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 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 YOUNGEVITY INTERNATIONAL
 14 CORP., a Delaware corporation; and
 15 JOEL D. WALLACH, DVM, ND, a
 California resident,

16 Plaintiffs,

17 v.

18 TODD SMITH, an individual and
 19 Utah resident; WAKAYA
 20 PERFECTION, a Utah corporation;
 21 TOTAL NUTRITION TEAM D/B/A
 22 TNT, a Utah corporation; BLAKE
 23 GRAHAM, an individual and Utah
 resident; WILLIAM ANDREOLI, an
 24 individual and New Hampshire
 resident; ANDRE VAUGHN, an
 25 individual and Pennsylvania
 resident; DAVE PITCOCK, an
 26 individual and Kansas resident;
 27 PATTI GARDNER, an individual
 and Utah resident; BRYTT
 28 CLOWARD an individual and Utah
 resident; and DOES 1–10, inclusive.

Case No. 3:16-cv-00704-L-JLB

**SECOND AMENDED COMPLAINT
 FOR DAMAGES AND INJUNCTIVE
 RELIEF FOR:**

1. Lanham Act (15 U.S.C. § 1125);
2. False Advertising (Cal. B&P Code §§ 17500, *et seq.*); and
3. Unfair Competition (Cal. B & P Code § 17200).
4. Intentional Interference with Prospective Economic Advantage;
5. Breach of Contract;
6. Intentional Interference with Contract/Inducing Breach of Contract;
7. Misappropriation of Trade Secrets (Cal. Civ. Code § 3426);
8. Misappropriation of Likeness (Cal. Civ. Code § 3344);
9. Lanham Act (15 U.S.C. § 1114);

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Defendants.

10. Breach of Fiduciary Duty;

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Plaintiffs Youngevity International Corp. (“YGYI” or “Youngevity”) and Joel D. Wallach, BS, DVM, ND (“Dr. Wallach”) (collectively, “Plaintiffs”), by counsel, file this Second Amended Complaint for Damages and Injunctive Relief against the above-named Defendants. Plaintiff YGYI filed its original Complaint (Dkt. 1) on March 23, 2016. It completed service on all defendants April 1, 2016 (Dkt. 14). Plaintiffs filed their First Amended Complaint on May 6, 2016 (Dkt. 25). On June 29, 2016, this Court granted Plaintiffs leave to file this Second Amended Complaint (Dkt. 45).

PARTIES

The Plaintiffs:

2. Organized in 1997, Plaintiff Youngevity, a publicly traded company (NASDAQ symbol: YGYI), operates under the laws of Delaware with its principal place of business in Chula Vista, California.

3. For the past nineteen years, Youngevity has sold products through direct selling networks worldwide, as well as wholly owned subsidiaries, including, e.g., AL Global Corporation; CLR Roasters, LLC; Financial Destinations, Inc.; and FDI Management, Inc.

4. Originally U.S.-centric, selling specialty liquid based vitamin and mineral formulas created by plaintiff Dr. Joel D. Wallach, Youngevity has become global, selling in excess of 1,000 products through direct sales worldwide, including, but not limited to, nutritional products, sports and energy drinks, health and wellness-related services, lifestyle products, gourmet coffees, and cosmetics.

1 5. Youngevity develops and distributes consumer products through
2 independent, direct-sellers known as “distributors,” who are Youngevity agents
3 bound by the Youngevity distributor agreement. Each has a “genealogy” within
4 Youngevity that consists of other distributors in an “upline” or “downline.”
5 Distributors in the upline predate, and those in the downline post-date, the
6 distributor’s enrollment. Sales flowing from downline distributors are also shared
7 with upline distributors, who generally have a limited commission payable for all
8 sales in their respective downlines. The integrity of the Youngevity genealogies is
9 essential to Youngevity’s business model.

10 6. Youngevity’s distributors market products through corporate-backed
11 marketing channels, including internet websites, media, trade shows, lectures,
12 community events, local shops, and home meetings. Distributors generally sell
13 through peer-to-peer relationships, e-commerce, and social media marketing.

14 7. Youngevity invests more than seventy million dollars annually in
15 sales, incentives, and marketing efforts to support its distributor networks.

16 8. Plaintiff Dr. Joel D. Wallach is an individual and resident of
17 California, a doctor of veterinary medicine, author of leading texts and articles on
18 veterinary medicine and comparative pathology, and a doctor of naturopathic
19 medicine.

20 9. Dr. Wallach has been actively involved with biomedical research and
21 clinical medicine for over five decades. His research is contained in more than
22 seventy peer-reviewed and refereed journal articles in diverse fields including
23 veterinary medicine, veterinary pathology, comparative pathology, nutrition, and
24 pharmaceutical research.

25 10. Dr. Wallach founded American Longevity Corporation in 1997, which
26 became Youngevity in 2006.

27 11. Youngevity has grown and thrived under Dr. Wallach’s direction, and
28 as a result of his research and reputation.

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2 **The Defendants:**

3 12. Defendant Wakaya Perfection, LLC (“Wakaya” or “Wakaya
4 Perfection”) is a limited liability company formed and operated under the laws of
5 Utah. Wakaya has one founding member in its documentation filed with the Utah
6 Secretary of State: Todd Smith. Smith acquired Wakaya in October, 2015.
7 Wakaya is a Utah resident and business for jurisdictional purposes.

8 13. Wakaya is a multi-level marketing company that competes directly
9 with Youngevity.

10 14. Defendant Todd Smith is an individual and Utah resident. From 1997
11 until March of 2016, Todd Smith was a top level Youngevity distributor. Smith
12 had ownership interests in entities that distributed Youngevity products. Smith
13 formed Wakaya Perfection after departing Youngevity, and designed Wakaya
14 specifically to compete against Youngevity.

15 15. William “Bill” Andreoli is an individual and resident of New
16 Hampshire. Andreoli is Wakaya’s President. Through November of 2015,
17 Andreoli served as Youngevity’s President, received a seven figure salary of pay,
18 stock, and benefits, and received commissions as a Youngevity distributor.

19 16. Andre Vaughn is an individual and resident of Pennsylvania. Vaughn
20 served as a top-level distributor in Youngevity until March of 2016. A confidant
21 of Andreoli, Vaughn is participates and invests in, distributes for, and promotes
22 Wakaya Perfection.

23 17. Dave Pitcock is an individual and resident of Kansas. Pitcock served
24 as a top-level distributor in Youngevity until March of 2016, and held ownership
25 interests in Livinity Corporation, which Youngevity purchased from Pitcock in
26 2012. As part of that agreement, Pitcock executed a consulting agreement with
27 Youngevity containing non-compete and nondisclosure clauses. While still a
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1 Youngevity distributor and subject to that consulting agreement, Pitcock became a
2 participant and investor in, distributor for, and promoter of Wakaya Perfection.

3 18. Total Nutrition, Inc., d/b/a “TNT,” is a corporation organized and
4 operated under the laws of Utah since 1996 and, until March of 2016, a
5 Youngevity distributor. TNT was founded and wholly owned by defendants Todd
6 Smith and Blake Graham, both residents of Utah, until approximately December
7 31, 2015. On that date, Smith purportedly transferred his ownership interest in
8 TNT to Graham.

9 19. Blake Graham is an individual and resident of Utah. Until March of
10 2016, Graham served as a top-level distributor in Youngevity, and, together with
11 Smith, held ownership interests in TNT. Graham is now a participant and investor
12 in, distributor for, and promoter of Wakaya Perfection.

13 20. Patti Gardner is an individual and resident of Utah. Gardner served as
14 the President of Heritage Makers, Inc. In August 2013, Youngevity acquired
15 Heritage Makers and entered into an Asset Purchase Agreement with Heritage
16 Makers. Gardner then became Youngevity’s Vice President of Sales. While still
17 employed by Youngevity, Gardner became a participant and investor in, agent for,
18 and promoter of Wakaya Perfection. Gardner is now Wakaya’s Vice President.

19 21. Brytt Cloward is an individual and resident of Utah. Cloward served
20 as the Vice President of Sales and Marketing of Heritage Makers, Inc. In August
21 2013, Youngevity acquired Heritage Makers through an Asset Purchase
22 Agreement. Cloward signed that agreement. Cloward then became Youngevity’s
23 Vice President of Marketing. While still employed by Youngevity, Cloward
24 became a participant and investor in, agent for, and promoter of Wakaya
25 Perfection.

26 22. Defendants DOES 1-10 are presently unidentified or unknown
27 individuals and/or entities who have or that have facilitated and participated or
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1 cooperated in the unlawful activities described herein. The nature and identity of
2 those defendants will become known through discovery.

3 **JURISDICTION AND VENUE**

4 23. This Court has original subject matter jurisdiction under 28 U.S.C. §
5 1331 because Plaintiff seeks relief under the federal laws of the United States.
6 Plaintiff presents Counts under the Lanham Act, 15 U.S.C. §§ 1111 *et seq.*, for
7 false and misleading advertising, trademark infringement, and unfair competition.
8 Plaintiffs' remaining state law claims are subject to this Court's supplemental
9 jurisdiction under 28 U.S.C. § 1367(a) because those state claims are related to
10 Plaintiffs' federal Lanham Act claim and form part of the same case or controversy
11 under Article III of the United States Constitution.

12 24. This Court additionally has original subject matter jurisdiction under
13 28 U.S.C. § 1332 because Plaintiffs Youngevity and Dr. Wallach are domiciled in
14 California, while no named Defendant resides in California and no Defendant
15 corporation is owned by a resident of California. The plaintiffs are completely
16 diverse from all defendants for purposes of 28 U.S.C. § 1332. Defendant Smith is
17 the sole member/owner of Wakaya and both Wakaya and Defendant Smith are
18 Utah residents. Defendant Graham is the sole member/owner of TNT and both
19 TNT and Graham are Utah residents. The matter in controversy yields damages in
20 the tens of millions of dollars and, thus, substantially exceeds \$75,000.

21 25. This Court has personal jurisdiction over all Defendants and venue is
22 proper in this District because Youngevity maintains its principal place of business
23 in this District and all Defendants have sufficient minimum contacts with
24 California, including conducting business with Youngevity. All Defendants
25 knowingly injured Youngevity with knowledge that Youngevity is located in this
26 District and that the damages would be incurred by Youngevity in this District.

27 26. Venue is proper under 28 U.S.C. § 139(b)(2) because a substantial
28 part of the events giving rise to Youngevity's claims herein occurred in this

1 District. Youngevity is a California Corporation with its principal place of
2 business in San Diego County, California.

3
4 **COUNT ONE**

5 **LANHAM ACT FALSE OR MISLEADING ADVERTISING**
6 **15 U.S.C. § 1125**
7 **(Defendants Wakaya and Smith)**

8 27. Wakaya and Smith, and all others found through discovery to have
9 acted in concert with them, are primarily engaged in the business of selling goods
10 and services through Wakaya.

11 28. Wakaya and Smith, and all others found through discovery to have
12 acted in concert with them, made the below identified false and misleading
13 statements to induce individuals to become Wakaya distributors and/or sell
14 Wakaya products, at the expense of Youngevity.

15 29. Wakaya and Smith, and all others to be discovered in this action to
16 have acted in concert with them, made the below identified false and misleading
17 statements to individuals who were Youngevity distributors or potential
18 distributors or Youngevity customers or potential customers. The conduct
19 described herein below violates federal law.

20 **A. False and Misleading Advertising—Income Claims**

21 30. Defendants Wakaya and Smith, and all others found through
22 discovery to have acted in concert with them, have made false statements of fact in
23 commercial advertisements about allegedly superior commercial opportunities
24 available to Wakaya distributors, by claiming, for example, that Wakaya
25 distributors would be able to earn \$100,000.00 per month or even \$250,000 per
26 month (“income claims”).
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1 31. Wakaya’s agents have pledged that individuals will have \$600-\$800
2 in earnings simply by signing to become Wakaya distributors and without
3 performing any work.

4 32. Wakaya agents promised that “a year from now, many of us will be
5 million dollar earners.”¹

6 33. Wakaya encouraged product sales and memberships by informing
7 individuals that they could be “million dollar earners.”²

8 34. Wakaya representatives claimed that participants could easily earn
9 more than \$85,000 within ninety days and that participants could earn “a quarter
10 million dollars in one month.”

11 35. Wakaya represented that individuals participating in Wakaya will be
12 able to replace their living wages through money earned in Wakaya.

13 36. Wakaya represented to participants that they will earn amounts of
14 money that they “won’t even be able to imagine” and that “are almost incalculable
15 ...”

16 37. Wakaya and its agents’ statements of fact concerning the amount of
17 income Wakaya distributors will make actually deceived or had the tendency to
18 deceive a substantial segment of its audience because the audience would likely
19 believe that Wakaya’s false income claims were truthful.

20 38. The income claims are material because, if true, the intended audience
21 would likely contract to become Wakaya distributors to earn the promised
22 substantial income.

23 39. Wakaya and its agents have made unsubstantiated income claims
24 through conference calls and internet webcasts, causing those claims to enter
25 interstate commerce.

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27 ¹See, e.g., <https://www.youtube.com/watch?v=4dW5-yCgJRE> (last visited
28 July 12, 2016).

²<https://youtu.be/qpVPTIKiVmw> (last visited July 12, 2016).

1 40. Youngevity has suffered injury as a result of Wakaya’s false income
2 claims because Youngevity distributors, or potential distributors, have joined
3 Wakaya instead of Youngevity or have reduced their sales promotions of
4 Youngevity products to spend more time in sales promotions of Wakaya products
5 in reliance on those claims.

6 41. Those income claims are, in fact, false or misleading. No Wakaya
7 distributor has earned the amounts claimed above and none is likely to ever earn
8 the money promised by Wakaya’s agents. In fact, only the top-level distributors or
9 founders are ever likely to see a profit, if at all, from their participation in Wakaya,
10 which is a corporation operating in the red without any serious prospect of
11 becoming profitable.

12
13 **B. False and Misleading Advertising—David Gilmour**

14 42. Defendants Wakaya and Smith, and all others acting in concert (to be
15 determined through discovery), have promoted the Wakaya business as a joint
16 venture with David Gilmour, the billionaire founder of Fiji Water company and the
17 owner of the tropical island Wakaya.

18 43. Wakaya advertising describes Gilmour as a “partner” or “founder” of
19 Defendant Smith’s Wakaya venture.

20 44. Wakaya’s promotional brochures feature Gilmour’s likeness and
21 include quotations from him.

22 45. Wakaya holds Gilmour out as an individual who personally
23 participates in the Wakaya venture and who backs the Wakaya venture financially.

24 46. Wakaya informational videos refer to “Mr. Gilmour, the founder of
25 our company.”

26 47. Wakaya routinely provides Gilmour’s information, including books
27 and literature, to prospective Wakaya members, and hold Smith out as Gilmour’s
28 “partner.”

1 48. Wakaya sales pitches and promotional material frequently rely on
2 Gilmour’s biography and successes.

3 49. Wakaya intended promotional statements associating Gilmour with
4 Defendant Smith’s Wakaya to create the impression that Gilmour was intimately
5 involved in the direct-selling venture and a financial supporter of same, which
6 representations are false.

7 50. Wakaya agents proclaim during sales presentations that “Mr. David
8 Gilmour is our founder; the same founder of Fiji water.”

9 51. Wakaya agents have also said that “a billionaire’s backing it,”
10 referring to Gilmour while promoting the Wakaya venture. Other promotional
11 videos have stated that Gilmour is “backing everything” related to the company.³

12 52. Wakaya pledged that all Wakaya distributors would meet Gilmour,
13 and spoke about “how excited Mr. Gilmour is to see and meet every single one of
14 you [Wakaya participants].”

15 53. Defendants thus marketed the Wakaya enterprise by falsely touting
16 Gilmour as the financial backer of and as directly involved in promotion Smith’s
17 Wakaya. Defendants have thus marketed Wakaya upon Gilmour’s reputation.
18 Those efforts were designed to lend credibility to Smith’s Wakaya venture by
19 suggesting that Gilmour’s interests were tied with Smith’s Wakaya.

20 54. In reality, Defendant Smith is the sole founder of the Wakaya
21 Perfection direct-selling network, a startup business that purchased the Wakaya
22 Perfection brand from Gilmour. Smith’s own father, Steve Smith, himself not a
23 billionaire, is the primary financial backer of Wakaya to date.

24 55. Defendant Smith has not purchased an exclusive right to use the
25 Wakaya brand. Many online retailers and vendors sell Wakaya brand products at
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28 ³See, e.g., <https://youtu.be/OHNNj-0BjPI> (last visited July 12, 2016).

1 prices lower than those offered through the Wakaya system—thus undercutting
2 any incentives to Wakaya members.

3 56. Gilmour is not involved with Smith’s Wakaya Perfection LLC direct-
4 selling network and is not an owner of Wakaya Perfection LLC, despite
5 Defendants’ advertisements to the contrary.

6 57. Wakaya’s statements concerning Gilmour’s involvement in Wakaya,
7 serving as a business partner of Smith in Wakaya, and financially backing Wakaya,
8 are false and tend to deceive or actually deceive prospective Wakaya distributors
9 who are induced by those representations to pay to become Wakaya distributors
10 and buy Wakaya products.

11 58. Wakaya’s and its agents’ advertising claims concerning Gilmour’s
12 involvement and the false income statements are material to consumers purchasing
13 Wakaya’s products and prospective recruits entering Wakaya.

14 59. Wakaya and its agents have made false and misleading claims
15 concerning Gilmour through internet webcasts and telephone conference calls,
16 causing those statements to enter interstate commerce.

17 60. Youngevity has suffered injury as a result of Wakaya’s false claims
18 concerning David Gilmour because Youngevity distributors, or potential
19 distributors, have joined Wakaya instead of Youngevity and because consumers
20 have purchased Wakaya products instead of Youngevity products thinking that the
21 Wakaya products are backed by Gilmour.

22
23 **C. False and Misleading Advertising—Youngevity’s Finances**

24 61. Defendants Wakaya and Smith, and all others acting in concert (to be
25 determined in discovery), have maliciously and unlawfully promoted Wakaya
26 through false and misleading claims about Youngevity.

27 62. To lure business opportunities away from Youngevity, Defendants
28 have falsely claimed that Youngevity has financial troubles. Defendants have

1 falsely claimed that Youngevity was unable to pay commissions. Defendants have
2 thus attempted to characterize Youngevity as a failing organization.

3 63. In fact, Youngevity maintains excellent ratings with the Dunn &
4 Bradstreet corporate credit monitoring organization. Youngevity's sales and
5 profits have grown consistently over the past decade. As a publicly traded
6 corporation, Youngevity most recently posted sales revenues over \$156 million.

7 64. Wakaya and its agents have made false statements of fact concerning
8 Youngevity's financial status when promoting and marketing Wakaya.

9 65. Wakaya's false statements concerning Youngevity's financial status
10 were likely to deceive and did deceive the intended audience.

11 66. Wakaya's statements concerning Youngevity's finances are material
12 in that they have caused Youngevity distributors, or potential distributors, to leave
13 Youngevity, violate Youngevity distributor agreements, and/or not actively
14 promote and sell Youngevity products.

15 67. Wakaya and its agents have made false and misleading claims
16 concerning Youngevity's finances through internet webcasts and telephone
17 conference calls, causing those statements to enter interstate commerce.

18 68. Youngevity has suffered injury as a result of Wakaya's false
19 statements concerning Youngevity's finances because Youngevity distributors
20 have left Youngevity or reduced their sales and promotion activity for Youngevity
21 because of those statements and because potential new Youngevity distributors
22 have been dissuaded from so becoming as a result of those statements.

23 Additionally, Youngevity has suffered injury in harm to its reputation and goodwill
24 as a result of Wakaya's false statement concerning Youngevity's finances.
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D. False and Misleading Advertising—Origin of Wakaya Products

69. Defendants Wakaya and Smith, and all others acting in concert (to be determined through discovery), have advertised products based on claims that those products originate in the Fijian islands.

70. A significant source of Wakaya’s promoted value for products comes from the “Fijian” qualities said to be inherent in the products sold.

71. Wakaya has marketed the following products primarily based on the claim that they originate in the Fijian islands and on benefits and qualities said to be due to sourcing from Fiji: Wakaya Bula Bottles, Wakaya Sava Cosmetics, Wakaya Detox Caps, Wakaya Essential Oils.

72. Those products in fact do not originate in the Fijian islands and are not sourced from Fiji. The Bula Bottles are produced in Idaho. The Detox Caps are manufactured in Idaho. The Essential Oils are manufactured in Kansas.

73. The statements concerning the origin of Wakaya’s products are likely to deceive and did deceive Wakaya distributors and potential distributors into believing that Wakaya products are all sourced from Fiji.

74. Wakaya’s misleading claims are material and are likely to influence the willingness of the audience to become Wakaya distributors by purchasing that business opportunity.

75. Wakaya caused its false statements to enter interstate commerce by publishing those statements on the internet.

76. Youngevity is or is likely to be injured as a result of the Defendants’ false statements because Youngevity distributors have left Youngevity or reduced their sales and promotion activity for Youngevity because of those statements and because potential new Youngevity distributors have been dissuaded from so becoming as a result of those statements.

E. False and Misleading Advertising —Unsafe Products

77. Defendants Wakaya and Smith, and all others acting in concert (to be determined through discovery), market and sell a line of products known as “pure Calcium Bentonite Clay.”

78. The “pure Calcium Bentonite Clay” products include the Calcium Bentonite Clay Powder (referred to herein as the “Clay Product”).

79. Wakaya recommends that consumers ingest 1 teaspoon of Calcium Bentonite Clay with 2 ounces of water. *See* Decl. of Eric J. Awerbuch, attached as Exh. A, at Attach. 1 (Wakaya Powdered Clay Label).

80. Wakaya claims that its Clay Product has “AMAZING health benefits!” Wakaya does not include any warnings against use of the Clay Product by children or warning of risk of injury due to elevated arsenic and lead.

81. Wakaya recommends oral consumption of the Clay Product multiple times daily, for continued use over prolonged periods of time.

82. Wakaya claims that its Clay Product provides the following health benefits:

- a. Used on the Skin to Heal Eczema, Dermatitis & Psoriasis;
- b. Used in the Bath as a Soaking Liquid to Remove Toxins;
- c. Allows Cells to Receive More Oxygen;
- d. Alkalizes the Body;
- e. Boosts Probiotics;
- f. Relieves Digestive Problems (Constipation, IBS, Nausea, etc.);
- g. Boosts Immunity by Killing Harmful Bacteria and Viruses;
- h. Improves the Health of Teeth and Gums; and
- i. Purifies Water.

See Exh. A (Decl. of Eric J. Awerbuch), at Attach 2 (Facebook Post).

83. Wakaya claims that its Clay Product has “powerful detoxifying benefits.”

1 84. Wakaya claims that its Clay Product aids nutrient absorption, weight
2 loss, and overall good health. In corporate-sponsored presentations, Wakaya has
3 advertised its Clay Product as effective for treatment of “serious health problems.”⁴

4 85. In fact, Wakaya’s Clay Product contains lead at dose levels high
5 enough that when taken daily over extended periods pose a significant risk of
6 serious health consequences, including damage to the central nervous system,
7 kidneys, and immune system, not least of which are neurological disorders, lead
8 encephalopathy, tremors, hallucinations, paralysis, coma, and even death.

9 86. Instead of detoxifying and conveying health benefits, Wakaya’s Clay
10 Product poisons those who consume it, posing a significant risk of serious health
11 consequences.

12 87. The FDA recently warned consumers not to ingest clay products
13 similar to Wakaya’s Clay Products⁵, explaining that “laboratory analysis of the
14 [clay] product found elevated lead levels” and that “[e]xposure to lead can cause
15 serious damage to the central nervous system, the kidneys, and the immune
16 system.”

17 88. Wakaya’s statements concerning its Clay Product outlined above are
18 false and misleading because the Clay Product contains toxic levels of lead, often
19 in excess of state and federal standards when used as directed, making them
20 injurious to the health of all users.

21 89. Wakaya has made no effort to warn consumers, including children, of
22 the risks posed by its Clay Product.

23 90. Wakaya’s statements about its Clay Product have a tendency to
24 deceive and have deceived consumers into mistakenly believing that Wakaya’s
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26 ⁴See, e.g., <http://wakayaleaders.podbean.com/e/calcium-bentonite-clay-product-call/> (last visited July 6, 2016).

27 ⁵See <http://www.fda.gov/Drugs/DrugSafety/ucm483838.htm> (last visited
28 July 1, 2016).

1 Clay Products are healthy and beneficial to human health when they are in fact
2 unhealthy and a risk to human health.

3 91. Wakaya's false and misleading statements concerning its Clay
4 Product are material in that they have caused consumers to purchase and use the
5 Clay Product and have also caused Youngevity distributors, or potential
6 Youngevity distributors, to become Wakaya distributors and unwittingly sell the
7 unsafe Clay Product believing them to be safe. The Wakaya Clay Product is
8 specifically marketed and sold as "detox" or "detoxification" products despite
9 having substantially elevated levels of lead and arsenic that are toxic. The "detox"
10 claims are therefore false and misleading.

11 92. Youngevity has been harmed and continues to be harmed by
12 Wakaya's false and misleading statements concerning Wakaya's Clay Product.
13 Youngevity would have earned more sales for its own competing health products
14 but for Wakaya's false and misleading statements concerning its Clay Product.
15 Further, Youngevity is harmed by Wakaya's statements concerning its Clay
16 Product because those statements have caused Youngevity distributors or potential
17 distributors to become Wakaya distributors.

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19 **F. False and Misleading Advertising —Unlawful Pyramid Scheme**

20 93. Defendants Wakaya and Smith, and all others found through
21 discovery to have acted in concert with them, drive their compensation plan
22 heavily through sign-up bonuses designed to compensate the acquisition of
23 downline members in a marketing "matrix," as opposed to direct consumer sales.
24 Wakaya pays "bonuses" based on the enrollment of new members. Wakaya's
25 agents have explained that members must "join the program at \$499."⁶
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28 ⁶See, e.g., <https://youtu.be/BKUWHmKHaHY> (last visited July 12, 2016).

1 94. Wakaya’s agents have promoted a “10k” push in an effort to obtain
2 10,000 Youngevity distributors, thus indicating Wakaya’s attempt to profit from
3 Youngevity’s distributor base.

4 95. The Wakaya product “Packs” are sold at exorbitant cost, and Wakaya
5 encourages new members to purchase those packs for at least \$499 per order. New
6 members must purchase those packs at \$499 per month to remain eligible for
7 profits within the system. Those goods are sold at considerable markup, indicating
8 little value attributed to the goods themselves—meaning that the purported value
9 actually comes exclusively through the business opportunity.

10 96. Before Wakaya Perfection began its direct-marketing business in
11 2016, a package of three Wakaya Beauty and Wellness products (e.g., Ginger
12 Body Soak (16oz), Ginger Body Scrub (15oz), and Organic Pink Fijian Ginger
13 (5.8oz)) sold online through Costco for \$49.00. Those products are currently
14 available through eBay.com for as little as \$39.89. *See* Exh. A (Decl. of Eric J.
15 Awerbuch), at Attach. 3 (eBay page). Those same three products now cost
16 \$187.90 through the Wakaya Perfection direct-selling network, which actually
17 represents a discount at the “preferred customer” rates displayed online: \$38.25
18 for Pink Ginger Body Scrub 18oz; \$84.40 for Pink Fijian Ginger Body Soak
19 (16.9oz); and \$65.25 for Organic Pink Fijian Ginger Powder (6.7oz).

20 97. That significant price markup is necessary to support the significant
21 “bonuses” and “commissions” promised to distributors participating in the direct-
22 selling business.

23 98. Wakaya’s price markup is inherently problematic because Wakaya
24 does not maintain a closed distribution network. Retail consumers are thus able to
25 purchase the Wakaya products from online retailers (e.g., Amazon.com) for
26 substantially less money than through the Wakaya program.

27 99. Wakaya’s compensation plan pays bonuses for recruitment of new
28 enrollees, including so-called qualifying, coding, or other bonuses linked

1 exclusively to recruitment of new Wakaya distributors, *not* product sales or
2 customer acquisition. Wakaya compensation is thus largely tied to recruiting new
3 members rather than product sales.

4 100. Wakaya enrollment bonuses are tied to the number of members
5 Wakaya participants can enroll. Wakaya pledges to pay distributors \$100 per
6 enrollee in the system, and that bonus is not contingent on product sales. It
7 promises “matrix bonuses” that also compensate upline members solely for the
8 recruitment of new participants without regard to product sales. The system
9 encourages reps to recruit new members rather than sell product.

10 101. The Wakaya promotional campaign emphasizes luxury lifestyles,
11 large financial gains, cruises, and other trappings of wealth. The false promise of
12 luxury and wealth absent commercial substance and the need to appeal to outside
13 “customers” indicates that Wakaya is primarily a pyramid scheme without regard
14 to product sales.

15 102. Wakaya’s marketing focuses on bucolic images of sandy beaches and
16 tropical islands. Its sales pitches promise rags-to-riches success, even pledging
17 that participation in Wakaya will help families “avoid foreclosure” or procure
18 additional funds for luxury living. In reality, none but a few top corporate
19 participants will be eligible for the promised riches, if at all.

20 103. The Wakaya venture’s primary (if not exclusive) source of revenue
21 and income is sourced from *within* the Wakaya organization, meaning the only
22 individuals purchasing product are those involved in the business opportunity itself
23 rather than outside customers. Wakaya has no significant independent source of
24 income. The reinvestment of income from downline members is thus essential for
25 the promised payment of upline bonuses and commissions.

26 104. Wakaya compels new distributors or enrollees to purchase goods
27 monthly in an effort to “qualify” accounts for earnings (e.g., commissions and
28 bonuses), including the Paradise Starter Packs (at \$500). It also compels new

1 enrollees to accept a monthly auto-ship (i.e., a continuity plan where credit cards
2 are charged automatically) at a cost of \$150 per month. *See* Exh. A (Decl. of Eric.
3 J. Awerbuch), at Attach. 4 (Wakaya Ambassador Application).

4 105. New enrollees are considered “qualified” only if they also pay the
5 \$500 “starter pack” fee. Although products ship along with the \$500 fee, the
6 “starter pack” is designed as an initial fee for new enrollees, which funds help to
7 pay “bonuses” promised to upline distributors. The Wakaya scheme therefore
8 reaps profits almost exclusively based on new acquisition of enrollees and not from
9 product sales, a hallmark of unlawful pyramid schemes.⁷

10 106. Wakaya offers a product line consisting of luxury beauty and cosmetic
11 products (e.g., body scrubs and facial products), along with a small number of
12 nutrition or “wellness” products at exorbitant prices. Those products are unlikely
13 to generate substantial residual income streams, particularly from Wakaya’s
14 flagship offerings that are, essentially, culinary spices commonly available at retail
15 like Ginger and Turmeric powder. Wakaya sells Turmeric Powder for \$65.25
16 (7.5oz), Pink Ginger for \$65.25 (6.7oz), and Kosher Sea Salt for \$39.35 (12oz).
17 Moreover, at those elevated prices, individuals looking to replace living wages
18 through the Wakaya system are unlikely to find any value in Wakaya’s compulsory
19 product purchases.

20 _____
21 ⁷ Wakaya’s compensation plan does allow distributors to qualify through
22 personal retail sales in excess of \$1,000 over a three month window. Distributors
23 must be “qualified” before they can earn commissions and bonuses within the
24 Wakaya business engine. However, those distributors would otherwise “qualify”
25 through one purchase of the \$499 Paradise Starter Pack. Thus, Wakaya made the
26 most expedient and affordable method for qualifying an account the purchase of a
27 Starter Pack by those distributors within Wakaya’s organization. Moreover, those
28 sponsoring participants benefit most directly and efficiently by having their
enrollees purchase the Paradise Starter Pack, making the sponsors’ interests
primarily geared towards that qualification process as they introduce prospects into
the Wakaya system. Again, the Wakaya system is designed almost exclusively to
drive recruitment—*NOT* product sales—a hallmark of unlawful pyramid schemes.

1 107. Wakaya’s promotional events, marketing, videos, and literature focus
2 exclusively on the business opportunity and growth of “downline” distributors.
3 Wakaya’s promotional content provides no guidance, instructions, or
4 encouragement related to product sales outside of the organization to legitimate
5 customers.

6 108. Wakaya participants and agents have explained that the system is a
7 pyramid. *See* Exh. A (Decl. of Eric J. Awerbuch), at Attach. 5 (Ashley Duncan
8 Facebook Post).

9 109. Indeed, because Wakaya’s direct-selling network supplies Wakaya
10 products at a considerable premium over market rate, few legitimate “customers”
11 would be expected outside of the Wakaya business plan.

12 110. Wakaya’s business plan promotes false and misleading earnings and
13 opportunity claims, because the “residual” income promised by the Company is
14 mathematically impossible to achieve for all but a few top-level distributors with
15 high placements in the corporation.

16 111. Wakaya’s method of advertisement as a pyramid scheme has the
17 tendency to deceive and does deceive the advertising audience into believing they
18 can earn sustainable income by only encouraging others to join Wakaya without
19 selling any actual product.

20 112. Most Wakaya participants will spend more money to participate in
21 Wakaya than they will earn through their involvement with the company, and the
22 majority of Wakaya representatives will not make the substantial incomes
23 promised.

24 113. Those Wakaya advertising claims concerning the business
25 opportunity are therefore false and misleading. The average Wakaya participant
26 will not experience significant financial gains through the Wakaya startup venture.

27 114. The Federal Trade Commission has determined that similar business
28 structures that share elements of the Wakaya business methodology are unlawful

1 pyramid schemes, in part, based on similar fact presented herein in this Complaint.
2 *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014) (affirming district
3 court’s holding that the defendant was an illegal pyramid scheme); *see also F.T.C.*
4 *v. Vemma Nutrition Co.*, No. CV-15-01578-PHX-JJT (D. Ariz. Aug. 21, 2015)
5 (Order granting preliminary injunction against illegal pyramid scheme); *F.T.C. v.*
6 *Fortune Hi-Tech Mktg., Inc.*, No. 5:13-cv-123-KSF (E.D. Ky. May 9, 2014)
7 (Stipulated Order for Permanent Injunction and Monetary Judgment against illegal
8 pyramid scheme).

9 115. The following reveal Wakaya to be an unlawful pyramid scheme:

- 10 a. Wakaya requires payments for entry into the business organization,
11 which entrance fees are then used to pay existing participants;
- 12 b. The Wakaya income is based predominantly on the number of
13 people that are recruited into the program, and not based on how
14 much product is actually sold.
- 15 c. The Wakaya marketing materials focus solely on recruiting other
16 representatives or affiliates.
- 17 d. The Wakaya venture requires new enrollees to purchase product
18 through a continuity plan, meaning that most of the product
19 “sales” are derived from within the business organization itself.
- 20 e. Wakaya requires a continuity plan equivalent to \$150/month or
21 \$1,800/year, the same value the FTC found unlawful in its
22 Vemma lawsuit. *F.T.C. v. Vemma Nutrition Co.*, No. CV-15-
23 01578-PHX-JJT, 2015 WL 9694632 (D. Ariz. Sept. 18, 2015)
24 (explaining that “[t]he FTC objects to Vemma’s proposed
25 compensation plan on the grounds that it still incentives
26 recruitment of Affiliates over retail sales”).
- 27 f. The Wakaya promotional materials promise luxurious living,
28 luxury cars, vacations, etc., without disclosing the average or

1 expected yields to those distributors who become downline
2 participants.

3 g. The Wakaya products provide little value when compared with,
4 or in exchange for, the investment in the business opportunity.

5 h. Wakaya's direct-selling products commonly available at retail are
6 marked up substantially over the prices previously offered at
7 retail in prior years predating the direct-selling organization.

8 i. The Wakaya venture has few (if any) "customers" that are
9 beyond the business organization itself. Sales occur only
10 between people inside the pyramid structure or to new recruits
11 joining the structure.

12 j. The Wakaya venture lures new recruits by touting the exotic and
13 luxurious qualities of Wakaya's products sourced from "Fijian
14 Islands." The benefits of the "Fijian" sourcing are difficult for
15 consumers to verify and, indeed, misleading to the extent
16 Wakaya suggests that the Fijian source produces any significant
17 health or commercial benefit. New recruits are led to disregard
18 the commercial impracticalities through distractive emphasis on
19 the foreign-sourced, luxury or tropical branding.

20 116. Unlawful pyramid schemes, by definition, materially mislead
21 consumers. New recruits, distributors, and participants are encouraged to
22 participate in the scheme without critical disclosures or warnings related to the risk
23 of monetary loss.

24 117. Wakaya has misrepresented the true nature of its business opportunity.
25 Defendants cannot reasonably expect that the Wakaya venture will be as lucrative
26 as advertised.

27 118. Wakaya has embraced the false and misleading nature of its pyramid
28 scheme. It has encouraged blind enrollment in the Wakaya "matrix" and targeted

1 vulnerable recruits looking for quick profit and wealth. At public Wakaya events
2 and on corporate webinars, several Wakaya agents have described the desired
3 enrollment process as “ignorance on fire.”

4 119. One Wakaya recruiter described the recruitment process as a means to
5 keep prospective recruits ignorant of key business aspects:

6 We don’t want people to know everything. We want people –
7 even Andre [Vaughn], when we were at the [Wakaya Prelaunch]
8 event this weekend, Andre was like ‘I know like 15% of
9 everything that’s, you know, where this company is concerned.’
10 He said ‘I’m ignorance on fire right now.’ And that’s what we
11 want. We don’t want to have a bunch of experts running around
12 thinking that they need to tell everybody everything about anything
because then your prospects are going to think that they need to
know and do the same thing.”⁸

13 120. Another recruiter separately explained that she had enrolled
14 individuals without even having the name of the Wakaya company:

15 [T]alk about ignorance on fire, the first person I signed up on this
16 was my rep Dave. And [in] our phone conversation ... I had
17 forgotten to ask what the name of the company was. So here I am
18 signing Dave up and he’s like, ‘what’s the name?’ I said ‘do you
19 want to know the name of the company?’ He said ‘no I don’t
20 care.’ And I said ‘that’s good [because] I forgot to ask.’ I had no
idea. But you know what, I was so excited that it didn’t matter.
Does it really matter what the name is? No.⁹

21 121. Wakaya’s and its agents’ statements concerning Wakaya have been
22 made through internet webcasts and in phone calls, thereby causing them to enter
23 interstate commerce.
24

25
26 ⁸*See, e.g.*,
27 <https://www.youtube.com/watch?v=2SpzIBlaxjA&feature=youtu.be> (last visited
28 July 12, 2016).

⁹*Id.*

1 122. Youngevity suffers direct and proximate injury stemming from the
2 false and misleading Wakaya advertising and business model. Wakaya solicits
3 Youngevity distributors to become Wakaya distributors through that advertising
4 and model and to devote time to Wakaya distributor recruitment that would
5 otherwise be spent selling and promoting Youngevity's products.

6
7 **COUNT TWO**

8 **FALSE ADVERTISING**
9 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
10 **(Defendants Wakaya and Smith)**

11 123. Defendants have made or caused to be made or disseminated to the
12 public false and misleading statements.

13 124. Those false statements include statements concerning:

- 14 a. The amount of income Wakaya distributors can earn by joining
15 Wakaya, *see supra* at ¶¶ 30–41;
16 b. David Gilmour's relationship with Wakaya, *see supra* at ¶¶ 42–60;
17 c. Youngevity's financial state, *see supra* at ¶¶ 61–68;
18 d. The origin of Wakaya's products, *see supra* at ¶¶ 69–76;
19 e. Wakaya's corporate structure, *see supra* at ¶¶ 93–122;
20 f. The safety and health benefits of the Wakaya Clay Product, *see*
21 *supra* at ¶¶ 77–92.

22 125. Defendants, through the exercise of reasonable care should have
23 known the above identified statements were false and misleading when made.

24 126. Defendants' false statements identified above have harmed
25 Youngevity in an amount to be proven at trial because those statements have the
26 effect of causing Youngevity distributors and potential Youngevity distributors to
27 become Wakaya distributors, sell products in competition with Youngevity, and
28 reduce their promotion and sale of Youngevity products.

1 Wakaya. The primary focus of Wakaya is the recruitment of more members into
2 the scheme. *See supra* at ¶¶ 93–122.

3 132. Defendants willfully contrived, prepared, set up, and operated
4 Wakaya in violation of Section 327.

5 133. As a result of Defendants’ wrongful conduct, Youngevity has suffered
6 and will continue to suffer damages and injuries according to proof at trial.

7
8 **B. Unlawful Sale of Misbranded and Adulterated Foods or Dietary
Supplements**

9 134. Wakaya sells a Bentonite Clay Product as natural and safe detoxifying
10 agents; it is not; it contains toxic levels of lead. *See supra* at ¶¶ 77–92.

11 135. Wakaya recommends in corporate materials and advertising
12 (including social media) that consumers ingest its Clay Product as a detoxifying
13 agent when, in fact, it imparts toxic levels of lead to the body.

14 136. Wakaya’s promotional materials advertise the Clay Product for use
15 with “detoxification and weight loss.”

16 137. Wakaya therefore advertises an intended use of the Clay Product as
17 dietary supplements regulable under state and federal laws. *See* 17 Cal. Code
18 Regs. § 10200 (defining “dietary supplement”).

19 138. As a dietary supplement, Wakaya’s Clay Product is adulterated and
20 misbranded and, thus, unlawful for sale. *See, e.g.*, Cal. Health & Safety Code §§
21 110100, 110665, 110670, 110673, 110675, 110710, 110720.

22 139. Wakaya’s Clay Product is marketed without required labels or
23 labeling sufficient to inform consumers of the contents contained within the
24 product. Federal and state laws require proper disclosures of Supplement Facts for
25 all dietary supplements marketed to California consumers. *See* Cal. Health &
26 Safety Code §§ 110100, 110665 (Nutrition labeling not in conformity with federal
27 requirements), 110670 (Nutrition content or health claims not in conformity with
28 federal requirements), 110675 (packaged food; labeling requirements), 110710

1 (definition and standard of identity; failure to include on label or otherwise
2 conform), 110720 (common or usual name if no standard of identity exists; failure
3 of label to state).

4 140. Wakaya’s Clay Product, intended to be digested orally, is a “food” or
5 “dietary supplement” under California’s Sherman Laws. Cal. Health & Safety
6 Code § 109935.

7 141. Foods and dietary supplements are adulterated if they contain any
8 poisonous or deleterious substance that may render the product injurious to health.
9 Cal. Health & Safety Code § 110545.

10 142. As described above, Wakaya’s Clay Product contains amounts of lead
11 which render it injurious to those who consume it. *See supra*, at ¶¶ 77–92.
12 Wakaya’s Clay Product is therefore misbranded under Cal. Health & Safety Code
13 § 110545.

14 143. It is unlawful under California’s Sherman Laws “to manufacture, sell,
15 deliver, hold, or offer for sale any food that is adulterated.” Cal. Health & Safety
16 Code § 110620.

17 144. Wakaya sells, delivers, holds, and offers for sale the Clay Product.

18 145. Wakaya violates the California Health and Safety Code by selling,
19 delivering, holding, and offering for sale the Clay Product.

20 146. Wakaya’s violations of the California Health and Safety Code
21 constitute “unlawful” conduct under the California Unfair Competition Law. Cal.
22 Health & Safety Code § 17200 *et seq.*

23 147. As a direct competitor with Wakaya, Youngevity suffers economic
24 injury as a result of Wakaya’s promotions and sales in violation of the California
25 food and drug code sections. Wakaya’s use of unlawful labeling and claim
26 language provides an unfair and unlawful market advantage. Moreover, in light of
27 Defendants use of web sites that trade upon the name of Youngevity and name and
28 likeness of Dr. Wallach, Defendants convey the impression that Youngevity

1 endorses or supports Wakaya's products, including its toxic clay, thereby
2 irreparably injuring the good will of Youngevity and the reputation of Dr. Wallach.

3 148. Youngevity has lost business, or is likely to lose business, to the
4 extent Youngevity distributors and consumers at large buy Wakaya's Clay
5 Products rather than Youngevity's competing health products.

6
7 **C. General Allegations Concerning Defendants' Violations of
8 California's UCL**

9 149. Defendants conspired to violate California's unfair competition law
10 by agreeing to take actions that are unlawful, unfair, and fraudulent as described
11 herein. As a result of Defendants' conspiracy to violate California's unfair
12 competition law, Youngevity has suffered and will continue to suffer damages and
13 injuries according to proof at trial.

14 150. The Defendants' conduct, as alleged herein through Counts One, Two,
15 and Three constitutes unlawful, unfair, and/or fraudulent business practices, as
16 defined in the California Business and Professions Code § 17200 *et seq.*

17 151. Plaintiffs bring this Cause of Action on behalf of themselves and on
18 behalf of the public pursuant to Business & Professions Code § 17204.

19 152. Defendants' misleading and false statements identified above at
20 Paragraphs 30–122 constitute an ongoing harm on the public at large and on
21 California citizens.

22 153. Defendants' sale of unsafe products, while advertising them as safe
23 detoxifying products (*see supra* at ¶¶ 134–48), constitutes an ongoing harm to the
24 public at large and California citizens in particular.

25 154. Plaintiffs and the public are subject to a real and immediate threat of
26 continuing or additional injury from Defendants. Defendants continue to make the
27 false and misleading claims identified in this Complaint and to sell the harmful
28 Clay products identified in this Complaint.

1 155. Pursuant to Business & Professions Code § 17204, Plaintiffs seek an
2 order of this Court enjoining Defendants from continuing to engage in unlawful
3 commerce and commercial promotions as set forth in Counts One, Two, and
4 Three.

5 156. Plaintiffs and the public will be irreparably harmed if such an order is
6 not granted.

7 157. The Defendants' conduct presents a matter of substantial public
8 concern and interest necessitating injunctive relief that will limit the potential for
9 false and misleading claims and the sale of unsafe products.

10
11 **COUNT FOUR**

12 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE**
13 **ECONOMIC ADVANTAGE**
14 **(All Defendants)**

15 158. Youngevity alleges the tort of Intentional Interference with
16 Prospective Economic Advantage as follows:

17
18 **A. Todd Smith, Blake Graham, and Wakaya's Tortious Interference**
19 **with the Great American Clay Company**

20 159. For over a year before July 2015, Youngevity distributor Mia
21 Magistro had an economic relationship with the Great American Clay Company,
22 owned and operated by David Smith. A GAC product purchaser and associate of
23 David Smith, Youngevity distributor Magistro sought to arrange for Youngevity to
24 purchase and sell GAC products. GAC coordinated with Magistro to contact
25 Youngevity for the purpose of negotiating the purchase of GAC products and/or
26 GAC itself. A distributor in Todd Smith's downline, Magistro followed
27 Youngevity protocol by asking her upline Smith to inquire whether Youngevity
28 management would consider entering into a contract with GAC for sale of GAC
products.

1 160. When Youngevity distributor Magistro informed Defendant Todd
2 Smith of GAC’s interest in contracting with Youngevity, Smith, and shortly
3 thereafter Graham and Wakaya, knew that GAC wished to contract with
4 Youngevity.

5 161. Defendants Smith, Graham, and Wakaya, acted intentionally to divert
6 the GAC business opportunity intended for Youngevity to Wakaya, while posing
7 in negotiations of the deal as contracting agents for Youngevity.

8 162. Wakaya, Smith, and Graham did divert the GAC product purchasing
9 agreement intended for Youngevity to Wakaya, entering into an exclusive purchase
10 and sale agreement with GAC for Wakaya sale of GAC products.

11 163. Youngevity suffered economic harm through the loss of the GAC
12 business opportunity, combined with Wakaya’s competitive market advantage
13 gleaned from the GAC contract.

14 164. In or about July, 2015, a distributor in Todd Smith’s Youngevity
15 “downline,” Mia Magistro, introduced Todd Smith to David Smith, the owner of
16 GAC based in Austin, Texas (hereinafter “GAC”).¹⁰ See Decl. of Mia Magistro,
17 attached as Exh. B at ¶ 7.

18 165. Youngevity Downline distributors work under their “upline”
19 distributors, who are generally the individuals responsible for enrolling, training
20 and guiding downline distributors in the Youngevity business.

21 166. GAC expressed interest in forming an economic relationship with
22 Youngevity that would have Youngevity sell GAC’s products. *Id.* at ¶¶ 5–7, 9,
23 11–12. GAC also indicated its willingness to work with Dr. Joel Wallach on a
24 book publishing project related to Youngevity’s business. *Id.* at ¶ 11.

25
26
27
28 ¹⁰David Smith and Todd Smith are unrelated and have no familial
connections.

1 167. On August 25, 2015, Todd Smith, Blake Graham, David Smith, Lynn
2 Jenkins (a part owner of GAC), and Mia Magistro met at TNT's offices in Pleasant
3 Grove, Utah. *Id.* at ¶ 9.

4 168. At that meeting, Graham and Smith became aware that GAC wanted
5 to establish an economic relationship with Youngevity and Dr. Wallach.

6 169. Magistro identified Todd Smith as a Youngevity distributor in her
7 upline who had direct access to Youngevity management and Youngevity CEO
8 Steve Wallach, and Todd Smith met with GAC as a representative of Youngevity.
9 *Id.* GAC thought that it was meeting Youngevity representatives who would
10 negotiate a GAC product purchase agreement on Youngevity's behalf.

11 170. At the time, however, and undisclosed to Youngevity CEO Steve
12 Wallach, to GAC, or to Magistro, Todd Smith and Blake Graham were operating
13 in their own self-interest with an intent to divert the GAC purchase agreement
14 intended for Youngevity to their competing Wakaya venture, which venture had
15 not then been publicly disclosed and was unknown to the Plaintiffs or to Magistro.

16 171. Smith and Graham therefore abused their apparent authority to act on
17 Youngevity's behalf to secure an opportunity for Wakaya with GAC.

18 172. Todd Smith and Blake Graham thereby diverted a business
19 opportunity intended for Youngevity to Wakaya, never disclosing to Youngevity
20 CEO Steve Wallach the interest of GAC in selling its products through
21 Youngevity.

22 173. Todd Smith led GAC owner David Smith to understand that he, Todd
23 Smith—and he alone—was the point of contact for Youngevity in negotiation of
24 the GAC contract. That representation was false. The only person with authority
25 to negotiate the GAC contract was Youngevity CEO Steve Wallach or those
26 expressly authorized so to do by him for the benefit of Youngevity.

1 174. GAC had been scheduled to meet with Dr. Joel D. Wallach, the
2 founder of Youngevity and the father of Youngevity CEO Steve Wallach, in
3 November of 2015 in North Carolina. *Id.* at ¶ 14.

4 175. Todd Smith told GAC to cancel the meeting with Wallach, stating
5 falsely that he (Todd Smith) was already working on the account and had been
6 given Youngevity's authorization to develop new products himself. *Id.* at ¶¶ 15–
7 16. Those representations were false.

8 176. Todd Smith had no authority from Youngevity to determine whether
9 Youngevity would contract with GAC. Youngevity was unaware that Todd Smith
10 was meeting with GAC.

11 177. Todd Smith asked GAC not to disclose the reasons he gave David
12 Smith for cancelling GAC's meeting with Dr. Wallach and asked David Smith to
13 keep all communications between Todd Smith and David Smith confidential. *Id.*
14 at ¶¶ 12, 18.

15 178. Until approximately mid-December, 2015, Todd Smith continued his
16 negotiations with GAC for the development and formulation of four GAC products
17 for sale exclusively by Wakaya all the while still purporting to do so on
18 Youngevity's behalf. *Id.* at ¶¶ 19–20.

19 179. Todd Smith then prepared a contract for GAC which named as
20 contracting parties not Youngevity and GAC, but Wakaya and GAC. That led
21 GAC's owner to engage in email correspondence expressing confusion as to why
22 Wakaya and not Youngevity was listed as the named contracting party. Given
23 further assurances by Todd Smith, GAC then contracted with Wakaya to prepare
24 its four clay products developed at Todd Smith's request for exclusive sale by
25 Wakaya.

26 180. At no point did Todd Smith inform Youngevity or Dr. Joel D.
27 Wallach that GAC had been seeking to contract with Youngevity or that Smith had
28 canceled the previously scheduled meeting between GAC's owner and

1 Youngevity's Dr. Wallach. *See* Decl. of Steve Wallach, attached as Exh. C at ¶ 12;
2 Decl. of Joel D. Wallach, attached as Exh. D at ¶ 10.

3 181. The actions of Todd Smith and Blake Graham on behalf of Wakaya
4 disrupted the prospective economic relationship between GAC and Youngevity.

5 182. GAC now provides products exclusively for sale through Wakaya.
6 The Wakaya-GAC products include nutritional supplements or products that now
7 compete directly with Youngevity's nutritional products.

8 183. Wakaya's agents have described the GAC bentonite clay product as a
9 safe, unique and exclusive product that can only be sourced from the GAC mines
10 and only purchased through Wakaya.

11 184. Had Youngevity been aware of the opportunity to contract with GAC,
12 Youngevity would have evaluated that business opportunity seriously, negotiating
13 with GAC for the testing, acquisition, manufacture, and sale of the Great American
14 Clay products through Youngevity for commercial and non-ingestible uses, or into
15 negotiations to purchase the Great American Clay Company itself. *See* Exh. C
16 (Decl. of Steve Wallach) at ¶ 12. To the extent the GAC products contain unsafe
17 levels of lead and arsenic, Youngevity would have determined how best to remove
18 those harmful metals from GAC products through further processing to permit
19 alternative, safe commercial and non-ingestible uses for the GAC clay in
20 accordance with applicable federal and state laws.

21 185. The actions outlined above therefore caused Youngevity to suffer
22 economic harm because, but for Smith's, Graham's, and Wakaya's interference
23 with GAC and Youngevity's relationship, GAC would likely be producing
24 products for sale through Youngevity and at Youngevity's direction and all profits
25 to Wakaya from the sale of GAC products would instead flow to Youngevity.

26 186. Had Dr. Wallach known about the potential opportunities with David
27 Smith and Great American Clay, he would have been interested in pursuing those
28 opportunities. *See* Exh. D (Decl. of Joel D. Wallach) at ¶ 11. Dr. Wallach would

1 have been interested in pursuing the opportunity to learn more about the Great
2 American Clay products, in investigating the potential for safe commercial and
3 public uses of GAC products, in pursuing the opportunity to co-author a book
4 concerning the Great American Clay products, in pursuing the opportunity for
5 establishing an arrangement to promote Great American Clay through media
6 appearances, and in pursuing the opportunity to create a viable commercial
7 relationship between Youngevity and Great American Clay for the commercial or
8 public sale of GAC products. *Id.* The actions outlined above therefore caused Dr.
9 Wallach to suffer economic harm.

10 187. There was an economic relationship between Plaintiffs and GAC
11 because GAC contacted Youngevity distributor Mia Magistro who invited GAC to
12 contract with Youngevity, and GAC intended to contract with Youngevity.

13 188. Defendants Smith, Graham, and Wakaya were aware that GAC
14 intended to enter into an economic relationship with Youngevity and posed as
15 agents authorized by Youngevity to consummate a deal on Youngevity's behalf
16 with GAC but then diverted the deal to Wakaya.

17 189. Defendants Smith, Graham, and Wakaya took intentional acts to
18 interfere in the economic relationship between GAC and Plaintiffs because they
19 mislead and lied to David Smith of GAC and misrepresented their authority in
20 Youngevity.

21 190. Defendants Smith, Graham, and Wakaya actually interrupted
22 Plaintiffs' relationship with GAC because, as a result of Defendants' actions, GAC
23 and Plaintiffs were never able to profit from their economic relationship.

24 191. Plaintiffs suffered economic harm resulting from the acts of
25 defendants Smith, Graham, and Wakaya because they were not able to secure a
26 product purchase and sales contract with GAC.

1 **B. All Defendants' Tortious Interference with Youngevity's**
2 **Distributor Relationships**

3 192. Youngevity alleges tortious interference with prospective contractual
4 relations against all named defendants as follows.

5 193. While still employed by or serving as Youngevity distributors,
6 Defendants encouraged other high ranking Youngevity distributors and
7 Youngevity employees to work for, or enroll as distributors in, Wakaya and further
8 recruit to Wakaya other Youngevity distributors with the aim of depleting
9 Youngevity's entire distributor force while those so recruiting simultaneously
10 continued to receive distributor commission payments from Youngevity.

11 194. Defendants advised and encouraged those they induced to breach their
12 Youngevity distributor agreements to maintain secrecy about their involvement
13 with Wakaya until after public announcement of the company by Todd Smith.

14 195. Defendants induced married couples and business partners to breach
15 their Youngevity distributor agreements through nominal and false conveyances of
16 Youngevity distributorships from one spouse or business partner to another.
17 Defendants misleadingly informed married couples who were both Youngevity
18 distributors, and business partners who were both Youngevity distributors, that
19 they could keep their full Youngevity distributor commissions if those couples and
20 partners engaged in what Defendants called "the split." "The split" involved the
21 conveyance of nominal and false representations to Youngevity that a spouse or a
22 business partner had transferred his or her Youngevity distributorship to the other
23 spouse or the other business partner, thereby enabling the transferor to become a
24 Wakaya distributor yet in fact retain access to the full economic benefit of
25 commissions previously received by the couple or the partnership from
26 Youngevity, and retain full access to Youngevity business materials and
27 distributors. In fact, Defendants encouraged use of this act of legerdemain and
28 misrepresentation to induce Youngevity distributors to breach their Youngevity
contracts which forbid such transfers without prior Youngevity evaluation and

1 consent, which prior evaluation and consent was never given in any case, and
2 which forbid Youngevity distributors while serving as Youngevity distributors
3 from aiding in the recruitment of other Youngevity distributors into competing
4 MLM's.

5 196. Graham has admitted that individuals employed and under his
6 management of then-Youngevity distributor and defendant TNT (who were also
7 Youngevity distributors) were invited by Graham to consider becoming Wakaya
8 distributors while retaining their Youngevity distributor positions, thereby inducing
9 breach of their contracts with Youngevity. Those so employed who became
10 Wakaya distributors assisted in inducing other Youngevity distributors to breach
11 their contracts with Youngevity.

12 197. Wakaya has thus relied on Youngevity distributors to serve and
13 promote Youngevity competitor Wakaya and thereby breach their distributor
14 agreements with Youngevity for the economic benefit of Wakaya. Wakaya's
15 conduct has been to the economic benefit of Wakaya and the corresponding
16 economic loss of Youngevity.

17 198. Defendants made their statements to Youngevity distributors solely
18 for Defendants' own financial gain, and as a promotional tool to lure Youngevity
19 business into Wakaya.

20 199. In October 2015, while under contract with Youngevity and while
21 serving as Youngevity's President, Andreoli contacted specific Youngevity
22 distributors and employees and invited them to become distributors or employees
23 of Wakaya, and further recruit other Youngevity distributors to do the same.
24 Andreoli made additional contacts with other Youngevity distributors in November
25 2015 to induce those distributors to breach their Youngevity distributor agreements
26 by simultaneously becoming Wakaya distributors or employees and further recruit
27 other Youngevity distributors to do the same.
28

1 200. In reliance on their prominent positions as leading distributors in
2 Youngevity, Defendants Pitcock, Vaughn, and Todd Smith, while still Youngevity
3 distributors, encouraged or solicited other Youngevity distributors to breach their
4 distributor agreements with Youngevity by simultaneously becoming Wakaya
5 distributors and further recruiting other Youngevity distributors to do the same.
6 Those subsequent acts of cross-recruiting at the Defendants behest were in
7 violation of Youngevity's distributor agreement. For their personal and pecuniary
8 gain, the Defendants thus encouraged, aided, and abetted the disruption of
9 Youngevity's business and relationships with Youngevity's distributors.

10 201. In January 2015, Vaughn, Andreoli, and Todd Smith participated in
11 meetings with Youngevity distributors wherein they falsely represented that
12 Youngevity had made bad business decisions against their advice with resulting
13 financial losses that would imperil Youngevity, encouraging those Youngevity
14 distributors to fear remaining in Youngevity. Andreoli took those actions while
15 serving as President of Youngevity. That conduct misled Youngevity distributors
16 into violating their distributor agreements with Youngevity by enrolling in the
17 competing Wakaya as distributors and actively soliciting other Youngevity
18 distributors to do the same. Defendants' statements about Youngevity were false
19 and motivated by Defendants' need to secure new business for the nascent Wakaya
20 venture.

21 202. Defendants Vaughn, Pitcock, and Smith also used internet webcasts
22 and telephone conference calls to interfere with Youngevity's economic
23 relationships with its distributors. In those webcasts and telephone calls,
24 defendants Vaughn, Pitcock, and Smith made false or misleading statements of fact
25 about Wakaya's business operations, and, either implicitly or explicitly, about
26 Youngevity's business operations, including false representations that Youngevity
27 was in financial distress. Defendants Vaughn, Pitcock, and Smith made those
28

1 statements during promotional presentations for Wakaya, which were intended
2 solely to generate commercial gains for Defendants.

3 203. On February 22, 2016, defendant Graham without prior authorization
4 from Youngevity sent an email and text letter to all Youngevity distributors using
5 Youngevity's confidential distributor list. In that email Graham, then still a top
6 level Youngevity distributor and co-owner of TNT, falsely conveyed the
7 impression that Youngevity acquiesced in Smith's formation of a competing
8 company (which was then engaged in cross-recruitment of Youngevity
9 distributors) and wished Smith success in that new venture. *See* Graham e-mail,
10 attached as Exh. E.

11 204. The statements made by Graham, Pitcock, Vaughn, and Smith in their
12 webcasts, emails, and conference calls, were made solely to further Defendants'
13 pecuniary interests, whereby they would receive from Wakaya commissions upon
14 causing other Youngevity distributors simultaneously to become Wakaya
15 distributors and thereafter induce and further recruit other Youngevity distributors
16 to likewise breach their Youngevity distributor agreements by simultaneously
17 becoming Wakaya distributors and so on.

18 205. Defendants Cloward and Gardner acted tortiously by using
19 Youngevity's confidential distributor lists and information to interfere with
20 Youngevity's economic relationships. During the course of their employment
21 and/or association with Youngevity, each of the Defendants came into possession
22 of Youngevity confidential distributor lists. They have each used those lists to
23 assist Wakaya to interfere with Youngevity's relationship with its distributors by
24 variously falsely alleging that Youngevity is in financial extremis and falsely
25 alleging Youngevity is engaged in unlawful conduct; by inducing Youngevity
26 distributors to believe that if they simultaneously become Wakaya distributors they
27 will earn from Wakaya tens of thousands or hundreds of thousands of dollars in
28 commissions each month; and by inducing Youngevity distributors to believe that

1 if they engage in “the split” they will be able to retain their full Youngevity
2 commissions while simultaneously profiting from distributorships in Wakaya.

3 206. As a direct result of the Defendants’ tortious interference with
4 Youngevity’s relationships with its distributors, Youngevity has suffered a loss in
5 its distributor sales force and in sales revenues.

6 207. Many of Wakaya’s initial participants and endorsers were Youngevity
7 distributors or former Youngevity distributors recruited by Todd Smith or at Todd
8 Smith’s request, evidencing Wakaya’s concerted effort to procure Youngevity
9 business.

10 208. As of April 22, 2016, approximately 125 of Wakaya’s 268
11 participants (about 46.6%) are Ambassadors¹¹ who are current or former
12 Youngevity distributors. Exh. C (Decl. of Steve Wallach), at ¶ 11.

13 209. As of April 22, 2016, approximately 77 of Wakaya’s 125 “Founder
14 Qualified” Wakaya ambassadors (about 61%) are current or former Youngevity
15 distributors. *Id.*

16 210. As of July 10, 2016, all of the individuals who are administrators on
17 the Facebook.com page entitled “Wakaya Leaders” are former Youngevity
18 distributors, employees, or officers. *See* Exh. A (Decl. of Eric J. Awerbuch), at
19 Attach. 6 (Wakaya Leaders Facebook Page).

20 211. Wakaya has launched “challenges” for its participants, asking them to
21 target and secure Youngevity distributors for Wakaya.

22 212. All Defendants were aware that Youngevity maintains an economic
23 relationship with its distributors because all Defendants were former distributors,
24 employees, or executives of Youngevity themselves.

25 213. All Defendants took intentional actions to disrupt the economic
26 relationships between Youngevity and their distributors because they contacted
27

28 ¹¹Wakaya refers to its distributors as “ambassadors.”

1 Youngevity distributors and encouraged them simultaneously to join Wakaya and
2 to urge other Youngevity distributors simultaneously to join Wakaya.

3 214. Defendants interfered with Youngevity's distributor relations through
4 improper means, to wit, by encouraging or soliciting those distributors to breach
5 Youngevity's distributor agreement.

6 215. All Defendants are primarily engaged in the business of selling goods
7 and services through Wakaya.

8 216. Youngevity's economic relationship with many of its distributors was
9 disrupted because many Youngevity distributors did in fact lessen or halt their
10 promotion and sales of Youngevity products while simultaneously mounting
11 efforts to promote and sell the competing Wakaya products, thus causing
12 Youngevity to experience a loss in sales revenues and in active distributors for its
13 products.

14 **COUNT FIVE**

15 **BREACH OF CONTRACT**
16 **(Defendants Andreoli, Pitcock, Gardner, Cloward)**

17
18 217. Defendants Andreoli, Pitcock, Gardner, and Cloward all entered into
19 valid contacts with Youngevity. *See* Andreoli Employment Contract, attached as
20 Exh. F; Pitcock Consulting Agreement, attached as Exh. G; Heritage Makers
21 Agreement, attached as Exh. H.

22 218. Youngevity has performed its obligations required under those
23 contracts. Youngevity therefore alleges the following facts and legal allegations.

24 **A. Defendant Andreoli Breached His Contract with Youngevity**

25 219. In August 13, 2011, as part of the sale of Andreoli's company, FDI, to
26 Youngevity, Andreoli and Youngevity entered into an Employment Agreement
27 which included non-circumvent and non-disclosure clauses. *See* Exh. F (Andreoli
28 Employment Agreement). That agreement contains the following relevant terms:

- 1 • Andreoli must “devote his full working time, attention, and energy to
2 [Youngevity ...] and shall not ... be engaged in any other business
3 activity if pursued for gain, profit, or other pecuniary advantage without
4 [Youngevity’s] prior written consent” *Id.* at § 7.
- 5 • Andreoli cannot disclose any confidential information, including
6 customer information, to any third party. *Id.* at § 9(a)
- 7 • Andreoli cannot use any of Youngevity’s trade secrets to compete with
8 Youngevity. *Id.* at § 9(b).
- 9 • Andreoli was required to promptly disclose any new discoveries or
10 improvements that he developed to Youngevity. *Id.* at § 10.

11 220. Youngevity entered that Agreement as part of its acquisition of
12 Andreoli’s holdings. Andreoli was made President of Youngevity after
13 Youngevity’s acquisition of FDI. The contractual clauses were designed, in part,
14 to ensure that Youngevity received the ongoing value and goodwill of FDI.

15 221. Andreoli breached his contract with Youngevity because he
16 participated in, and helped facilitate, the directly competing Wakaya network
17 marketing venture while serving as President of Youngevity and while under
18 contractual obligations to refrain from such participation, facilitation, and
19 competition against Youngevity. Andreoli’s contractual agreements with
20 Youngevity expressly precluded and prohibited his involvement with other
21 network marketing companies while also employed with Youngevity.

22 222. Andreoli, while serving as Youngevity’s President in August 2015,
23 acted to encourage widespread dissention from Youngevity during key distributor
24 meetings and on occasional visits to other Youngevity offices. He worked against
25 Youngevity in favor of Wakaya while holding a top level corporate position within
26 Youngevity.

27 223. In October 2015 Andreoli, again while under contract with
28 Youngevity and while serving as Youngevity’s President, contacted other

1 Youngevity distributors in an effort to induce contract breaches by causing them to
2 become distributors for Wakaya Perfection while simultaneously serving as
3 Youngevity distributors. Andreoli contacted distributors in November 2015, again
4 soliciting their involvement in the Wakaya venture while simultaneously serving as
5 Youngevity distributors. Andreoli hosted Wakaya corporate events at the New
6 Hampshire offices wherein Youngevity distributors invited to attend were
7 simultaneously solicited to become Wakaya distributors.

8 224. In August 2015, Andreoli, acting as President of Youngevity,
9 arranged to have Youngevity's top level employees, including its marketing team
10 comprised of Mike Casperson, Brytt Cloward, and Patti Gardner, fly to Andreoli's
11 Youngevity office in New Hampshire purportedly to work on Youngevity's
12 marketing projects. On information and belief, however, Andreoli had those three
13 Youngevity employees travel to New Hampshire to discuss in secret the formation
14 of Wakaya and their prospective employment by that competing company.

15 225. Andreoli's conduct described herein this Court violated his
16 contractual obligations to Youngevity while still employed with Youngevity.

17 226. Youngevity has suffered and continues to suffer damage as a result of
18 Andreoli's breach of his contract with Youngevity because that breach resulted in
19 lost Youngevity employees Casperson, Barney, Cloward, and Gardner and lost
20 revenues to the competing venture he helped create and promote, Wakaya.

21 **C. Defendant Pitcock Breached His Contract with Youngevity**

22 227. Defendant Pitcock was the owner of Livinity, Inc. On or about July
23 10, 2012, Pitcock sold Livinity, Inc.'s assets to Youngevity. As part of that
24 transaction, Livinity and Youngevity entered into a Consulting Agreement with
25 valid non-disclosure and non-circumvent clauses, wherein Pitcock agreed to serve
26 as a Consultant for Youngevity. *See* Exh. G (Pitcock Consulting Agreement).
27
28

1 228. That agreement prohibited Livinity and Pitcock from disclosing any
2 confidential information and from using confidential information, including
3 business contacts, information regarding distributors/vendors/supplies and other
4 business associates of Youngevity, for the purpose of circumventing Youngevity's
5 business operations, specifically requiring Pitcock to:

- 6 • maintain in strict confidence, and not use or disclose except pursuant
7 to written instructions from [Youngevity], any Confidential
8 Information (as defined below) of [Youngevity], for so long as the
9 pertinent data or information remains Confidential;
- 10 • not use any of the Confidential Information and/or business contacts,
11 information regarding distributors/vendors/suppliers and other
12 business associates of [Youngevity], or other types of confidential and
13 proprietary business information transmitted to [Pitcock] by
14 [Youngevity], for the purpose of circumventing [Youngevity's]
15 business operations.

16 *Id.* at §§ 4(c)–(d).

17 229. Furthermore, Livinity was required, at all times, to refer to
18 Youngevity in terms that further Youngevity's business objectives and not refer to
19 Youngevity in a manner that damages Youngevity's position in the
20 marketplace. *Id.* at § 6 (requiring Pitcock to “refer to [Youngevity] and its
21 operating units in terms that further its business objectives” and to “not refer to
22 [Youngevity] or its operating units in a manner that damages [Youngevity's]
23 position in the marketplace”).

24 230. Those contractual provisions were designed to ensure that Youngevity
25 received full benefit of its bargain in acquiring Pitcock's holdings in Livinity.
26 Enabling Pitcock to activity promote product or ventures against Youngevity
27 would clearly devalue Youngevity's interest in Livinity and its remaining business.

28 231. The Pitcock Consulting Agreement provides for extensive relief to
Youngevity, including an “injunction, monetary damages, punitive damages, and
specific liquidated damages in the amount of the prior year's earnings for

1 disclosure of Confidential Information and/or use of such information to solicit
2 Youngevity's customers." *Id.* at § 4(e).

3 232. Pitcock has violated his contract with Youngevity. On conference
4 calls and/or internet webcasts, in meetings with Youngevity distributors, and in
5 person, either implicitly or explicitly, he has referred to Youngevity in terms that
6 do not further Youngevity's business objectives and instead disparage Youngevity,
7 including personal attacks calling into question the fitness to serve and fiduciary
8 integrity of Youngevity's CEO Steve Wallach and Youngevity's COO Michelle
9 Wallach on a company cruise in January, 2015.

10 233. Youngevity has suffered and continues to suffer injuries as a result of
11 Pitcock's breach because Pitcock's comments disparaging Youngevity and efforts
12 to induce Youngevity distributors to violate their distributor agreements by
13 becoming Wakaya distributors who solicit additional Youngevity distributors to
14 likewise become Wakaya distributors, have harmed Youngevity's reputation and
15 have caused Youngevity to suffer economic loss from lost Youngevity product
16 sales diverted unlawfully to Wakaya.

17
18 **D. Defendants Gardner and Cloward Breached Their HM
Agreement with Youngevity**

19 234. On or about August 7, 2013, Youngevity purchased Heritage Makers,
20 Inc. HM owners Patti Gardner and Brytt Cloward signed that Agreement (the
21 "HM Agreement"). *See* Exh. H (Heritage Makers Agreement).

22 235. Both Gardner and Cloward are bound by the HM Agreement.

23 236. Article XI of the HM Agreement contains confidentiality and non-
24 competition clauses:

25 **Confidentiality.** At all times after the Closing Date, HM and the
26 Representing Parties shall retain in strictest confidence, and shall
27 not use for its benefit or for the benefit of others all confidential
28 information comprising or related to the Assets described in this
Agreement including, without limitation, the technology, trade

1 secrets, customer lists transferred hereby to YGYI, pricing
2 policies, marketing plans or strategies, product development
3 techniques or plans, or technical processes, designs and design
projects respecting the Business.

4 **Non-Competition.** (a) (i) For a period of four (4) years from and
5 after the Closing Date, HM shall not, directly or indirectly: (i)
6 engage in a business or enterprise (either as proprietor, partner,
7 employee, agent, consultant, or controlling stockholder) that
8 qualifies as a “competing business” (as defined in subsection (b)
9 hereof) or (ii) solicit or attempt to solicit sales or licenses of any
10 competing businesses, interfere with, or disrupt or attempt to
11 disrupt the relationship (contractual or otherwise) between HM,
12 YGYI and their customers, suppliers, agents, consultants, officers
or employees relating to the Product; and (ii) each of the
13 Representing Parties agrees to the confidentiality and non-
14 competition provisions set forth in their respective employment
15 agreements, if any.

16 *See id.* at Art. XI.

17 237. Under that article, neither Gardner nor Cloward may use, for their or
18 Wakaya’s benefit, customer lists or other information that HM transferred to
19 Youngevity. *Id.* Further, those individuals cannot engage in a business or
20 enterprise that qualifies as a “competing business” until at least August, 2017, or
21 solicit or attempt to solicit sales or licenses of any competing businesses, interfere
22 with, disrupt, or attempt to disrupt the relationship between HM, Youngevity and
their customers, suppliers, agents, consultants, officers or employees relating to the
23 Heritage Makers’ products sold to Youngevity. *Id.*

24 238. That contractual language was drafted to protect Youngevity’s
25 investment in the Heritage Makers acquisition, in part, by preventing its former
26 owners (Gardner and Cloward) from competing directly against Youngevity’s
27 acquisition.

28 239. Gardner and Cloward have violated the HM Agreement by using
Youngevity’s customer lists to benefit Wakaya; by working for Wakaya which is a

1 business that directly competes with Youngevity; and by interfering in the
2 relationships between Youngevity and its customers and distributors.

3 240. Cloward's and Gardner's breach of the HM Agreement with
4 Youngevity has caused Youngevity damage because their use of Youngevity's
5 customer lists for the benefit of Wakaya and employment for Wakaya has
6 benefitted Wakaya to the detriment of Youngevity; has exposed Youngevity's
7 confidential methods and information to a direct competitor; and has diverted
8 employment resources and skills away from Youngevity to a direct competitor.

9 241. Defendants Andreoli, Pitcock, Gardner, and Cloward agreed and
10 conspired to breach their contracts with Youngevity. Those breaches caused
11 Youngevity damage in an amount to be proven at trial.

12 **COUNT SIX**

13
14 **INTENTIONAL INTERFERENCE WITH CONTRACT/INDUCING**
15 **BREACH OF CONTRACT**
16 **(Defendants Wakaya, TNT, Smith, Graham, Pitcock, Andreoli, and Vaughn)**

17 242. Defendants Wakaya, TNT, Smith, Graham, Pitcock, Andreoli, and
18 Vaughn have interfered with Youngevity contracts and have induced third parties
19 to breach their contracts with Youngevity, as follows:

20 **A. Defendants' Wakaya, TNT, Smith, Graham, Pitcock, and**
21 **Vaughn's International Interference with Youngevity's Contracts**
22 **with Distributors**

23 243. Youngevity hereby alleges the following facts with respect to
24 Defendants Wakaya, TNT, Smith, Graham, Pitcock, and Vaughn.

25 244. Youngevity's Policies and Procedures impose strict prohibitions
26 against "cross-recruiting" as provided in Section E12 of the Youngevity
27 Distributor Agreement:

28 Distributors are strictly forbidden from Cross-Recruiting, and shall
not sell, recruit, propose, or in any other way induce or attempt to

1 induce any other Distributor to purchase any product or service, or
2 to participate in any other income opportunity, investment,
3 venture, or commit any other activity deemed, at the full discretion
4 of the Company, as cross-recruiting. This includes any such
5 activities across any divisions of the Company, should any separate
6 divisions with different compensation plans or hierarchy structures
7 exist, unless, and as specifically stated otherwise. The integrity of
8 the hierarchy and the relationships therein is of paramount
9 importance to every Distributor as well as to the Company. Any
10 Distributor violating this provision may be subject to immediate
11 termination for cause, forfeiting any and all commissions due him
12 or her.

13 *See* Exh. C (Decl. of Steve Wallach), at Attach. 2 (Youngevity’s Policies and
14 Procedures).

15 245. Youngevity maintains valid and enforceable distributor agreements
16 containing this provision with all of its distributors. *See* Exh. C (Decl. of Steve
17 Wallach), at ¶ 5.

18 246. Defendants Wakaya, TNT, Smith, Graham, Pitcock, and Vaughn are
19 all aware of the foregoing provision not only because Smith (who owns Wakaya)
20 and Graham (who owns TNT) were themselves Youngevity distributors bound by
21 the contract but also because each urged or aided in enforcement of this very same
22 provision against other Youngevity distributors who violated the provision.

23 247. The intentional actions of Defendants Smith, Wakaya, TNT, Graham,
24 Vaughn, and Pitcock, described above in Paragraphs 192–216 were intended to
25 induce Youngevity distributors to breach their Youngevity contracts by inducing
26 them to cross-recruit for Wakaya while still serving as Youngevity distributors.

27 248. Defendants encouraged other Youngevity distributors to “cross-
28 recruit” within the Youngevity business, conduct that would violate the
29 Youngevity agreements and render those cross-recruiting defendants in breach and
30 subject to termination by Youngevity.

31 249. The intentional acts of Defendants Smith, Wakaya, TNT, Graham,
32 Vaughn, and Pitcock, described above in Paragraphs 192–216, did cause

1 Youngevity distributors to cross-recruit other Youngevity distributors to become
2 Wakaya distributors, in violation of Youngevity’s distributor agreement.

3 250. Youngevity suffered economic losses from lost sales revenues as a
4 direct result of defendants Smith, Wakaya, TNT, Graham, Vaughn, and Pitcock
5 inducing those distributors to breach their distributor agreements with Youngevity
6 by simultaneously becoming Wakaya distributors.

7 251. But for Defendants inducement of Youngevity distributors to breach
8 their distributor agreements, those distributors would have sold more Youngevity
9 product and devoted more time to promotion and sales of Youngevity products.

10 252. Defendants Smith, Wakaya, TNT, Graham, Vaughn, and Pitcock’s
11 interference was wrongful beyond the fact of the interference itself. Defendant
12 Pitcock violated Section 4 of his Livinity Sales Contract with Youngevity, Exh. G
13 (Pitcock Consulting Agreement), at ¶ 4, by inducing distributors to breach their
14 agreements with Youngevity, *see supra* at ¶¶ 227–33. Defendants Wakaya,
15 Vaughn, Pitcock and Smith made false statements of fact concerning Youngevity
16 to induce distributors to violate their agreements with Youngevity, *see supra* at ¶¶
17 27–122. Defendants TNT and Graham infringed Youngevity’s trademark while
18 inducing Youngevity distributors to violate their agreements with Youngevity, *see*
19 *infra* at ¶¶ 318–28. Defendants TNT and Graham misappropriated Dr. Wallach’s
20 name and likeness while inducing Youngevity distributors to violate their
21 agreements with Youngevity, *see infra* at ¶¶ 286–317.

22 **B. Wakaya’s and Andreoli’s Intentional Interference with**
23 **Youngevity’s Employment Contracts**

24 253. On or about August 7, 2013, Youngevity acquired Heritage Makers,
25 Inc. (the “HM Agreement”); Defendants Patti Gardner and Brytt Cloward, owners
26 of HM, signed the HM Agreement and are bound by it. *See* Exh. H (HM
27 Agreement).
28

1 254. Article XI of the HM Agreement contained confidentiality and non-
2 competition clauses:

3 **Confidentiality.** At all times after the Closing Date, HM and the
4 Representing Parties shall retain in strictest confidence, and shall
5 not use for its benefit or for the benefit of others all confidential
6 information comprising or related to the Assets described in this
7 Agreement including, without limitation, the technology, trade
8 secrets, customer lists transferred hereby to YGYI, pricing
9 policies, marketing plans or strategies, product development
projects respecting the Business.

10 **Non-Competition.** (a) (i) For a period of four (4) years from and
11 after the Closing Date, HM shall not, directly or indirectly: (i)
12 engage in a business or enterprise (either as proprietor, partner,
13 employee, agent, consultant, or controlling stockholder) that
14 qualifies as a “competing business” (as defined in subsection (b)
15 hereof) or (ii) solicit or attempt to solicit sales or licenses of any
16 competing businesses, interfere with, or disrupt or attempt to
17 disrupt the relationship (contractual or otherwise) between HM,
18 YGYI and their customers, suppliers, agents, consultants, officers
or employees relating to the Product; and (ii) each of the
19 Representing Parties agrees to the confidentiality and non-
competition provisions set forth in their respective employment
agreements, if any.

20 *See id.* at p. 33.

21 255. Neither Gardner nor Cloward may engage in a business or enterprise
22 that qualifies as a “competing business” until at least August, 2017, or solicit or
23 attempt to solicit sales or licenses of any competing businesses, interfere with,
24 disrupt, or attempt to disrupt the relationship between HM, Youngevity and their
25 customers, suppliers, agents, consultants, officers or employees relating to the
26 Heritage Makers’ products sold to Youngevity. *Id.*

27 256. The HM Agreement was executed in conjunction with a sale of
28 Heritage Makers to Youngevity. The non-compete clause in Article XI of the HM

1 Agreement was intended to preclude Cloward and Gardner from undermining
2 Youngevity's investment in Heritage Makers. To the extent Cloward and Gardner
3 compete directly against Youngevity, they act to undermine the value Youngevity
4 has invested in HM.

5 257. In August, 2015, Andreoli, acting as President of Youngevity, had
6 Youngevity's high level employees, including defendants Gardner and Cloward,
7 fly to Andreoli's Youngevity office in New Hampshire purportedly to work on
8 Youngevity's marketing. On information and belief, however, Andreoli had those
9 Youngevity employees travel to New Hampshire to discuss in secret the formation
10 of Wakaya and their prospective employment in Wakaya (a competing company).

11 258. While at Youngevity, Cloward reported directly to Andreoli and
12 became a close associate of Andreoli.

13 259. While at Youngevity, Gardner reported directly to Andreoli and
14 became a close associate of Andreoli.

15 260. Cloward resigned from Youngevity at the same time as Andreoli in
16 October 2015 to "pursue some other options" and "work on some new projects."
17 Gardner gave notice to Youngevity that she was resigning in October 2015, before
18 officially resigning from Youngevity in December, 2015.

19 261. Patti Gardner is the Vice President of Wakaya. Brytt Cloward is also
20 employed at Wakaya.

21 262. Through the HM Agreement, Youngevity maintained a valid contract
22 with Gardner and Cloward.

23 263. Andreoli, and Wakaya through Andreoli, were aware that Youngevity
24 maintained a valid contract with Gardner and Cloward because Andreoli was the
25 President of Youngevity and knew of its contractual relationships.

26 264. Andreoli's conduct taken on Wakaya's behalf was intended to cause
27 Gardner and Cloward to breach the HM Agreement by becoming employees of
28 Wakaya, a venture in direct competition with Youngevity.

1 intellectual property related to Youngevity marketing, marketing strategy, and
2 business know-how.

3 270. Defendants Andreoli, Pitcock, Gardner, Cloward, and Wakaya
4 (through those individual defendants) acquired Youngevity's trade secrets,
5 including confidential and proprietary customer and distributor lists, by virtue of
6 their positions as employees of Youngevity.

7 271. Defendants Gardner and Cloward also acquired Youngevity's
8 confidential and proprietary intellectual property used for marketing Youngevity
9 products by virtue of their positions as employees of Youngevity.

10 272. Defendants Andreoli, Pitcock, Gardner, Cloward were under specific
11 contractual obligations not to use Youngevity's trade secret information to harm
12 Youngevity or to benefit Youngevity competitors.

13 273. Defendant Andreoli's contract stated that Andreoli cannot disclose
14 any confidential information, including customer information, to any third
15 party. Exh. F (Andreoli Employment Agreement), at § 9(a). That contractual
16 provision prohibited Andreoli from using any of Youngevity's trade secrets to
17 compete with Youngevity. *Id.* at § 9(b).

18 274. Defendant Pitcock's contract with Youngevity prohibits Pitcock from
19 disclosing any confidential information and from using confidential information,
20 including business contacts and information regarding
21 distributors/vendors/supplies and other business associates of Youngevity, for the
22 purpose of circumventing Youngevity's interests in the Livinity sale or Pitcock's
23 consulting services. Exh. G (Pitcock Consulting Agreement), at §§ 4(c)-(d).

24 275. Under their contract with Youngevity, neither Gardner nor Cloward
25 may use, for their or Wakaya's benefit, customer lists or other proprietary
26 information that HM transferred to Youngevity. Exh. H (HM Agreement), at Art.
27 XI.

1 276. Defendants Andreoli, Pitcock, Gardner, Cloward, and Wakaya
2 misappropriated Youngevity's trade secrets, including distributor and customer
3 lists, and Youngevity marketing and business information removed by or at the
4 direction of Andreoli, Pitcock, Gardner, and Cloward from Youngevity computers
5 to benefit Wakaya at the expense of Youngevity.

6 277. Defendants Andreoli, Pitcock, Gardner, and Cloward used
7 Youngevity's trade secrets through improper means because those defendants were
8 under a contractual obligation not to use those trade secrets to harm Youngevity
9 and/or to benefit Youngevity's competitor, Wakaya.

10 278. The proprietary information, including customer and distributor lists,
11 is, and at all relevant times has been, the subject of Youngevity's reasonable efforts
12 under the circumstances to maintain their use exclusively by Youngevity and its
13 top level distributors. Youngevity has taken reasonable measures to prevent the
14 unauthorized disclosure or use of its proprietary customer and distributor lists by
15 limiting access to the whole list to only specific officers, distributors, and
16 employees who have a need to know.

17 279. Defendants Andreoli, Pitcock, Gardner, and Cloward misappropriated
18 Youngevity's trade secrets by, among other things, retaining and/or using
19 Youngevity's distributor and customer information, and confidential Youngevity
20 work product, for the purpose of soliciting, directing or advising Youngevity's
21 customers and distributors to switch their business away from Youngevity and to
22 Wakaya's competing business.

23 280. Defendants Cloward and Gardner misappropriated Youngevity's trade
24 secrets by using Youngevity's proprietary intellectual property to create marketing
25 material for Wakaya.

26 281. Defendants Cloward and Gardner misappropriated Youngevity
27 computers when they left Youngevity to work for Wakaya. Cloward and Gardner
28

1 refused to return complete laptops that held valuable and confidential Youngevity
2 information.

3 282. Wakaya's distribution of promotional content and its prompt
4 connection and enrollment of Youngevity distributors evidences the use of
5 Youngevity's confidential and proprietary information by Wakaya and Defendants.
6 The majority of Wakaya founders and ambassadors are sourced from Youngevity's
7 ranks.

8 283. As a direct and proximate result of Defendants Andreoli, Pitcock,
9 Gardner, and Cloward misappropriating Youngevity trade secrets, Youngevity has
10 suffered and will continue to suffer economic injuries. Furthermore, Defendants
11 have been unjustly enriched by their misappropriation and use of Youngevity's
12 trade secrets and confidential information.

13 284. Defendants' conduct was done and continues to be done willfully and
14 maliciously. Youngevity is therefore entitled to exemplary damages pursuant to
15 Civil Code section 3426.3, subdivision (c), and reasonable attorneys' fees pursuant
16 to Civil Code section 3426.4.

17 285. Defendants agreed and conspired to misappropriate Youngevity's
18 trade secrets and confidential information to recruit Youngevity distributors into
19 Wakaya and to promote Wakaya using Youngevity's trade secrets. That
20 misappropriation caused Youngevity damage in lost product sales.

21 **COUNT EIGHT**

22 **MISAPPROPRIATION OF NAME AND LIKENESS**
23 **(Cal. Civ. Code § 3344)**
24 **(Defendants TNT and Graham)**

25
26 286. Dr. Wallach is a celebrity within the field of nutrition and in the
27 direct-sales, network-marketing field. He is a frequent speaker or lecturer on
28 nutritional science and medicine.

1 287. There is substantial value in selling and promoting nutritional
2 supplements and similar products through use of Dr. Wallach's name and likeness.

3 288. Dr. Wallach has granted Youngevity an exclusive license to trade on
4 his name and likeness. Exh. D (Decl. of Joel D. Wallach) at ¶ 6.

5 289. Defendants TNT and Graham and any others acting in concert with
6 them as discovery may reveal (collectively "TNT" under this cause of action) were
7 previously Youngevity authorized distributors.

8 290. TNT, while an authorized Youngevity distributor, traded on Dr.
9 Wallach's name and likeness for decades without objection from Youngevity.

10 291. While an authorized Youngevity distributor, TNT created the websites
11 www.wallachonline.com and www.yteamtools.com and the phone number 1-800-
12 WALLACH. Exh. C (Decl. of Steve Wallach), at ¶¶ 6–7. TNT also created and
13 owns www.myyoungevity.com which automatically redirects to
14 www.wallachonline.com. Through those websites and phone number, TNT sold
15 Youngevity approved products along with tools designed for Youngevity
16 distributors. Distributors could purchase those business "tools" to help promote
17 their own downlines within the Youngevity system.

18 292. While TNT was an authorized Youngevity distributor, it enjoyed a
19 bundle of rights Youngevity provides to its authorized distributors. Those rights
20 include, *inter alia*, the right to enroll other distributors in Youngevity downlines,
21 order Youngevity products, and sell those products under the Youngevity mark and
22 Wallach name and likeness. Exh. C (Decl. of Steve Wallach), at Attach. 2
23 (Youngevity's Policies and Procedures) at §§ F1, H1; *Id.* at 31 at § E1, 41 at §§
24 I9(c)–(e), (j).

25 293. Under the Distributor Agreement that Youngevity executes with all
26 distributors, Youngevity expressly reserves the right in its sole discretion to revoke
27 consent to the use of its logos, slogans, and trademark "without notice or reason
28 and solely at the discretion of Youngevity." *See* Exh. C (Decl. of Steve Wallach)

1 at Attach. 2 (Youngevity's Policies and Procedures) at § 19(c), 46 at § J 10(c).
2 That authority is necessary to protect the Youngevity brand and maintain a
3 compliant direct-selling business and state and federal laws.

4 294. While Youngevity never affirmatively authorized TNT to make
5 commercial use of Dr. Wallach's name or likeness or Youngevity's mark, Exh. C
6 (Decl. of Steve Wallach, at ¶ 7) TNT enjoyed an implied license to trade on Dr.
7 Wallach's name and likeness while TNT remained an authorized Youngevity
8 distributor.

9 295. So long as TNT served as a Youngevity distributor, TNT had the right
10 to order and sell Youngevity products; implicit in that right is the right to use Dr.
11 Wallach's name and likeness, but solely in the capacity as a Youngevity distributor
12 and in accordance with Youngevity's distributor agreement and Youngevity
13 policies and procedures.

14 296. TNT's implied license to trade on Dr. Wallach's name and likeness
15 ended with the notice of termination of the distributorships memorialized in
16 Youngevity's March 21, 2016 letter to TNT wherein Youngevity stated that TNT
17 "may not continue" to sell or distribute items bearing Dr. Wallach's name and
18 likeness and prohibited TNT "from making any further use of web sites or web
19 addresses that purport to be those of, or make commercial use of the names of, Dr.
20 Joel D. Wallach, Youngevity, or any Youngevity product, material, or service."
21 Exh. C (Decl. of Steve Wallach), at Attach. 4.

22 297. Youngevity suspended TNT and Graham's distributor accounts in
23 March 2016 after learning that those Defendants had actively promoted, aided, and
24 abetted the formation of Wakaya as a competing business. Youngevity discovered
25 that TNT and Graham had exploited their relationships within Youngevity to aid
26 and abet the Wakaya venture, which would have violated the operative Youngevity
27 agreements.
28

1 298. Despite that March 21, 2016 letter, TNT has used and continues to
2 knowingly use Dr. Joel Wallach’s name, likeness, and identity without his or
3 Youngevity’s permission and for its own commercial benefit.

4 299. Despite Youngevity’s revocation of the TNT Youngevity
5 distributorship and demand that TNT no longer make commercial use of the
6 Youngevity mark and Dr. Wallach’s name and likeness, TNT sent postcards
7 bearing Dr. Wallach’s name and likeness with Youngevity’s mark to Youngevity
8 distributors. *See* Decl. of Richard Renton, attached as Exh. I at ¶ 5, at Attach. 1.
9 Those postcards encouraged Youngevity distributors to purchase Youngevity
10 product from TNT by calling 1-800-WALLACH or visiting Wallachonline.com.
11 *Id.* at Attach. 1.

12 300. Despite Youngevity revocation of his Youngevity distributorship and
13 demand that he no longer make commercial sue of the Youngevity mark and Dr.
14 Wallach’s name and likeness, Defendant Graham hosted a “Youngevity”
15 distributor meeting in Salt Lake City, Utah, wherein he sold newly published
16 “YTeam Tools” to distributors, which purport to aid in the sale of Youngevity
17 products, and from which TNT exclusively profits. *See* Decl. of Leia Anderson,
18 attached as Exh. J at ¶ 6.

19 301. Those new tools are not authorized by Youngevity but contain Dr.
20 Wallach’s name and likeness, specifically his image and a short biography. *See id.*
21 at Exh. B. Both tools are copyrighted “2016 yteamtools.com” which evidences
22 TNT’s recent republication of Dr. Wallach’s name and likeness and Youngevity’s
23 mark this very year. *Id.* at ¶¶ 6–7.

24 302. Youngevity requires all such “tools” to have corporate approval—a
25 necessary measure to prevent unauthorized advertising claims and business
26 methods that could violate law or damage Youngevity’s business.

27 303. TNT and Graham continue, as recently as July 13, 2016, to hold
28 events for Wakaya ambassadors at TNT headquarters, despite continuing to profit

1 from the website www.wallachonline.com and the phone number 1-800-
2 WALLACH. *See* Exh. A (Decl. of Eric J. Awerbuch), at Attach. 7 (Blake Graham
3 Facebook Post).

4 304. TNT has gained a commercial benefit and advantage by using Dr.
5 Wallach's name, likeness, and identity in commerce.

6 305. TNT continues to use Dr. Wallach's mark, brand, and likeness on
7 websites www.wallachonline.com and www.yteamtools.com, and through the
8 phone number 1-800-Wallach, without Plaintiffs' permission and despite
9 Youngevity's demands for immediate cessation of the unauthorized uses. TNT
10 also continues to use Dr. Wallach's name and likeness in other promotional
11 material despite demand for immediate cessation of the unauthorized uses.

12 306. TNT's continued misappropriation of Dr. Wallach's name and
13 likeness causes Youngevity and Dr. Wallach irreparable harm.

14 307. Youngevity and Dr. Wallach are injured by the unlawful and improper
15 misappropriation and use of Dr. Wallach's name, likeness, and identity. TNT has
16 used the websites and the other promotional material containing Dr. Wallach's
17 name and likeness to divert Youngevity consumer traffic away from Youngevity.

18 308. Youngevity and Dr. Wallach have lost their control over Dr.
19 Wallach's online identity. The unauthorized TNT website "Wallachonline.com" is
20 the first site returned in most online searches for content related to Dr. Joel
21 Wallach. The website is based on Dr. Wallach's image and likeness.

22 309. TNT has used Dr. Wallach's name and likeness to mislead consumers
23 when selling products. Consumers who have purchased purportedly "Youngevity"
24 product from www.wallachonline.com have in fact received mislabeled
25 Youngevity "product," with the product label bearing Japanese language. *See*
26 Additional Declaration of Joel D. Wallach, attached as Exh. K at ¶¶ 5–7. TNT's
27 use of Dr. Wallach's name and likeness to sell products held out by TNT to be
28

1 Youngevity products when in fact those products are not Youngevity approved
2 products harm Dr. Wallach's reputation.

3 310. TNT similarly uses Dr. Wallach's name and likeness to attract
4 Youngevity distributors to events held out by TNT to promote Youngevity, but are
5 in fact events to promote Wakaya and unauthorized TNT products.

6 311. On March 30, 2016, Jonny Steele, a Youngevity Distributor and
7 cousin of defendant Todd Smith, sent an e-mail to Steve Wallach, Youngevity's
8 Chief Executive Officer. *See* Steele e-mail, attached as Exh. L. That e-mail
9 explained how and why TNT's control over Wallachonline.com and
10 Yteamtools.com cause Youngevity and its distributors irreparable harm. Steele
11 explained that "[i]f Todd [Smith] and Blake [Graham] continue to operate
12 wallachonline and yteamtools, they will have the potential to negatively affect our
13 downline and our livelihood." *Id.* "The damage [to Youngevity distributors] can
14 be devastating and long term, even if they continue to operate for only a couple
15 more weeks let alone for the next few months or years." *Id.*

16 312. TNT continues to use Dr. Wallach's name and likeness on its website,
17 through its phone number 1-800-WALLACH, when selling goods and products,
18 and when promoting Wakaya.

19 313. TNT's misappropriation of Dr. Wallach's name benefits TNT and
20 Wakaya because it uses Dr. Wallach's valuable reputation to entice others to join
21 Wakaya as distributors and/or purchase Wakaya and TNT products and goods.
22 The website relies on Dr. Wallach's image and likeness to generate traffic online.
23 That site then places Defendants TNT and Wakaya in direct contact with
24 Youngevity distributors, potential distributors, or potential customers. Wakaya
25 thus profits from lead generation through Dr. Wallach's image. TNT's website is
26 designed to appear as Youngevity-authorized content.

27 314. TNT lacks consent to trade on Dr. Wallach's name and likeness
28 because Plaintiffs revoked that consent in March 2016.

1 315. Plaintiffs are harmed by TNT’s misappropriation of Dr. Wallach’s
2 name and likeness because they lose business opportunities that would otherwise
3 flow from the websites and phone number herein identified directly to Youngevity.
4 But for TNT’s misappropriation of Dr. Wallach’s name and likeness, Youngevity
5 customers would have purchased Youngevity product not from TNT but from
6 authorized Youngevity distributors. The purchase of products and unauthorized
7 “tools” from an unauthorized individual or entity not within the Youngevity system
8 causes direct loss to those authorized distributors, and threatens to undermine
9 Youngevity’s closed distribution network—which closed-system is an integral
10 element in a direct-sales business like Youngevity. Plaintiffs suffer harm to their
11 reputations and goodwill resulting from consumers being misled to believe that
12 Plaintiffs endorse or condone toxic Wakaya products, including the Clay Product.

13 316. Dr. Wallach is further harmed by TNT’s misappropriation of his name
14 and likeness because his privacy interests, including the right to limit use of
15 commercial trading on his name, likeness and identity outweigh any public interest
16 served by the Defendants’ improper use of Dr. Wallach’s name, likeness, and
17 identity.

18 317. TNT agreed and conspired to misappropriate Dr. Wallach’s name and
19 likeness by continuing to profit from his name and likeness through 1-800-
20 WALLACH, yteamtools.com, and wallachonline.com. That conspiracy to
21 misappropriate caused Youngevity and Dr. Wallach damage in diversion of sales,
22 profit, internet traffic, and consumer contact information that should have gone to
23 Youngevity and authorized Youngevity distributors.

COUNT NINE

**LANHAM ACT TRADEMARK INFRINGEMENT
15 U.S.C. § 1114
(Defendants TNT and Graham)**

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318. Youngevity owns a valid trademark through the United States Patent and Trademark Office in the mark “Youngevity.” Exh. C (Decl. of Steve Wallach), at ¶ 4.

319. Defendants TNT and Graham and any others acting in concert with them as discovery may reveal (collectively “TNT” under this cause of action) currently own the websites www.yteamtools.com and www.wallachonline.com.

320. Until March of 2016, TNT was an authorized Youngevity distributor. While an authorized Youngevity distributor, TNT maintained, among other rights, an implied right to sell Youngevity goods and trade on Youngevity’s mark. *See supra* at ¶¶ 292–95.

321. In March 2016, Youngevity terminated TNT’s distributorships and revoked any implied right to trade on Youngevity’s mark. *See supra* at ¶¶ 296–97. Nevertheless, on those websites and through other promotional material, TNT continues to use the mark “Youngevity” to sell and promote unauthorized products, including Wakaya products.

322. TNT sells products through www.myyoungevity.com, www.wallachonline.com. TNT also sells product through www.yteamtools.com. TNT uses the Youngevity mark on those websites and in its products sold on those websites to imply falsely to consumers and Youngevity distributors that TNT is an authorized Youngevity distributor and that the products it sells bearing the Youngevity mark are Youngevity approved products.

323. In fact, TNT is not an authorized Youngevity distributor and Youngevity does not approve all of the products TNT sells to consumers and Youngevity distributors.

1 324. TNT sells unauthorized and misbranded Youngevity “goods” on
2 www.wallachonline.com. When consumers believe they are purchasing legitimate
3 Youngevity products from www.wallachonline.com, TNT in fact sends them
4 unapproved Youngevity products with a Japanese label. *See* Exh. K (Additional
5 Decl. of Joel D. Wallach), at ¶¶ 5–7.

6 325. Youngevity does not object to TNT’s use of the Youngevity mark
7 only to the extent TNT sells Youngevity products which TNT purchased from
8 Youngevity while still acting as an authorized Youngevity distributor.

9 326. Defendant Blake Graham and TNT also use the Youngevity mark to
10 attract Youngevity distributors to what Graham and TNT advertise to be
11 Youngevity events but at which those Defendants engage in a bait and switch
12 whereby they solicit Youngevity distributors in attendance to buy Wakaya
13 products and become Wakaya distributors.

14 327. TNT’s use of the Youngevity mark is likely to, and does, confuse
15 consumers into believing falsely that TNT is an authorized Youngevity distributor
16 and that Youngevity approves of the sale of Wakaya products and the enrollment
17 of Youngevity distributors in Wakaya.

18 328. TNT’s illegal use of the Youngevity mark has harmed Youngevity,
19 including harm to Youngevity’s reputation and in diluting the value of the
20 Youngevity mark, in an amount to be proven at trial. Youngevity also suffers
21 harm to its reputation and goodwill resulting from consumers being misled to
22 believe that Youngevity endorses or condones toxic Wakaya products, including
23 the Clay Product.
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COUNT TEN

**Breach of Fiduciary Duty
(Defendant Andreoli)**

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4 329. Defendant Andreoli served as President of Youngevity from October,
5 2011 through November, 2015.

6 330. As President of Youngevity, Andreoli owed fiduciary duties to
7 Youngevity.

8 331. Andreoli in his capacity as President of Youngevity authorized in
9 excess of a dozen “forced qualifications” or automatic rank advancements to be
10 bestowed upon individuals and entities who did not earn those advancements
11 through increased product sales volumes, as required by Youngevity rules.

12 332. The effect of those forced qualifications was to cause the company to
13 pay those individuals and entities higher than justified commissions, bonuses, and
14 car bonuses.

15 333. Among those given forced qualifications were Andreoli’s parents, his
16 wife and children, defendant Andre Vaughn, and Monique Vaughn.

17 334. As a result of Andreoli’s forced qualification of Andre Vaughn,
18 Youngevity paid Vaughn \$40,000.00 in car bonuses and in excess of \$600,000.00
19 in commissions and other bonuses over a four year period.

20 335. Through those forced qualifications, Andreoli breached his fiduciary
21 duty to Youngevity and caused Youngevity funds to be converted for the unjust
22 enrichment of those friends and family members he wished to financially benefit
23 without the prior knowledge or advanced approval of Youngevity’s CEO Steve
24 Wallach.

25 336. Andreoli’s duties as Youngevity President included notifying
26 Youngevity’s CEO and obtaining authorization from him before force qualifying
27 any individuals or entities. Those duties also obligated actions from Andreoli that
28 served the interests of Youngevity over competing ventures. Those duties also

1 required Andreoli to exercise reasonable care and to maintain his loyalty to
2 Youngevity.

3 337. He further breached his fiduciary duties by encouraging the infliction
4 of financial loss to Youngevity's business by inducing and condoning breaches of
5 Youngevity distributor's agreements with Youngevity and violation of
6 Youngevity's contracts with the other named Defendants by aiding and abetting
7 those Defendants in forming and promoting the competing company Wakaya.

8 338. Andreoli's breach of his fiduciary duties to Youngevity proximately
9 caused Youngevity damages. Youngevity then paid those individuals and entities
10 higher than justified commissions and bonuses over the course of four years,
11 unjustly enriching them at the direct and substantial expense of Youngevity.

12
13 **PRAYER FOR RELIEF:**

14 WHEREFORE, Plaintiffs pray for judgment in its favor and against
15 Defendants and requests that this Court:

16 A. Award Plaintiffs exemplary or punitive damages under Cal. Civ. Code
17 § 3294, 15 U.S.C. § 1117, and other applicable laws and statutes for Defendants'
18 conduct undertaken with intent to injure Plaintiffs, or with a willful and conscious
19 disregard of Plaintiffs' rights. This is an exceptional case that involves a
20 Company's top officers, employees, and distributors conspiring together, while
21 employed at Youngevity, to create a business in direct competition with
22 Youngevity. An award of punitive damages sufficient to deter and prevent that
23 misconduct in future is appropriate in this case.

24 B. Issue against Defendants a permanent injunction enjoining the
25 Defendants, their officers, shareholders, agents, servants, employees, attorneys,
26 successors and assigns, subsidiaries, affiliated companies or entities, all those in
27 privity with same, and all those in active concert or participation who receive
28 actual notice of the judgment: (1) from using any of Youngevity's proprietary and

1 confidential information in any manner not expressly authorized by Youngevity;
2 (2) from profiting from any of their illegal activities, including profits made from
3 Wakaya employees and/or distributors who were employed by and/or distributors
4 for Youngevity; (3) from inducing Youngevity distributors and employees to
5 breach their contracts with Youngevity; (5) from operating an unlawful pyramid
6 scheme; (6) from making any further commercial use of the name and likeness of
7 Joel D. Wallach, BS, DVM, ND, including, but not limited to, making commercial
8 use of the name and likeness of Joel D. Wallach, BS, DVM, ND through the
9 websites wallachonline.com and yteamtools.com, and through the phone number
10 1-800-WALLACH; and (7) from making any further commercial use of the mark
11 “Youngevity,” including, but not limited to, making commercial use of the name
12 “Youngevity” through the websites wallachonline.com and yteamtools.com.

13 C. Order the Defendants to file with this Court a compliance plan under
14 oath describing the method and manner in which Defendants intend to comply with
15 the injunction(s), including a description of any new operating procedures and
16 policies, to be filed within 30 days after service of an injunction;

17 D. Order the Defendants to specifically perform contractual provisions
18 binding on Defendants Smith, Andreoli, Pitcock, Gardner, and Cloward that
19 require those Defendants to return all proprietary and confidential information to
20 Youngevity;

21 E. Award Plaintiffs all costs and reasonable attorney fees and expenses
22 incurred by Plaintiffs in connection with this action;

23 F. Award Plaintiffs all of Defendants’ profits and income since October,
24 2015;

25 G. Award Plaintiffs recompense for all damages suffered by Plaintiffs as
26 a result of Defendants’ unlawful acts;

1 H. Award Plaintiff Youngevity all damages allowed under the contracts
2 and agreements between Youngevity and defendants Smith, Andreoli, Pitcock,
3 Cloward, and Gardner;

4 I. Award Plaintiff Youngevity all Wakaya sales receipts and proceeds
5 from the sale of GAC products exclusively licensed to Wakaya;

6 J. Award Plaintiffs all damages necessary to remedy the injuries to their
7 reputations and goodwill resulting from Defendants' misrepresentation to
8 consumers that Plaintiff endorses or condones the sale of injurious product, to wit,
9 the Clay Product.

10 K. Compel an accounting of all Defendants' profits, revenues, accounts,
11 and proceeds received or obtained, directly or indirectly, since the date Wakaya
12 was founded.

13 L. Award Plaintiffs pre-judgment and post-judgment interest on the
14 above damage awards;

15 M. Adjudge all Defendants jointly and severally liable, as the law allows,
16 under each cause of action asserted by Youngevity and for all damages awarded
17 against any Defendant;

18 N. Grant such other and further relief as this Court deems just.

19
20 DATED: July 13, 2016

21
22 Respectfully submitted,

23
24 YOUNGEVITY INTERNATIONAL,
25 CORP.

26
27 By: /s/ Peter A. Arhangelsky
28 Peter A. Arhangelsky, Esq. (SBN 291325)
Attorney for Plaintiff Youngevity
E-mail: parhangelsky@emord.com

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Emord & Associates, P.C.
3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
Phone: (602) 388-8899
Fax: (602) 393-4361

1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on July 13, 2016, I electronically filed the foregoing
5 with the Clerk of the Court using the CM/ECF system which will send notification
6 of such filing to the following:

7 Kyle M. Van Dyke
8 Hurst & Hurst
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25 *Attorneys for Defendants*

26
27
28
/s/ Peter A. Arhangelsky
Peter A. Arhangelsky

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EXHIBIT A

1 Peter A. Arhangelsky, Esq. (SBN 291325)
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 jemord@emord.com
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 Fax: (602) 393-4361
 8 Attorneys for Plaintiffs
 9

10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
 12

13 YOUNGEVITY INTERNATIONAL
 14 CORP. et al.,

15 Plaintiff,

16 v.

17 TODD SMITH, et al.

18 Defendants.
 19
 20

Case No.: 16-CV-704-L-JLB

**DECLARATION OF ERIC J.
 AWERBUCH**

21 **DECLARATION OF ERIC AWERBUCH**
 22

23 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
 24 following is true and correct:

25 1. I, Eric Awerbuch, am over the age of 18 and competent to testify to
 26 the information below. All matters contained herein are of my own personal
 27 knowledge unless stated as based upon information and belief.
 28

1 2. I am an associate attorney at Emord & Associates, P.C., and counsel
2 of record for Plaintiffs in the above captioned matter.

3 3. Attached hereto as **Attachment 1** is a true and correct copy of
4 Wakaya’s label for its Powdered Clay product (identified in Plaintiffs’ Second
5 Amended Complaint as the “Clay Product”).

6 4. Attached hereto as **Attachment 2** is a true and correct copy¹ of a
7 publicly available post submitted on the Facebook.com page “Wakaya Perfection
8 Evolution,” by a user named “Wakaya Perfection Evolution,” entitled “WAKAYA
9 PERFECTION’S BENTONITE CLAY! 10 Bentonite Clay Benefits and Uses.”

10 5. Attached hereto as **Attachment 3** is a true and correct copy of a
11 posting on www.eBay.com offering to sell the Wakaya Perfection Pink Fijian
12 Ginger Beauty and Wellness Collection for \$39.89.

13 6. Attached hereto as **Attachment 4** is a true and correct copy of the
14 Wakaya Perfection Ambassador Application.

15 7. Attached hereto as **Attachment 5** is a true and correct copy² of a
16 publicly available Facebook.com post submitted by a user named “Ashley
17 Duncan.”

18 8. Attached hereto as **Attachment 6** is a true and correct copy of the
19 Facebook.com cover page for the group called “Wakaya Leaders.” I am aware that
20 all of the individuals identified as administrators for the Facebook.com group
21 named “Wakaya Leaders” (Mike Casperson, Mike Randolph, Bill Andreoli, Barb
22 Pitcock, Patti Gardner, Blake Graham, Maxandra Desrosiers, Andre L. Vaughn,
23 and David Pitcock) are former Youngevity distributors, employees, or officers.
24

25 _____
26 ¹ I have redacted certain private information completely unrelated to this
litigation.

27 ² I have redacted certain private information completely unrelated to this
litigation.
28

1 9. Attached hereto as Attachment 7 is a true and correct copy³ of a
2 publicly available Facebook.com post submitted by a user named “Blake Graham.”

3 10. Pursuant to CivLR 15.1(c), attached hereto as Attachment 8 is a
4 version of Plaintiffs’ Second Amended Complaint with redline revisions showing
5 how Plaintiffs’ Second Amended Complaint differs from Plaintiffs’ First
6 Amendment Complaint (Dkt. 25).

7
8 Executed on this 12th day of July, 2016.

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12 /s/ Eric Awerbuch
13 Eric Awerbuch
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25

26
27 ³I have redacted certain private information completely unrelated to this
28 litigation.

Attachment 1 to Exh. A

**WAKAYA PERFECTION
CALCIUM BENTONITE MINERAL CLAY**

NET WT. 10 OZ. (300 G.)

Used by the world's finest spas and resorts for
facials, full body wraps and soaks.

Ingredients: 100% pure, all natural, calcium bentonite clay.

Topical/facial use: Mix 1 part clay to 3 parts water.
Let stand until smooth (best in 24 hours).

Internal use: Mix 1 tsp. to 2 oz. water, stir well.

Baths: Mix 1 cup clay powder into water as tub fills.



WPO20110

Distributed by
Wakaya Perfection
7 South 1550 West #500
Lindon, UT 84042

wakayaperfection.com

Attachment 2 to Exh. A

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Wakaya Perfection Evolution is on Facebook.

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Wakaya Perfection Evolution Organization

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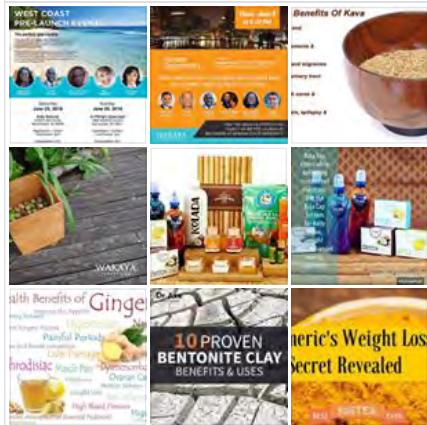
PEOPLE

39 likes

ABOUT

<http://www.evolution83.mywakaya.com/>

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Wakaya Perfection Evolution

April 10 ·

WAKAYA PERFECTION'S BENTONITE CLAY!

10 Bentonite Clay Benefits and Uses healing skin, hands

1. Used on the Skin to Heal Eczema, Dermatitis & Psoriasis

When combined with water and left to dry on the skin as a clay mask, the clay is able to bind to bacteria and toxins living on the surface of the skin and within pores to extract these from the pores. This helps to reduce the outbreak of blemishes, alleviate redness, and also to fight allergic reactions from irritating lotions or face washes, and even helps help poison ivy.

Thanks to the clay's special ability to act as an antibiotic treatment when applied topically to the skin, the clay can help to calm skin infections and speed up healing time of wounds or eczema, even when prescription antibiotics were not able to help solve the problem. (2, 3, 4)

2. Used in the Bath as a Soaking Liquid to Remove Toxins

The clay can be added to your bath water and used as a soaking liquid, binding to the toxins that are dispelled from your skin. The clay leaves skin feeling smooth, hydrated, and less inflamed, all while you relax in the tub effortlessly!

3. Allows Cells to Receive More Oxygen

Bentonite clay helps to get oxygen into the cells because it has the ability to pull excess hydrogen from the cells, leaving room for oxygen to take its place.

When cells have more oxygen entering them, you feel more energized and your body can repair itself more easily from illness or hard workouts, including improving muscle recovery.

Human Body diagram with Alkaline4. Alkalizes the Body

Much of the foods that are present in the "Standard American Diet" have an acidic reaction in the body, meaning they alter the body's preferred pH level to make it more acidic than we'd like for it to be.

The less healthy someone's diet is, normally the more acidic their body is. This is the case because the stomach needs to work extra hard to produce strong acids in order to break down these foods, creating the need for even more alkalizing foods to balance things out.

Proper digestion requires enzymes that are made from alkalizing minerals, so when alkalizing foods do not enter the body, acidity remains high and digestion suffers. Bentonite clay contains alkalizing minerals, which brings the level of the body's pH to a more optimal balance between acidity and alkalinity, helping to make the blood, saliva and urine more alkaline.

5. Boosts Probiotics

By removing toxins, digestive-distress causing chemicals and heavy metals from the gut, bentonite clay helps to promote the "good bacteria" or probiotics living in your gut wall and decrease the amount of harmful "bad



GWYNN PARK DANCE Team
Organization



Bells United Methodist Church
Methodist Church



Heart of a Nation:Uncomplicated ...
Book

English (US) · Español · Português (Brasil) · Français (France) · Deutsch



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bacteria.”

A healthy gut wall prevents us from experiencing malabsorption of nutrients from our food, increases our immunity, and also helps to elevate our mood and brain function. Research has also shown that bentonite clay can bind to particular toxins like “aflatoxins” that are common in the standard diet, found in things like peanuts and some grains.

When left unattended, an influx of aflatoxins can contribute to liver damage and potentially even the onset of certain cancers. Because of bentonite clay’s negatively charged electrons, it’s able to withstand acids found in the gut and survive long enough to bind to toxins. (5)

6. Relieves Digestive Problems (Constipation, IBS, Nausea, etc.) Hands on Stomach, gut health

Thanks to its ability to neutralize bacteria in the gut and kill viruses, bentonite clay helps to alleviate many digestive problems. It is often used as relief for nausea and vomiting by pregnant women, is a safe way to remedy constipation, and helps with IBS.

Results from one study carried out in 1998 showed that bentonite clay was extremely successful at absorbing harmful rotavirus and caronavirus toxins within the gut of young mammals. Rotaviruses are one of the leading causes of gastrointestinal distress, such as diarrhea and nausea, in infants and toddlers. (5)

Bentonite clay benefits your pets as well. It is safe for pet consumption within your own home and can alleviate pet’s nausea and vomiting in the same way. You can add bentonite clay to your pet’s water to help reduce symptoms like vomiting. Mix ¼ cup or less of the clay into their water until it dissolves; they should not taste anything or even notice that it’s there, but should feel better pretty quickly.

7. Boosts Immunity by Killing Harmful Bacteria and Viruses

Bentonite clay was also found to be effective at killing harmful bacteria. In a study published by the Journal of Antimicrobial Chemotherapy, “results indicate that specific mineral products have intrinsic, heat-stable antibacterial properties, which could provide an inexpensive treatment against numerous human bacterial infections.” (6)

More research is still needed on the topic but results of studies so far appear to be promising in terms of how the clay can be used as a treatment for these gut-related illnesses. On top of killing these types of infections and viruses, bentonite clay benefits your immune system by keeping the gut wall strong.

Much of the immune system actually lives inside of the gut, and when the gut wall is compromised, toxins are better able to leach into the bloodstream and cause serious problems. By protecting the gut wall and decreasing the amount of pesticides, toxins, bacteria and chemicals that could potentially enter the blood, the body is better able to protect its health.

8. Improves the Health of Teeth and Gums

The mouth is one of the most susceptible areas of the body when it comes to harmful outside “invaders” taking over, like bacteria and toxins.

Bentonite clay binds to unhealthy substances in the mouth, such as around the teeth and on the tongue and gums, and helps to remove them before you swallow them and become sick. Because of Bentonite’s antibacterial properties, it has been used in natural toothpastes and even mixed with water and used as a daily rinse.

Running Water9. Purifies Water

Bentonite clay has been researched as an effective way to remove some of the fluoride that is often in drinking water.

When combined with magnesium, the clay has been shown to benefit the purity of tap water, which leads to some promising possibilities for using it in the future as a widespread cost-effective water purification method. (7)

10. Useful As a Baby Powder Alternative

Bentonite clay can be applied to any area on the skin of babies that is irritated, red or needs soothing in the same way that traditional powders are used. Plus, it is very gentle and naturally cleansing.

Apply a small amount of the clay directly to the skin and allow it to sit for several minutes before wiping/rinsing it away.

How to Effectively Start Using Bentonite Clay

Bentonite clay normally comes in a gray or cream color, not a bright white color, which can indicate that it may have gone bad. The clay should also be odorless and not have much of any taste at all.

If you plan on consuming bentonite clay by mouth (ingesting it either by eating or drinking the clay), try this:

•Drink 1/2 to 1 teaspoon once per day as many days of the week as you'd like. Mix the clay with water, preferably in a jar with a lid where you can shake the clay and make it dissolve. Then drink it right away.

If you plan on only using it externally on your skin, try this:

•Enjoy the bentonite clay benefits by adding a ¼ of a cup of the clay to your bath and massage your skin with it. Or just allow the clay to dissolve into the water and soak in for as long as you'd like, then rinse your skin well with clean water.

•Try gargling the clay in your mouth with some water for 30 seconds to 1 minute, similarly to using mouth wash. Then spit out the clay and rinse your mouth with clean water.

•Try creating a face mask by smearing the clay directly onto your skin, especially anywhere where you have blemishes, red spots, irritations or scarring. Allow the clay to dry (this usually takes about 20 minutes) and then rinse it off with warm water. It's recommended to use the clay mask one or twice per week for best results.

•For scrapes or bug bites, apply a concentrated amount of the clay directly to the trouble area and cover with a Band-Aid or gauze, then let it sit for about 2 hours, then rinse it off.

If you're looking for an inexpensive and safe way to help rid toxins from your body, consider trying bentonite clay in one of its many uses. Whether you are looking to clear skin irritations or undergo a more dramatic internal detox, experiment with this traditional and completely natural method of healing that has been practiced for hundreds of years.



 **Wakaya Perfection Evolution**
June 26 at 2:22pm ·

Everyone needs a little clay in their lives. AMAZING health benefits!
www.evolution83.mywakaya.com



David Smith Calcium Bentonite Clay

YOUTUBE.COM

Like Comment Share

 **Wakaya Perfection Evolution**
June 22 at 7:24am ·

Attachment 3 to Exh. A



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Wakaya Perfection Beauty And Wellness Collection Pink Fijian Ginger

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1

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\$39.89

+ Free Shipping

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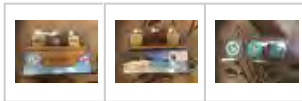
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Attachment 4 to Exh. A

AMBASSADOR APPLICATION

Presented by Independent Ambassador

Name: _____

Ambassador ID#: _____

WAKAYA

PERFECTION

7 South 1550 West, Suite 600 • Lindon, UT 84042

Phone: 1-877-WAKAYA1 (925-2921)

E-mail: customerservice@wakayaperfection.com

Website: mywakayaprelaunch.com

Enrollment Options (select one)**Ambassador Enrollment** **Ambassador Welcome Kit**
\$49.95 #WP000000

Includes sales aid samplers and access to an Independent Ambassador Website, Wakaya Back Office, Online Training Center, Downline Genealogy, Commission Statements and more.

Only \$25 with purchase of a Paradise Product Pack

 Paradise Product Pack
\$499.95 (Save over \$115) #WP100005 500 QVOver \$590 of our most popular products including: Organic Pink Fijian Ginger Capsules, Organic Fijian Turmeric Capsules, Sava Daily Detox Moisturizer, Sava Daily Detox Masque, Wakaya Perfection Culinary Kitchen Set, Bula Bottle, DetoxCap (2), Procaps, SlimCaps, Pain Relief Essential Oil, Immunity Essential Oil, Start Up, Wakaya Caramel Popcorn, Ginger Gem Cookies. *Includes discounted Ambassador Welcome Kit - \$25.00**Contents of kits subject to change without notice, visit www.mywakayaprelaunch.com to view current contents.***Autoships***A Web Tools/Renewal Premium of \$25 is required each year for all Ambassadors and will be set up on an Annual Auto-ship. Ambassadors who purchase the Paradise Product Pack will have an additional monthly Autoship of a Daily Detox Health Pack for \$149.95 (150 QV, 125 BV). This Autoship may be edited anytime through the Ambassador Back Office.***Subtotal:****Shipping:****Tax (____):****Total:****New Applicant Information**

Last Name	First Name	Middle Initial	Social Security Number or Tax ID	Date of Birth (MM/DD/YY)
Company Name (OPTIONAL - MUST MATCH TAX ID)	Username/URL	Password	Phone Number	Email Address
Billing Address	City	State	Zip Code	
Shipping Address	City	State	Zip Code	

Method of Payment

Credit Card Type <input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> AMEX <input type="checkbox"/> DISCOVER	Name (as it appears on the card)
Credit Card Number	Expiration Date (MM/YY) CVV
Billing Address	City State Zip Code
Signature	Date (MM/DD/YY)

Tax Information & Authorization

I certify that the Tax ID Number listed is a valid: (mark one only)

 Social Security Number or Business Tax ID Number for a: Sole Proprietor Corporation Partnership Other

I certify that the Tax ID Number listed is a valid: (mark one only)

 1. The name given for the first line of the Independent Marketing Director/Preferred Customer Name is the name registered with the U.S. Government for that Tax ID Number, or 2. The name registered with the government for that number is: _____**Payment Authorization and Approval**

I have read the reverse side of this application and agree to abide by these as well as all of the Wakaya Perfection Policies and Procedures. I authorize Wakaya Perfection to charge the credit/debit card above for the Order Total. I authorize Wakaya Perfection to charge the credit/debit card above for my annual Web Tools/Renewal Premium and for the Daily Detox Health Pack Monthly Autoship.

Signature	Date (MM/DD/YY)	For Office Use Only
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The undersigned (on the reverse) agrees and attests to the following: I am of legal age in the state in which I enter this Agreement. I understand that I am not a Distributor until the Company has accepted an original Agreement, properly signed, at its home office.

I will not purchase products solely for the purpose of qualifying for commissions or bonuses. I will resell or personally consume at least 70% or more of all products that I have purchased from the Company prior to making any subsequent product order. Products personally consumed by my household, in reasonable quantities, and not purchased to meet sales plan qualifications, are deemed retail sales. Products deemed certified as sold under this 70% rule are not eligible for buyback.

I am entitled to cancel this Agreement at any time and for any reason with written notice to the Company. **This business model does not provide for the sale of products or sales aids into the inventory of an independent contractor for resale. The Company recognizes that some buy-back laws extend to fees and other consideration paid, and to the extent that such laws are applicable, the Company will honor the buyback laws of Georgia, Idaho, Louisiana, Maryland, Massachusetts, Montana, Nebraska, Oklahoma, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wyoming. Additionally, Montana distributors who cancel within 15 days are entitled to a 100% refund of any consideration given to participate.**

As an Independent Distributor I will:

- Provide training and motivation to my distributors.
- Study the product literature and promote retail sales.
- Represent the Company products in an honest manner.
- Honor the Company Customer Guarantees.
- Be professional, courteous, and considerate.
- Not misrepresent the Company's Compensation Plan.
- Become familiar with, and abide by, the Company Statement of Policies and other materials as prescribed by the Company.

I understand that Independent Distributors cannot, under any circumstances, incur any debt, expense, or obligation on behalf of, or for, the Company.

I understand that, as an Independent Distributor, I will not, for any reason, act as spokesperson for the Company and its products, in any manner, to any media or publication, without prior, written authorization. I will not create, print, publish, or distribute any literature or materials representing the Company or its products other than those from, or approved in writing by, the Company.

I understand that, as an Independent Distributor, I have the following rights: (a) to solicit sale of the products/services offered by the Company in agreement with the Company Compensation Plan, and its Sales Policies, including without limitation the Statement of Policies, and (b) to sponsor other Independent Distributors in agreement with the Company Compensation Plan and Statement of Policies.

I understand that I will make no claims or warranties of any kind, including, but not limited to, any claims for earnings or benefits concerning the Company's products or its Compensation Plan, other than those included in the Company's official written literature. I will not make product claims which are not stated in official Company literature, and I am not permitted to create my own literature, sales aids, or training materials, without written consent from the Company.

If I fail to pay for products, services or sales aids, the Company is authorized to withhold the appropriate amounts from my commission and bonus checks, or credit card/electronic checking accounts, if any, which I have authorized the Company to charge. If payment owed is not made, I understand that I may, at the Company's discretion, lose my marketing organization and future commissions and bonuses, and may be placed on inactive status by the Company for an indeterminate period. The Company will not be responsible for the loss of any commissions and bonuses or other payments because of delays or errors in orders, charges, receiving agreements, or other acts outside of the control of the Company.

As an Independent Distributor, I understand that I am an independent contractor, and not an agent, employee, or franchisee of the Company. I understand and agree that I will not be treated as an employee for federal or state tax purposes, nor for purposes of the Federal Unemployment Tax Act, the Federal Insurance Contributions Act, the Social Security Act, State Unemployment Acts, State Employment Security Acts, or State Workers Compensation Acts. I understand and agree to pay all applicable federal and state self-employment taxes, sales taxes, local taxes, and/or local license fees that may become due as a result of my activities under this Agreement.

I understand that my acceptance of this Agreement, does not constitute the sale of a franchise or a security, no exclusive territories can be granted to anyone, and that no franchise fees have been paid, nor can I acquire any interest in a security by the acceptance of this Agreement.

The Company may, at its discretion, amend the Company Compensation Plan and Statement of Policies and/or terms of the Independent Distributor Agreement. Notification of such changes shall be published in newsletters, on the Company website, broadcast by Email, written or published material circulated or made available to all Independent Distributors. I agree to abide by all such amendments. The continuation of my Business, and/or my acceptance of products, commissions, and bonus checks, or other payments from the Company, constitutes my acceptance of any and all amendments.

My Distributorship cannot be sold, assigned, or transferred without prior, written approval from the Company.

I have carefully reviewed the Company Compensation Plan and Statement of Policies, and acknowledge that they are incorporated as a part of this Agreement in their present form and as modified from time to time by the Company. My violation of any of the terms of this Agreement or the Company Statement of Policies may result, at the Company's discretion, in forfeiture of commission and bonus checks, or other payments from the Company; loss of all or part of my marketing organization; or cancellation of this Agreement.

This Agreement constitutes the entire agreement between the parties, and no other promises, representations, guarantees, or agreements of any kind shall be valid unless in writing. If any provision herein is held to be invalid, all other provisions shall remain valid and enforceable.

The term of this Agreement is one year. This Agreement can be renewed annually on each anniversary date of the acceptance of this Agreement, unless otherwise canceled or extended by the Company. A renewal fee of \$25 will be charged.

This Agreement shall be governed by the laws of the State of Utah, and any claims or disputes between parties to this Agreement shall be subject to binding arbitration under the Commercial Rules of the American Arbitration Association, with arbitration to be held in Salt Lake City, Utah. Louisiana residents may choose jurisdiction in, and arbitrate in New Orleans, Louisiana.

Attachment 5 to Exh. A

[Empty rectangular box]



Ashley Duncan

July 4 at 4:47pm ·

Here's How It Works! Who wants to come on a road trip to hilo with me tomorrow?!

1. You buy a Paradise pack!
2. You tell every one you can.
3. Your friends say you're crazy.
4. You tell more people.
5. Your family says you're in a pyramid scheme.
6. You tell more people.
7. A few quit.
8. You tell more people.
9. A lot quit.
10. But you don't. And one day you earn more in one month than 90% of Americans earn in a year!

It's simply called "Not Quitting"

NOW GO DO IT!

YES! It really is that simple!

#wakayaperfection#befreetolive#makeyourowngoalsanddreams



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10

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Attachment 6 to Exh. A

Wakaya Leaders

Wakaya Leaders

Closed Group

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Join this group to see the discussion, post and comment.

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MEMBERS

1,330 Members



DESCRIPTION

This page is to offer support, information, motivation and inspi... [See More](#)

GROUP TYPE

Team

CREATE NEW GROUPS

Groups make it easier than ever to share with friends, family and teammates.

Create Group

Members (1,330)

[See All](#)

Admins



Mike Casperson



Mike Randolph



Bill Andreoli



Brytt Cloward



Barb Pitcock



Patti Gardner



Barb Pitcock



Blake Graham



Maxandra Desrosiers



Andre L Vaughn



David Pitcock



Wakaya Leaders

Other Members



Nst Apologetics



Ibert Glenn



Otto W. Myree



Lucy Meek



Reyo Joy



Chandra Lee



Kery King



Coral Stephens



Judy Lopez



Heather Huff Lyman



Teri Lynn Hasty



Valen Olson



Kelly Puhmann



Cathy Simmons Buchanan



Shelley Smith



Cheryl Hurzeler Smoley



Jeff Meador

SUGGESTED GROUPS

[See All](#)



Attachment 7 to Exh. A

[Empty rectangular box]



Blake Graham
July 9 at 12:01pm ·

WAKAYA THIS WEEK in BOISE, ID and Pleasant Grove, UT
Opportunity Meeting with Ruby Ambassador Blake Graham
WHEN: Monday July 11 at 7 PM MTN
WHERE: 2895 East Los Altos
Dr. Meridian, ID 83642
Ambassador Training with Ruby Ambassador Blake Graham
WHEN: Wednesday July 13 at 7:30 PM MTN
WHERE: Total Nutrition Office
872 North 2000 West
Pleasant Grove, UT 84062

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Why This Shirt Company Is Causing so Many Gu...
propercloth.com
Find out why guys are choosing Proper Cloth over traditional off-the-rack brands.



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Attachment 8 to Exh. A

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10 Emord & Associates, P.C.

11 3210 S. Gilbert Road, Suite 4

12 Chandler, AZ 85286

13 Phone: (602) 388-8899

14 Fax: (602) 393-4361

15 Attorneys for Plaintiffs

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

18 YOUNGVEVITY INTERNATIONAL
19 CORP., a Delaware corporation; and
20 JOEL D. WALLACH, DVM, ND, a
21 California resident,

22 Plaintiffs,

23 v.

24 TODD SMITH, an individual and
25 Utah resident; WAKAYA
26 PERFECTION, a Utah corporation;
27 TOTAL NUTRITION TEAM D/B/A
28 TNT, a Utah corporation; BLAKE
GRAHAM, an individual and Utah
resident; WILLIAM ANDREOLI, an
individual and New Hampshire
resident; ANDRE VAUGHN, an
individual and
~~Maryland~~Pennsylvania resident;
DAVE PITCOCK, an individual and
Kansas resident; PATTI

Case No. 3:16-cv-00704-~~WL~~-JLB

**FIRSTSECOND AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEFFORRELIEF
FOR:**

- 1. Lanham Act (15 U.S.C. § 1125);
- 2. False Advertising (Cal. B&P Code §§ 17500, et seq.); and
- 3. Unfair Competition (Cal. B & P Code § 17200).
- ~~1.~~4. Intentional Interference with Prospective Economic Advantage;
- 5. Breach of Contract;
- ~~2.~~6. Intentional Interference with Contract/Inducing Breach of Contract;
- ~~3.~~Breach of Contract;

1 GARDNER, an individual and Utah
2 resident; BRYTT CLOWARD an
3 individual and Utah resident; and
4 DOES 1–10, inclusive.

5 Defendants.

4.7. Misappropriation of Trade Secrets
(Cal. Civ. Code § 3426);

5.8. Misappropriation of Likeness (Cal.
Civ. Code § 3344);

6.9. Lanham Act (15 U.S.C. ~~1125~~); §
1114);

7.10. Breach of Fiduciary Duty;

~~8.1. Unfair Competition (Cal. B & P Code
§ 17200); and~~

~~9. False Advertising (Cal. B&P Code §§
17500, et seq.).~~

JURY TRIAL DEMANDED

12 **FIRSTSECOND AMENDED COMPLAINT FOR DAMAGES AND**
13 **INJUNCTIVE RELIEF**

14 1. Plaintiffs Youngevity International Corp. (“YGYI” or “Youngevity”) and Joel D. Wallach, BS, DVM, ND, (“Dr. Wallach”) (collectively, “Plaintiffs”), by counsel, file this FirstSecond Amended Complaint for Damages and Injunctive Relief against the above-named Defendants. Plaintiff YGYI filed its original Complaint (Dkt. 1) on March 23, 2016. It completed service on all defendants ~~on~~
18 April 1, 2016 (Dkt. 14). April 1, 2016 (Dkt. 14). Plaintiffs filed their First
19 Amended Complaint on May 6, 2016 (Dkt. 25). On June 29, 2016, this Court
20 granted Plaintiffs leave to file this Second Amended Complaint (Dkt. 45).

21 2. ~~This is an action for intentional interference with business relations, inducement of breach of contract, breach of contract, misappropriation of trade secrets, misappropriation of likeness, violations of the Lanham Act, breach of fiduciary duty, unfair competition, and false advertising. For at least the past year, the Defendants have conspired and acted in concert to interfere with Youngevity business operations, Youngevity contractual relations, and Youngevity distributor relations in order to convert business opportunities meant for Youngevity to their own competing multi-level marketing startup, doing so maliciously and in breach~~

1 of fiduciary duties, while for much of that time serving as either top executives of
2 or top level distributors in Youngevity.

3 3. The Defendants have betrayed their unique positions of trust and
4 confidence in Youngevity by diverting Youngevity resources and business
5 opportunities to their own competing venture and inducing formerly loyal
6 Youngevity distributors and Youngevity employees to breach their contracts with
7 Youngevity and assist in building that competing enterprise, Wakaya Perfection,
8 LLC, a Utah based multi-level marketing company operated by them (“Wakaya”).
9 The Defendants took unlawful actions from within Youngevity, preying on the
10 trust, confidence, and prominence they had within Youngevity and using
11 confidential and trade secret information to which they had unique access to induce
12 breaches of contract and to convert business opportunities intended for Youngevity
13 to Wakaya.

14 4. The Defendants have thus built their competing business unlawfully at
15 Youngevity’s expense. Acting with malice and with the intent to cause permanent
16 and lasting injury to Youngevity, the Defendants have employed tactics of tortuous
17 interference, misappropriation, inducement to breach contract, breach of contract,
18 breach of fiduciary duty, and unfair competition.

19 5. The company created by the Defendants, Wakaya, has been
20 organized, initiated, and operated as an unlawful pyramid scheme in violation of
21 state and federal law.

22 PARTIES

23 The Plaintiff Plaintiffs:

24 2. Organized in 1997, Plaintiff Youngevity, a publicly traded company,
25 (NASDAQ symbol: YGYI), operates under the laws of Delaware with its principal
26 place of business in Chula Vista, California. Youngevity develops and distributes
27 consumer products through a global network of independent, direct sellers known
28

1 as “distributors.” ~~Youngevity is a successful, nineteen year-old company that~~
2 ~~operates~~

3 ~~6.3.~~ For the past nineteen years, Youngevity has sold products through
4 direct selling networks worldwide, as well as wholly owned subsidiaries,
5 including, e.g., AL Global Corporation; CLR Roasters, LLC; Financial
6 Destinations, Inc.; and FDI Management, Inc.

7 4. ~~Originally a domestic company that sold U.S.-centric, selling~~
8 specialty liquid based vitamin and mineral formulas created by plaintiff Dr. Joel D.
9 Wallach, ~~BS, DVM, ND (“Dr. Wallach”)~~, Youngevity has ~~fulfilled Dr. Wallach’s~~
10 ~~vision of becoming a~~ become global ~~enterprise~~, selling a wide range in excess of
11 ~~consumer and lifestyle~~ 1,000 products through direct sales worldwide, including,
12 but not limited to, ~~health, food, gourmet coffee, wellness, beauty, cosmetic, high-~~
13 ~~end clothing, photo organization and ancestry, and jewelry~~ nutritional products ~~to~~
14 ~~consumers globally through its,~~ sports and energy drinks, health and wellness-
15 related services, lifestyle products, gourmet coffees, and cosmetics.

16 5. Youngevity develops and distributes consumer products through
17 independent, direct-sellers known as “distributors,” who are Youngevity agents
18 bound by the Youngevity distributor network agreement. Each has a “genealogy”
19 within Youngevity that consists of other distributors in an “upline” or “downline.”
20 Distributors in the upline predate, and those in the downline post-date, the
21 distributor’s enrollment. Sales flowing from downline distributors are also shared
22 with upline distributors, who generally sell through peer-to-peer relationships, e-
23 commerce, and social marketing. have a limited commission payable for all sales
24 in their respective downlines. The integrity of the Youngevity genealogies is
25 essential to Youngevity’s business model.

26 7.6. Youngevity’s distributors market products through corporate-backed
27 marketing channels, including internet websites, media, trade shows, lectures,
28 community events, local shops, and home meetings. ~~Youngevity invests more than~~

1 ~~seventy million dollars annually on sales, incentives, and marketing efforts to~~
2 ~~support its distributor networks. Youngevity now sells in excess of 1,000 products,~~
3 ~~including, but not limited to, nutritional products, sports and energy drinks, health~~
4 ~~and wellness-related services, lifestyle products, gourmet coffees, and~~
5 ~~cosmetics~~Distributors generally sell through peer-to-peer relationships, e-
6 commerce, and social media marketing.

7 ~~8. Through its charity, Youngevity Be the Change Foundation,~~
8 ~~Youngevity directs hundreds of thousands of~~invests more than seventy million
9 ~~dollars and a large volume of clothing and consumer goods annually to those in~~
10 ~~need around the world~~sales, incentives, and to other charities that serve veterans
11 ~~and the needy.~~

12 ~~9. Youngevity's subsidiary owns a 1,000-acre Coffee Plantation in~~
13 ~~Nicaragua. The Plantation holds the unique distinction of being Fair Trade,~~
14 ~~Organic, Rain Forest Alliance and Bird Friendly certified. Through~~marketing
15 ~~efforts to support its own foundation and from its Fair Trade Certification,~~
16 ~~Youngevity has invested hundreds of thousands of dollars to provide modern~~
17 ~~housing and a hydroelectric plant for the one hundred and eighty families who live~~
18 ~~and work on the plantation. Additionally, Youngevity has opened a school on the~~
19 ~~plantation to provide Kindergarten through 8th grade education for the children of~~
20 ~~the families residing there.~~

21 ~~10.7. Youngevity is publicly traded under the symbol: YGYI.~~distributor
22 networks.

23 ~~8. Plaintiff Dr. Joel D. Wallach is an individual and resident of~~
24 ~~California,~~ a doctor of veterinary medicine, author of leading texts and articles on
25 veterinary medicine and comparative pathology, and a doctor of naturopathic
26 medicine.

27 ~~11.9. Dr. Wallach has been actively involved with biomedical research and~~
28 ~~clinical medicine for~~ more thanover five decades. His research ~~resulted in the~~

1 ~~publication of~~ is contained in more than seventy peer-reviewed and refereed journal
2 articles in diverse fields including veterinary medicine, veterinary pathology,
3 comparative pathology, nutrition, and pharmaceutical research.

4 10. Dr. Wallach founded American Longevity Corporation in 1997, which
5 became Youngevity in 2006.

6 ~~12-11.~~ Youngevity has grown and thrived under Dr. Wallach's direction, and
7 as a result of his research and reputation.

8 ~~Dr. Wallach is a celebrity within the field of nutrition and in the direct selling market.~~

9 ~~13. He is a frequent speaker or lecturer on nutritional science and~~
10 ~~medicine. Youngevity's expressed approval or authorization is always required~~
11 ~~before anyone may make use of Dr. Wallach's name or likeness in commerce.~~

12 ~~Youngevity and Dr. Wallach reserve the right to withdraw that permission within~~
13 ~~their sole discretion and at any time.~~

14 **The Defendants:**

15 ~~14-12.~~ Defendant Wakaya Perfection, LLC ("Wakaya" or "Wakaya
16 Perfection") is a limited liability company formed and operated under the laws of
17 ~~the State of~~ Utah. Wakaya lists just has one founding member in its documentation
18 filed with the Utah Secretary of State: Todd Smith. ~~Mr. Smith has identified~~
19 ~~himself in other papers as the sole member and founder of~~ Smith acquired Wakaya
20 Perfection LLC in October, 2015. Wakaya is a Utah resident and business for
21 jurisdictional purposes.

22 ~~15-13.~~ ~~From 1997 until March of 2016, Todd Smith was a top level~~
23 ~~Youngevity distributor.~~ Wakaya is a multi-level marketing company that competes
24 directly with Youngevity.-

25 ~~16. Through improper and unlawful means, and trade on the trust and~~
26 ~~confidence of their prominent Youngevity positions, Wakaya's owners, operators,~~
27 ~~and promoters (all of whom were affiliated with Youngevity as officers,~~
28 ~~employees, or top level distributors) have interfered with and injured Youngevity's~~

1 ~~business interests by, *inter alia*: unlawfully inducing Youngevity employees and~~
2 ~~distributors to violate Youngevity contractual agreements; intentionally converting~~
3 ~~business opportunities intended for Youngevity to Wakaya by falsely representing~~
4 ~~that they had authority to make acquisition decisions for Youngevity and diverting~~
5 ~~those opportunities to Wakaya; disseminating false information concerning~~
6 ~~Youngevity's business and financial health to induce distributors to subscribe to~~
7 ~~the erroneous view that Youngevity was failing in order to induce them to affiliate~~
8 ~~with Wakaya; aiding and facilitating the unauthorized use of Youngevity's~~
9 ~~intellectual property to divert business opportunities and commissions from~~
10 ~~Youngevity to Wakaya; and committing other acts of unfair competition through~~
11 ~~deceptive marketing, promotional, and advertising claims (performance and~~
12 ~~comparative claims).~~

13 ~~17.—Todd Smith served as a trusted, top-level distributor in Youngevity,~~
14 ~~and had ownership interests in entities that distributed Youngevity products.—~~
15 ~~While a top-level distributor for Youngevity, yet acting as an undisclosed agent for~~
16 ~~Wakaya, and serving the interests of Wakaya, Smith intentionally converted~~
17 ~~Youngevity business opportunities through misrepresentation, subterfuge, and~~
18 ~~deceit. Smith has facilitated, aided, and abetted the violation of Youngevity~~
19 ~~contractual agreements in an effort to induce Youngevity distributors to breach~~
20 ~~their contracts with Youngevity and to cause business opportunities meant for~~
21 ~~Youngevity to be diverted to Wakaya. Smith has encouraged or solicited~~
22 ~~Youngevity distributors to take actions that violate their contractual agreements~~
23 ~~with Youngevity. He has disseminated false and misleading information~~
24 ~~concerning Youngevity's finances and financial standing in an effort to disparage~~
25 ~~Youngevity and thereby draw distributors and business away from Youngevity and~~
26 ~~to Wakaya. He has falsely represented himself to be authorized by Youngevity to~~
27 ~~negotiate and consummate acquisition contracts for Youngevity acquisitions, only~~
28 ~~to conceal and divert at least one offer meant for Youngevity to Wakaya.—~~

1 14. William “Bill” Andreoli is an individual and resident of the state of
2 Defendant Todd Smith is an individual and Utah resident. From 1997 until March
3 of 2016, Todd Smith was a top level Youngevity distributor. Smith had ownership
4 interests in entities that distributed Youngevity products. Smith formed Wakaya
5 Perfection after departing Youngevity, and designed Wakaya specifically to
6 compete against Youngevity.

7 ~~18.15. William “Bill” Andreoli is an individual and resident of New~~
8 ~~Hampshire. Andreoli has undisclosed personal financial interests in Wakaya~~
9 ~~Perfection is Wakaya’s President. Through November of 2015 of 2015, Andreoli~~
10 ~~served as Youngevity’s President of Youngevity, received a seven figure salary of~~
11 ~~pay, stock, and benefits, and received commissions as a Youngevity distributor.~~
12 ~~While acting as an undisclosed agent for Wakaya, and serving the interests of~~
13 ~~Wakaya, Andreoli breached his contractual agreements with Youngevity for the~~
14 ~~purpose of helping create and advance the interests of Wakaya. Andreoli acted to~~
15 ~~injure Youngevity while serving as Youngevity’s President, aiding and abetting the~~
16 ~~unlawful poaching of Youngevity business opportunities and inducing Youngevity~~
17 ~~employees and distributors to breach their contracts with Youngevity to work for,~~
18 ~~and assist in the promotion of, Wakaya. Andreoli also violated his fiduciary duty~~
19 ~~to Youngevity by placing his family and friends in profitable positions within~~
20 ~~Youngevity’s marketing chain without approval from Youngevity.~~

21 ~~19.16. Andre Vaughn is an individual and resident of the state of~~
22 ~~Pennsylvania. Vaughn served as a top-level distributor in Youngevity until March~~
23 ~~of 2016. A confidant of Andreoli, Vaughn is now a participant participates and~~
24 ~~investor invests in, agent distributes for, and promoter of promotes Wakaya~~
25 ~~Perfection. Acting individually and in concert with other Defendants, Vaughn~~
26 ~~while still a Youngevity distributor induced breach of Youngevity contractual~~
27 ~~agreements in an effort to secure business opportunities for Wakaya from~~
28 ~~Youngevity distributors. Vaughn has encouraged or solicited Youngevity~~

1 ~~distributors to violate their contractual agreements with Youngevity. As part of his~~
2 ~~effort to induce such breaches, Vaughn has falsely disparaged the company,~~
3 ~~claiming it to be financially bereft and teetering on the brink of dissolution or~~
4 ~~bankruptcy.~~

5 ~~20-17.~~ Dave Pitcock is an individual and resident ~~of the state~~ of Kansas.
6 Pitcock served as a top-level distributor in Youngevity until March of 2016, and
7 held ownership interests in ~~the~~ Livinity Corporation, which Youngevity purchased
8 from Pitcock in 2012. As part of that agreement, Pitcock ~~entered into~~executed a
9 consulting agreement with Youngevity containing non-compete and nondisclosure
10 clauses. While still a Youngevity distributor and subject to ~~the~~that consulting
11 agreement, Pitcock became a participant and investor in, ~~agent~~distributor for, and
12 promoter of Wakaya Perfection. ~~Acting individually and in concert with other~~
13 ~~Defendants while still a Youngevity distributor, Pitcock has induced Youngevity~~
14 ~~distributors to breach their contracts with Youngevity in an effort to secure~~
15 ~~distributors and business opportunities for Wakaya. Pitcock has encouraged or~~
16 ~~solicited other Youngevity distributors to violate their contractual agreements with~~
17 ~~Youngevity. As part of his effort to induce such breaches, Pitcock has falsely~~
18 ~~disparaged the company, claiming it to be financially bereft and teetering on the~~
19 ~~brink of dissolution or bankruptcy.~~

20 ~~21-18.~~ Total Nutrition, Inc., d/b/a “TNT,” is a corporation organized and
21 operated under the laws of Utah since 1996 and, until March of 2016, a
22 Youngevity distributor. ~~Founded by~~TNT was founded and wholly owned by
23 defendants Todd Smith and Blake Graham, both residents of Utah, ~~TNT distributed~~
24 Youngevity nutritional products and information until approximately December
25 31, 2015. On that date, Smith purportedly transferred his ownership interest in
26 TNT to Graham.

27 ~~22.~~ ~~Blake Graham is an individual and resident of the state of Utah. Until~~
28 ~~March of 2016, Graham served as a top-level distributor in Youngevity, and,~~

1 together with Smith, held ownership interests in TNT. Acting individually and in
2 concert with other Defendants, while still a Youngevity distributor, Graham has
3 facilitated, aided, or abetted violations of Youngevity contractual agreements in aid
4 of efforts to secure business opportunities for Wakaya. For example, in December
5 2015, Graham lied to Youngevity to conceal Smith's involvement in Wakaya.
6 Further, under his control, TNT employed Wakaya distributors and assisted
7 Wakaya in developing promotional materials used in soliciting Youngevity
8 distributors to breach their contracts with the company. Graham helped support a
9 false narrative that the Defendants' defection from Youngevity was acceptable to
10 Youngevity management by dispatching, in the first quarter of 2016 shortly after
11 Smith's public announcement of his establishment of Wakaya, an unauthorized
12 email and text message to all Youngevity distributors which thanked Smith for his
13 service to Youngevity and wished him well in his new endeavor, materially
14 omitting reference to Smith's actions that were in violation of Youngevity
15 contractual requirements and unapproved by Youngevity. Graham orchestrated a
16 campaign of deception, whereby he represented to Youngevity and its distributors
17 that he was a loyal Youngevity distributor despite having direct knowledge of
18 actions taken by Smith to injure Youngevity and divert its business opportunities
19 and distributors to Wakaya. He aided in inducing breaches of contract by
20 Youngevity distributors employed by TNT, to secure their service as distributors
21 for Wakaya Perfection. He concealed from Youngevity those facts and additional
22 facts and circumstances detrimental to its business operations, distributor relations,
23 and business dealings with third parties.

24 19. Blake Graham is an individual and resident of Utah. Until March of
25 2016, Graham served as a top-level distributor in Youngevity, and, together with
26 Smith, held ownership interests in TNT. Graham is now a participant and investor
27 in, distributor for, and promoter of Wakaya Perfection.
28

1 ~~23-20.~~ Patti Gardner is an individual and resident of Utah. ~~Patti~~ Gardner
2 served as the President of Heritage Makers, Inc. In August 2013, Youngevity
3 acquired Heritage Makers and entered into an Asset Purchase Agreement with
4 Heritage Makers. Gardner then became Youngevity's ~~vice president~~ Vice President
5 of ~~sales~~ Sales. While still employed by Youngevity, Gardner became a participant
6 and investor in, agent for, and promoter of Wakaya Perfection. ~~Acting individually~~
7 ~~and in concert with other Defendants, while still employed at Youngevity, Gardner~~
8 ~~induced Youngevity distributors to breach their contracts with Youngevity in an~~
9 ~~effort to secure distributors and business opportunities for Wakaya. Gardner has~~
10 ~~encouraged or solicited other Youngevity distributors to violate their contractual~~
11 ~~agreements with Youngevity. Gardner violated the Asset Purchase Agreement~~
12 ~~which she signed on behalf of Heritage Makers. Gardner is now Wakaya's Vice~~
13 President.

14 ~~24-21.~~ Brytt Cloward is an individual and resident of Utah. ~~Brytt~~ Cloward
15 served as the Vice President of Sales and Marketing of Heritage Makers, Inc. In
16 ~~August 2013~~ August 2013, Youngevity acquired Heritage Makers ~~and entered~~
17 ~~into through~~ an Asset Purchase Agreement ~~with Heritage Makers.~~ Cloward signed
18 that agreement ~~on behalf of himself.~~ Cloward then became Youngevity's ~~vice~~
19 ~~president~~ Vice President of ~~marketing~~ Marketing. While still employed by
20 Youngevity, Cloward became a participant and investor in, agent for, and promoter
21 of Wakaya Perfection. ~~Acting individually and in concert with other Defendants~~
22 ~~while still employed at Youngevity, Cloward induced Youngevity distributors to~~
23 ~~breach their contracts with Youngevity in an effort to secure distributors and~~
24 ~~business opportunities for Wakaya. Cloward has encouraged or solicited other~~
25 ~~Youngevity distributors to violate their contractual agreements with Youngevity.~~
26 ~~Cloward violated the Asset Purchase Agreement which he signed on behalf of~~
27 himself.

1 ~~25-22.~~ Defendants DOES 1-10 are presently unidentified or unknown
 2 individuals and/or entities who have or that have facilitated and participated or
 3 cooperated in the unlawful activities described herein. The nature and identity of
 4 those defendants will become known through discovery.

JURISDICTION AND VENUE

6 ~~26-23.~~ This Court has original subject matter jurisdiction under 28 U.S.C. §
 7 1331 because Plaintiff seeks relief under the federal laws of the United States.
 8 Plaintiff presents Counts under the Lanham Act, 15 U.S.C. ~~§ 1125,~~ §§ 1111 *et seq.*,
 9 for false and misleading advertising, trademark infringement, and unfair
 10 competition. Plaintiffs' remaining state law claims are subject to this Court's
 11 supplemental jurisdiction under 28 U.S.C. § 1367(a) because those state claims are
 12 related to Plaintiffs' federal Lanham Act claim and form part of the same case or
 13 controversy under Article III of the United States Constitution.

14 ~~27-24.~~ This Court additionally has original subject matter jurisdiction under
 15 28 U.S.C. § 1332 because Plaintiff Plaintiffs Youngevity is and Dr. Wallach are
 16 domiciled in California, while no ~~other~~ named Defendant resides in California and
 17 no Defendant corporation is owned by a resident of California. The plaintiffs are
 18 completely diverse from all defendants for purposes of 28 U.S.C. § 1332.

19 Defendant Smith is the sole member/owner of Wakaya and both Wakaya and
 20 Defendant Smith are Utah residents of Utah. Defendant Graham is the sole
 21 member/owner of TNT and both TNT and Graham are Utah residents. The matter
 22 in controversy yields damages in the tens of millions of dollars and, thus,
 23 substantially exceeds \$75,000.

24 ~~28. The plaintiffs are completely diverse from all defendants for purposes~~
 25 ~~of 28 U.S.C. § 1332. None of the individual defendants resides in California.~~
 26 Wakaya Perfection has just one owner/member, Todd Smith, who resides in Utah.
 27 Wakaya Perfection, LLC, is a Utah corporation operating under the laws of Utah
 28 and with its principal place of business in Utah. Likewise, TNT, owned by

1 ~~Defendants Todd Smith and Blake Graham, has Utah members and none from any~~
2 ~~other state. All Plaintiffs reside in California. Youngevity has its principal place of~~
3 ~~business in California.~~

4 ~~29.25.~~ This Court has personal jurisdiction over all Defendants and venue is
5 proper in this District because Youngevity maintains its principal place of business
6 in this District and all Defendants have sufficient minimum contacts with
7 California, including conducting business with Youngevity. All Defendants
8 knowingly injured Youngevity with knowledge that Youngevity is located in this
9 District and that the damages would be incurred by Youngevity in this District.

10 ~~30.26.~~ Venue is proper under 28 U.S.C. § ~~1391~~139(b)(2) because a
11 substantial part of the events giving rise to Youngevity's claims herein occurred in
12 this District. Youngevity is a California Corporation with its principal place of
13 business ~~located~~ in San Diego County, California.

14 ~~I. ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF~~

15 ~~31. Wakaya is a Utah limited liability company founded in 2015. The~~
16 ~~vast majority of MLM startups ultimately fail or remain unprofitable. To survive,~~
17 ~~Wakaya needed to create, coincidental with the public announcement of the~~
18 ~~company's start of operations, extensive marketing appeal with a strong direct-~~
19 ~~selling network of distributors who could move consumer goods. Wakaya was~~
20 ~~introduced to the public on or about February 19, 2016. Wakaya has attempted to~~
21 ~~build that network by unlawfully converting to its own use Youngevity's business-~~
22 ~~opportunities, employees, intellectual property, distributors and distributor~~
23 ~~networks. Wakaya has attempted to accomplish those unlawful acts by interfering~~
24 ~~with Youngevity's relations with its distributors, inducing Youngevity employees~~
25 ~~and distributors to violate their contractual agreements with Youngevity, and~~
26 ~~converting business opportunities intended for Youngevity to Wakaya.~~

27 ~~32. Youngevity is a direct selling company that depends on the integrity~~
28 ~~of its direct selling distributor network to operate a profitable business.~~

1 ~~Youngevity's distributors are deemed independent contractors, but sales and~~
2 ~~commissions earned by each distributor are shared with other Youngevity~~
3 ~~members according to the well-defined corporate structure.~~

4 ~~33.—Youngevity distributors are encouraged to enroll additional~~
5 ~~distributors, thus increasing Youngevity's sales force and expanding the~~
6 ~~company's ability to provide Youngevity products at the consumer level to people~~
7 ~~worldwide. New distributors who enroll under an existing distributor are said to~~
8 ~~fall within that enrolling distributor's "downline." Those enrolling distributors fall~~
9 ~~within the new distributor's "upline." The relationships of distributors are all~~
10 ~~mapped through a Youngevity distributor "genealogy."~~

11 ~~34.—Each upline distributor receives commissions for the sales by those~~
12 ~~distributors in the downline. That compensation package encourages enrolling~~
13 ~~distributors to actively assist their downlines, train them, and support them in~~
14 ~~product promotions and sales. The success of any Youngevity genealogy is~~
15 ~~commensurate with teamwork, effort, and resources available to those in the~~
16 ~~genealogy.~~

17 ~~Because upline distributors have a direct financial interest in their~~
18 ~~downlines (or genealogy generally), Youngevity requires all~~
19 ~~distributors to adopt, execute, and follow the Youngevity Policies~~
20 ~~& Procedures Agreement (hereinafter "Procedures"). See~~
21 ~~Declaration of Steve Wallach, attached as Exhibit A, at ¶ 5. Those~~
22 ~~Procedures govern all aspects of distributor relations, from dispute~~
23 ~~resolution to advertising practices.~~

24 ~~35.—~~All~~ Youngevity distributors are bound by the Procedures. All~~
25 ~~distributors must submit an Application/Agreement Form to become a distributor.~~
26 ~~Almost all Applications/Agreements are now submitted through Youngevity's~~
27 ~~website. When accepting the submission of applications to become a distributor~~
28 ~~electronically, the Youngevity website requires all distributors and prospective~~

1 distributors to affirmatively agree to the Procedures. Once an individual becomes
 2 a Youngevity distributor, he or she must accept the Procedures each time before
 3 successfully logging into and accessing his or her back office. In addition, each
 4 time the Procedures are updated, the Youngevity website provides the update to
 5 distributors, and requires the distributors to affirmatively agree to the updates.

6 36. The integrity of Youngevity genealogies is essential for the successful
 7 operation of Youngevity's business. Like most direct selling companies,
 8 Youngevity's Policies and Procedures therefore impose strict prohibitions against
 9 activities like "cross-recruiting" among the various Youngevity genealogies. For
 10 example, Section E12 of the Youngevity Procedures states:

11 ~~Distributors are strictly forbidden from Cross-Recruiting, and shall~~
 12 ~~not sell, recruit, propose, or in any other way induce or attempt to~~
 13 ~~induce any other Distributor to purchase any product or service, or~~
 14 ~~to participate in any other income opportunity, investment,~~
 15 ~~venture, or commit any other activity deemed, at the full discretion~~
 16 ~~of the Company, as cross-recruiting. This includes any such~~
 17 ~~activities across any divisions of the Company, should any separate~~
 18 ~~divisions with different compensation plans or hierarchy structures~~
 19 ~~exist, unless, and as specifically stated otherwise. The integrity of~~
 20 ~~the hierarchy and the relationships therein is of paramount~~
 21 ~~importance to every Distributor as well as to the Company. Any~~
 22 ~~Distributor violating this provision may be subject to immediate~~
 23 ~~termination for cause, forfeiting any and all commissions due him~~
 24 ~~or her.~~

25 ~~See Exh. A at pp. 85-86, § E12.~~

26 37. Section E7 of those Procedures similarly prohibits the use of
 27 Youngevity's proprietary information to cross-recruit. *Id.* at 7 (including the use
 28 of "[d]istributor lists, including downline sales organization information," which is
 "proprietary and confidential to the Company"). Section E7 states:

Without limiting the generality of the foregoing, no such
 information may be used in cross-recruiting or with the intent to
 entice Company Distributors into other network marketing

1 organizations

2 ~~Id. at p. 86.~~

3 38.—~~Wakaya was founded by disgruntled former Youngevity distributor~~
4 ~~Todd Smith who, once loyal to the company, came to resent it as the growth of the~~
5 ~~company brought in more distributors with status equal to his own and income~~
6 ~~exceeding his. Smith joined with the above-named Defendants—all former~~
7 ~~Youngevity employees, distributors, or executives—to build a competing network-~~
8 ~~marketing company by disparaging Youngevity, inducing Youngevity distributors~~
9 ~~to break their contracts with Youngevity and work for Wakaya, converting~~
10 ~~Youngevity business opportunities intended for Youngevity to Wakaya, and~~
11 ~~unlawfully converting Youngevity resources to promote Wakaya.~~

12 39.—~~Smith had enjoyed a long period of success within Youngevity, had~~
13 ~~achieved prominence in the company, and garnered the trust and confidence of the~~
14 ~~company's distributors. He developed a reliable income stream through~~
15 ~~Youngevity's system and helped grow the business. Youngevity supported Smith~~
16 ~~and assisted in his business development for nineteen years.—~~

17 40.—~~Smith grew dissatisfied with Youngevity management, his~~
18 ~~dissatisfaction reaching a pinnacle when he received corporate reprimands for~~
19 ~~unlawfully entering the international market of Mexico without Youngevity~~
20 ~~authorization or Mexican legal approvals, and engaging in unlawful sales of~~
21 ~~product in Mexico, exposing the company to potential liability for foreign~~
22 ~~advertising claims and sales. Smith translated his dissatisfaction with those~~
23 ~~reprimands and his increasing immersion in a sea of up and coming new~~
24 ~~Youngevity leaders into a design to induce Youngevity distributors to defect from~~
25 ~~the company, to divert business opportunities intended for the company, and to~~
26 ~~redirect resources of the company to facilitate the creation of a competing direct~~
27 ~~sales company: Wakaya.—~~

1 41.—~~Smith and the other Defendants first tested whether they could induce~~
 2 ~~a mass exodus of Youngevity distributors from the company to their fledgling~~
 3 ~~start-up while on a Youngevity expense-paid cruise for distributors in January~~
 4 ~~2015. On that cruise, a top-level Youngevity distributor, Tom Chenault, called a~~
 5 ~~meeting to help organize and assist Youngevity distributors. At that meeting, co-~~
 6 ~~conspirators Dave Pitcock (a top-level Youngevity distributor), his wife Barb~~
 7 ~~Pitcock (a top-level Youngevity distributor), Andre Vaughn (a top-level~~
 8 ~~Youngevity distributor), Bill Andreoli (President of Youngevity), and Todd Smith~~
 9 ~~(a top-level Youngevity distributor), all publicly expressed dissatisfaction with~~
 10 ~~Youngevity and condemned company officers. Inviting dissent rather than~~
 11 ~~defending Youngevity interests, Andreoli stated that if anyone in attendance left~~
 12 ~~Youngevity, he would leave with them.—~~

13 42.—~~After that cruise, Smith worked with his co-conspirators to lay the~~
 14 ~~foundation for a new competing MLM. Wakaya Perfection was acquired on~~
 15 ~~October 22, 2015, in the State of Utah. Smith identifies himself as a co-founder.—~~

16 43.—~~While Smith was a top-level Youngevity distributor, he arranged~~
 17 ~~meetings ostensibly as a Youngevity representative with outside businesses~~
 18 ~~seeking to contract with Youngevity. Unbeknownst to those entities, Smith used~~
 19 ~~his position in Youngevity to redirect business opportunities intended for~~
 20 ~~Youngevity to Wakaya, all the while concealing the opportunities from~~
 21 ~~Youngevity.~~

22 ~~44.1.~~ ~~In or about July, 2015, a distributor in Smith's Youngevity~~
 23 ~~“downline,” Mia Magistro, introduced Todd Smith to David Smith, the owner of~~
 24 ~~the Great American Clay Company based in Austin, Texas (hereinafter~~
 25 ~~“GAC”).[†] See Declaration of Mia Magistro, attached as Exhibit B, at ¶ 7. GAC~~
 26 ~~expressed interest in contracting with Youngevity for Youngevity to sell GAC's~~

27 _____
 28 [†]~~David Smith and Todd Smith are unrelated and have no familial~~
~~connections.~~

1 bentonite clay products, which are helpful detoxifying agents. ~~Id. at ¶¶ 5, 7, 9, 11~~
2 ~~12. GAC also indicated its willingness to work with Dr. Joel Wallach on a book~~
3 ~~publishing project related to Youngevity's business. Id. at ¶ 11.~~

4 45. On August 25, 2015, Todd Smith, Graham, David Smith, Lynn
5 Jenkins (a part owner of GAC), and Mia Magistro met at TNT's offices in Pleasant
6 Grove, Utah. ~~Id. at ¶ 9.~~ Magistro identified Todd Smith as a Youngevity
7 distributor in her upline, and Todd Smith met with GAC as a representative of
8 Youngevity. ~~Id.~~ He led GAC owner David Smith to understand that he, Todd
9 Smith and he alone was the point of contact for Youngevity. ~~GAC had been~~
10 ~~scheduled to meet with Dr. Wallach in November of 2015 in North Carolina. Id. at~~
11 ~~¶ 14. Todd Smith asked GAC to cancel that meeting with Wallach, stating that he~~
12 ~~(Todd Smith) was already working on the account and had been given~~
13 ~~Youngevity's authorization to develop new products himself. Id. at ¶¶ 15-16.~~
14 ~~Those representations were false. Todd Smith had no authority from Youngevity to~~
15 ~~determine whether Youngevity would contract with a product supplier.~~

16 ~~46.1. Todd Smith asked GAC not to disclose the reasons for cancelling~~
17 ~~GAC's meeting with Wallach and Youngevity's representatives asked David Smith~~
18 ~~to keep all information concerning Wakaya confidential. Id. at ¶¶ 12, 18.~~
19 ~~Meanwhile, Todd Smith continued his negotiations with GAC for the development~~
20 ~~and formulation of four GAC products all the while still purporting to do so on~~
21 ~~Youngevity's behalf. Id. at ¶¶ 19-20.~~

22 ~~47. Todd Smith then prepared a contract for GAC which named as~~
23 ~~contracting parties not Youngevity and GAC but instead Wakaya Perfection and~~
24 ~~GAC. This led GAC's owner to engage in email correspondence expressing~~
25 ~~confusion as to why Wakaya and not Youngevity was the named contracting party.~~
26 ~~Given further assurances by Todd Smith, GAC then contracted with Wakaya to~~
27 ~~prepare its four clay products developed at Todd Smith's request for the exclusive~~
28 ~~marketing of Wakaya. At no point did Todd Smith inform Youngevity that GAC~~

1 had been seeking to contract with Youngevity or that GAC's owner had desired a
2 meeting with Youngevity's Dr. ~~Joel D. Wallach~~. Exh. A at ¶ 12; Declaration of
3 ~~Joel D. Wallach~~, attached as Exhibit C, at ¶ 10. In fact, Todd Smith requested that
4 GAC's owner keep his negotiations with Todd Smith confidential. Exh. B at ¶¶ 12,
5 19.

6 48.— Todd Smith falsely represented that he had authority to contract for
7 Youngevity, used his color of title within Youngevity to secure business meetings
8 allegedly on Youngevity's behalf, concealed those meetings from Youngevity,
9 discouraged prospective businesses from contracting with Youngevity, and then
10 converted those Youngevity business opportunities to his new Wakaya venture.
11 That conduct was unquestionably tortious, unlawful, and deceitful.

12 49.— GAC now provides products exclusively for sale through Wakaya,
13 and continues to develop products at Wakaya's direction. The Wakaya GAC
14 products include nutritional supplements or products that now compete directly
15 with Youngevity nutritional products.

16 50.— Had Youngevity been aware of Great American Clay, Youngevity
17 would have wanted to enter a contract with Great American Clay for the sale of the
18 Great American Clay products, or enter into negotiations to purchase the Great
19 American Clay Company. Exh. A at ¶ 12.

20 51.— ~~Had Dr. Wallach known about the potential opportunities with David~~
21 ~~Smith and Great American Clay, he would have been interested in pursuing those~~
22 ~~opportunities.~~ Exh. C at ¶ 11. Dr. Wallach would have been interested in pursuing
23 the opportunity to learn more about the Great American Clay products, in pursuing
24 the opportunity to co-author a book concerning the Great American Clay products,
25 in pursuing the opportunity to pursue an arrangement to promote Great American
26 Clay through media appearances, and in pursuing the opportunity to create a
27 commercial relationship between Youngevity and Great American Clay for the
28 sale of its clay products. Exh. C at ¶ 11.

1 ~~52.—Wakaya’s agents have promoted the new Wakaya venture by~~
2 ~~reference to Wakaya’s “exclusive” sales rights to the GAC bentonite clay product.~~

3 ~~53.—Smith intended to (and did) induce Youngevity distributors to break~~
4 ~~their contracts with Youngevity and become Wakaya participants, investors, and~~
5 ~~distributors.~~

6 ~~54.—Many of the first people to endorse Wakaya’s social media~~
7 ~~publications were Youngevity distributors or former Youngevity distributors~~
8 ~~recruited by Todd Smith or at Todd Smith’s request.~~

9 ~~55.—As of April 22, 2016, approximately 125 of Wakaya’s 268 (are~~
10 ~~46.6%) are Ambassadors² are currently or were Youngevity distributors. Exh. A at~~
11 ~~¶ 11.~~

12 ~~56.—As of April 22, 2016, approximately 77 of Wakaya’s 125 (about 61%)~~
13 ~~“Founder Qualified” Wakaya ambassadors are currently or were Youngevity~~
14 ~~distributors. *Id.*~~

15 ~~57.—The fact that, within approximately two months of Wakaya’s public~~
16 ~~launch, nearly half (1/2) of all Wakaya ambassadors are or were Youngevity~~
17 ~~distributors is evidence that Defendants cross-recruited Youngevity distributors to~~
18 ~~join Wakaya as ambassadors while defendants concurrently purportedly to work~~
19 ~~within the Youngevity organization and operate in Youngevity’s interests.~~

20 ~~58.—The fact that, within approximately two months of Wakaya’s public~~
21 ~~launch, nearly two thirds (2/3) of all Wakaya “Founder Qualified” ambassadors are~~
22 ~~or were Youngevity distributors is evidence that Defendants cross-recruited~~
23 ~~Youngevity distributors to join Wakaya as ambassadors while defendants~~
24 ~~simultaneously purported to work within the Youngevity organization and operate~~
25 ~~in Youngevity’s interests.~~

26
27
28 ~~²Wakaya refers to its distributors as “ambassadors.”~~

1 ~~59.—To promote Wakaya, Wakaya employees and distributors conducted~~
2 ~~conference calls. During those calls, Wakaya has used Youngevity top level~~
3 ~~distributors, including Pitcock and Vaughn, as primary presenters, which calls, text~~
4 ~~messages, and related social media posts are then communicated to a broad~~
5 ~~audience of Youngevity distributors, derived from Youngevity’s confidential~~
6 ~~distributor lists.~~

7 ~~60.—Smith manipulated relationships with Youngevity distributors to~~
8 ~~secure economic advantages for Wakaya, thus attempting to dismantle Youngevity~~
9 ~~business networks from within the Youngevity corporation. To preserve his prior~~
10 ~~income stream from Youngevity business, Smith purported to convey his interests~~
11 ~~in Youngevity distributorships to his long-time personal friend, partner, and fellow~~
12 ~~Youngevity distributor, Blake Graham. Smith conveyed those interests through a~~
13 ~~strawman transaction wherein no valuable consideration was exchanged and Smith~~
14 ~~continued to derive Youngevity income and resources from Graham and TNT~~
15 ~~despite conspiring with Graham to convince Youngevity that, unlike Smith,~~
16 ~~Graham had not defected from Youngevity and should thus be entitled to receive~~
17 ~~all distributorships and commissions previously divided by Graham and Smith. On~~
18 ~~information and belief, Graham and Smith maintained financial ties and enabled~~
19 ~~Youngevity commissions and resources to be available to and used by Smith in~~
20 ~~support of Wakaya. That arrangement was a violation of Youngevity agreements~~
21 ~~that Smith enabled and encouraged.~~

22 ~~61.—Graham continued operation of TNT purportedly without Smith as a~~
23 ~~named partner, but in fact permitted the direct recruiting and cross-recruiting of~~
24 ~~TNT distributors and the diversion of business opportunities by Wakaya. Graham~~
25 ~~maintained TNT as a Youngevity front that aided and abetted Smith’s tortious~~
26 ~~conduct. Both Graham and Smith profited at Youngevity’s expense while Graham~~
27 ~~permitted Smith to drive Youngevity business, resources, and opportunities away~~
28 ~~from Youngevity to Wakaya. Both Graham and Smith were aware of the~~

1 ~~Youngevity agreements executed to prevent business losses through that type of~~
2 ~~conduct.~~

3 ~~62.—TNT retains control over Youngevity websites that drive commerce to~~
4 ~~TNT based on the unauthorized use of the Youngevity founder’s name and~~
5 ~~likeness, those of Dr. Joel Wallach. Dr. Wallach has exclusively licensed his~~
6 ~~name, likeness, and image to Youngevity. Exh. C at ¶ 6. Youngevity has not~~
7 ~~granted to TNT, Graham, or Smith approval to use Dr. Wallach’s name, likeness,~~
8 ~~or identity and has in fact demanded that Smith, Graham, and TNT cease all use of~~
9 ~~the unauthorized marks. Exh. A at ¶¶ 7–8.~~

10 ~~63.—For example, TNT and Graham retain control over the website:~~
11 ~~www.wallachonline.com. Exh. A at ¶ 7. That webpage captures prospective~~
12 ~~Youngevity purchasers and traffic. The website ranks within the top pages when~~
13 ~~individuals search for Dr. Wallach online. The phone number for TNT is 1-800-~~
14 ~~925-5224 (or 1-800-WALLACH), thus further trading off of Dr. Wallach’s name~~
15 ~~without authorization. Calls to 1-800-Wallach and product purchases increase~~
16 ~~when Dr. Wallach makes daily radio and other appearances.—~~

17 ~~64.—TNT, Graham, and Smith continue to control websites that trade on~~
18 ~~Youngevity’s and Dr. Wallach’s marks, like www.yteamtools.com, which~~
19 ~~promotes Youngevity materials and is designed to assist Youngevity distributors in~~
20 ~~the management of their business. Exh. A at ¶ 8. On Yteamtools.com, TNT sells~~
21 ~~commercial goods including CDs, DVDs, flyers, and clothing, bearing~~
22 ~~Youngevity’s name which infringes on Youngevity’s registered trademark:~~
23 ~~“Youngevity.” *Id.* at ¶ 7.~~

24 ~~65.—While distributors are permitted to trade on and benefit from Dr.~~
25 ~~Wallach’s name and likeness if given approval or permission from Youngevity,~~
26 ~~Youngevity does not allow such uses unless pre-approved and reserves the right to~~
27 ~~revoke that permission or approval in its sole discretion and at any time. *Id.* at ¶ 6.~~
28

1 66.—~~To the extent TNT had permission or authorization to trade on and~~
2 ~~profit from Dr. Wallach’s name and likeness, Youngevity revoked that permission~~
3 ~~and authorization on March 21, 2016, when it terminated each of Graham’s and~~
4 ~~Smith’s distributorships and instructed them to “remove the web site entitled~~
5 ~~Wallachonline.com and [] transfer all URLs and other authorizations for use of the~~
6 ~~name and any other site including the name of Dr. Joel D. Wallach and Youngevity~~
7 ~~to Youngevity.”~~ *Id.* at ¶ 8, p. 121.

8 67.—~~Youngevity has and continues to lose business opportunities that are~~
9 ~~otherwise directed to the defendants’ “Youngevity” websites. For example,~~
10 ~~following Dr. Wallach’s presentations, lectures, and radio appearances, the~~
11 ~~Defendant-controlled phone number 1-800-Wallach and websites like~~
12 ~~www.wallachonline.com receive substantial traffic from prospective Youngevity~~
13 ~~customers or participants.~~

14 68.—~~The Defendants’ continued control over those websites causes~~
15 ~~Youngevity irreparable harm because Youngevity customers are mistakenly~~
16 ~~associating with Youngevity’s competitors (rather than Youngevity distributors)~~
17 ~~while thinking they have contacted Youngevity directly. Youngevity therefore~~
18 ~~loses its ability to control its goodwill and reputation.~~

19 69.—~~Youngevity’s distributors have further lost the ability to rely on~~
20 ~~support websites like “yteamtools” that are no longer controlled by Youngevity or~~
21 ~~its distributors.~~

22 70.—~~On March 30, 2016, Jonny Steele, a Youngevity Distributor and~~
23 ~~cousin of Defendant Todd Smith, sent an e-mail to Steve Wallach, Youngevity’s~~
24 ~~Chief Executive Officer. See Steele e-mail, attached as Exhibit D. That e-mail~~
25 ~~explained how and why TNT’s, Smith’s, and Graham’s control over~~
26 ~~Wallachonline.com and Yteamtools.com cause Youngevity and Youngevity~~
27 ~~distributors irreparable harm. For example, Steele explained that “[i]f Todd and~~
28 ~~Blake continue to operate wallachonline and yteamtools, they will have the~~

1 ~~potential to negatively affect our downline and our livelihood.” *Id.* “The damage~~
2 ~~[to Youngevity distributors] can be devastating and long term, even if they~~
3 ~~continue to operate for only a couple more weeks let alone for the next few months~~
4 ~~or years.” *Id.*~~

5 71. ~~Aware of Todd Smith’s actions to form a competing company that~~
6 ~~would cross-recruit Youngevity distributors, Graham withheld that information~~
7 ~~from Youngevity for months, until after Smith recently made a public~~
8 ~~announcement of his formation of Wakaya. Youngevity commissions were paid to~~
9 ~~distributorships owned by Smith, Graham, and both of them, during that time and~~
10 ~~from which they drew income, and some of those funds were diverted to help~~
11 ~~establish and further the business interests of Wakaya. In addition, Graham~~
12 ~~purported to receive, at or before the start of 2016, a transfer, assignment, or~~
13 ~~purchase of all Youngevity distributorships in which Todd Smith held an interest~~
14 ~~or received income, but the alleged transfer was a sham without complying with~~
15 ~~company rules that required authorization from Youngevity before so doing.~~
16 ~~Graham attempted to mislead Youngevity into believing Smith was no longer~~
17 ~~involved in or receiving income from any Youngevity distributorship when in fact~~
18 ~~Smith remained involved in and received income from Youngevity~~
19 ~~distributorships. Graham did so in an effort to have all distributorships previously~~
20 ~~held jointly or from which funds were divvied up between the two restructured to~~
21 ~~be in Graham’s name only but with no restrictions as to Graham’s dispensation of~~
22 ~~the funds, including payment back to the defecting Todd Smith or to Wakaya.~~
23 ~~Graham falsely informed Youngevity that TNT, a Youngevity distributor, had been~~
24 ~~assigned to him exclusively and that it had nothing to do with Smith or Smith’s~~
25 ~~company Wakaya.~~

26 72. ~~On February 22, 2016, Graham sent an email and text letter to all~~
27 ~~Youngevity distributors using Youngevity’s confidential distributor list without~~
28 ~~Youngevity authorization. Graham’s unauthorized correspondence, issued while~~

1 under suspension, complimented Todd Smith on his departure and wished him well
2 in the new venture, as if written with Youngevity's authorization when it was
3 not. ~~See Graham e-mail, attached as Exhibit E. The content was contrary to~~
4 ~~Youngevity's position on the departure of Todd Smith. A top level distributor,~~
5 ~~Graham used the email and text communication and the confidential distributor list~~
6 ~~to convey the false impression that Youngevity had no issues with Todd's~~
7 ~~departure or formation of a competing MLM, thus implying that further moves to~~
8 ~~induce Youngevity distributors to become Wakaya distributors would likewise not~~
9 ~~offend the company.~~

10 73. ~~Graham has admitted that certain individuals employed by TNT are in~~
11 ~~fact also employed by Wakaya Perfection and are also distributors for Wakaya~~
12 ~~Perfection, thereby causing a Youngevity distributor, TNT, to condone, aid, and~~
13 ~~support Wakaya Perfection's recruitment efforts, including Wakaya Perfection's~~
14 ~~efforts at cross-recruitment of Youngevity distributors and creation of certain~~
15 ~~Wakaya promotional materials. Those promotional materials have been used by~~
16 ~~Wakaya distributors to induce Youngevity distributors to breach their contracts~~
17 ~~with Youngevity.~~

18 74. ~~While still employed by or serving as distributors for Youngevity,~~
19 ~~Defendants encouraged high ranking Youngevity distributors and Youngevity~~
20 ~~employees to work for or enroll in Wakaya. All of those individuals were advised~~
21 ~~and encouraged to maintain secrecy about their dealings with Wakaya Perfection~~
22 ~~until after public announcement of the company by Smith. Most continued~~
23 ~~working for Youngevity at a superficial level, while concurrently gathering~~
24 ~~Youngevity information and using Youngevity relationships to lay the foundation~~
25 ~~for and promotion of Wakaya.~~

26 ~~75.1. Bill Andreoli had owned Financial Destination, Inc., FDI~~
27 ~~Management, Inc., FDI Realty, LLC, and MoneyTRAX, LLC (collectively,~~
28 ~~"FDI"). FDI was not a successful company, was experiencing a severe decline in~~

1 ~~its finances, and had just lost a major contract for one of its services when, on or~~
 2 ~~about August 13, 2011, Andreoli contracted Youngevity concerning the sale of~~
 3 ~~FDI to Youngevity. Youngevity agreed to allow Andreoli, as an accommodation,~~
 4 ~~to maintain and staff an office in New Hampshire. As part of the transaction,~~
 5 ~~Andreoli and Youngevity entered into an Employment Agreement which included~~
 6 ~~non-circumvent and non-disclosure clauses. See Andreoli Employment~~
 7 ~~Agreement, attached as Exhibit F. ~~That agreement contains the following relevant~~~~
 8 ~~terms:~~

- 9 =
- 10 ● ~~Andreoli must “devote his full working time, attention, and energy to~~
 11 ~~[Youngevity ...] and shall not ... be engaged in any other business-~~
 12 ~~activity if pursued for gain, profit, or other pecuniary advantage without~~
 13 ~~[Youngevity’s] prior written consent” Id. at § 7.~~
 - 14 ● ~~Andreoli cannot disclose any confidential information, including~~
 15 ~~customer information, to any third party. Id. at § 9(a)~~
 - 16 ● ~~Andreoli cannot use any of Youngevity’s trade secrets to compete with~~
 17 ~~Youngevity. Id. at § 9(b).~~
 - 18 ● ~~Andreoli was required to promptly disclose any new discoveries or~~
 19 ~~improvements that he developed to Youngevity. Id. at § 10.~~

20 76. ~~Over a period of approximately four years, Andreoli in his capacity as~~
 21 ~~President of Youngevity, caused in excess of a dozen “forced qualifications” or~~
 22 ~~automatic rank advancements to be bestowed upon individuals and entities who did~~
 23 ~~not earn those advancements through increased product sales volumes, as required~~
 24 ~~by Youngevity rules. Through those forced qualifications, Andreoli breached his~~
 25 ~~fiduciary duty to Youngevity. The effect was to cause the company to pay those~~
 26 ~~individuals and entities higher than justified commissions, bonuses, and car-~~
 27 ~~bonuses. Among those given these forced qualifications were Andreoli’s parents,~~
 28 ~~his wife and children, Andre Vaughn, and Monique Vaughn. For example, as a~~
 result of Andreoli’s forced qualification of Andre Vaughn, Youngevity paid

1 ~~Vaughn \$40,000.00 in car bonuses and in excess of \$600,000.00 in commissions~~
2 ~~and other bonuses over a four year period.—~~

3 ~~77.—Andre Vaughn and Monique Vaughn are married, share their assets,~~
4 ~~and co-mingle their funds. Andre was a top distributor for Youngevity. While~~
5 ~~both Andre and Monique maintained Youngevity distributor accounts, Andre was~~
6 ~~by far the more active in the Youngevity business. Monique claims that she has~~
7 ~~not accessed her Youngevity back office in over three years, and, upon information~~
8 ~~and belief, Monique has never been to a YGYI distributor meeting.—~~

9 ~~78.—Andre Vaughn is now a participant, promoter, and distributor for the~~
10 ~~Wakaya venture. Andre used his contacts at Youngevity to induce Youngevity~~
11 ~~distributors to enroll in his downline at Wakaya.—~~

12 ~~79.—Andre has unlawfully promoted Wakaya by making false and~~
13 ~~misleading claims. For example, Andre has represented that Wakaya distributors~~
14 ~~can earn a free cruise in only 12 hours.~~

15 ~~80.—Andreoli participated in, and helped facilitate, the Wakaya venture~~
16 ~~while serving as President of Youngevity and while under contractual obligations~~
17 ~~to refrain from such participation and facilitation. Andreoli's contractual~~
18 ~~agreements with Youngevity expressly precluded and prohibited his involvement~~
19 ~~with other network marketing companies.—~~

20 ~~81.—Nonetheless, while serving as Youngevity's President in August 2015,~~
21 ~~Andreoli acted to encourage widespread dissention from Youngevity management~~
22 ~~during key distributor meetings and on occasional visits to other Youngevity~~
23 ~~offices.~~

24 ~~82.—In October 2015, again while under contract with Youngevity and~~
25 ~~while serving as Youngevity's President, Andreoli contacted other Youngevity~~
26 ~~distributors in an effort to induce contract breaches by causing them to become~~
27 ~~distributors for Wakaya Perfection. Andreoli made additional contacts with~~
28 ~~distributors in November 2015, again soliciting their involvement in the Wakaya~~

1 ~~venture. Andreoli hosted Wakaya corporate events at his New Hampshire~~
2 ~~facilities. Andreoli was unquestionably a participant in and promoter of the~~
3 ~~Wakaya venture. Andreoli took those actions despite contractual provisions that~~
4 ~~expressly and directly forbid him from so doing.~~

5 ~~83.—Also in October 2015, Andreoli, while serving as Youngevity’s~~
6 ~~President, contacted world renowned oncologist and immunologist Dr. Charles ~~B.~~~~
7 ~~Simone, who had been in talks with Youngevity concerning possible licensing of a~~
8 ~~Simone health product to Youngevity. Andreoli informed Simone that Andreoli~~
9 ~~was involved in a new MLM venture and urged Simone to join Andreoli in~~
10 ~~consummating a deal with that venture. The offer to Simone was not made known~~
11 ~~to Youngevity’s CEO or other officers or directors, and Simone declined to accept~~
12 ~~the offer.~~

13 ~~84.—Effective December 30, 2015 in accordance with its lease agreement~~
14 ~~Youngevity closed its New Hampshire office. A Youngevity employee, John~~
15 ~~Taylor, flew to New Hampshire to pack up the office equipment, including~~
16 ~~computers and data contained within same. That office employed Mike Randolph,~~
17 ~~a Youngevity Executive Vice President and “consiglieri” to Andreoli. Youngevity~~
18 ~~also employed Mike Randolph. When John Taylor attempted to obtain the~~
19 ~~computer used by Mike Randolph’s son, Taylor discovered that the computer was~~
20 ~~missing and had been replaced by an older computer. Taylor was unable to~~
21 ~~recover the contents of the computer he sought, which had included proprietary~~
22 ~~Youngevity information. In addition, at Andreoli’s request, Taylor did not remove~~
23 ~~approximately \$40,000 worth of office furniture to which Youngevity was entitled.~~

24 ~~85.—Youngevity also employed Jimmy Hyun, Andreoli’s brother-in-law, at~~
25 ~~the New Hampshire office. Hyun refused to supply Youngevity with passwords~~
26 ~~essential to updating Youngevity’s distributor information sections on~~
27 ~~Youngevity’s website. Youngevity was therefore required to expend employee~~
28 ~~hours to rebuild and replace that part of their website.~~

1 ~~86.1. On or about August 7, 2013, Youngevity purchased Heritage Makers,~~
2 ~~Inc. Patti Gardner signed that Agreement (the “HM Agreement”) on behalf of~~
3 ~~Heritage Makers, and Brytt Cloward signed that Agreement on behalf of himself.~~
4 ~~See Heritage Makers Agreement, attached as Exhibit G. Article XI of that~~
5 ~~agreement contains confidentiality and non-competition clauses. See id. at p. 33.~~
6 ~~Under that article, neither Gardner nor Cloward may use, for their or Wakaya’s~~
7 ~~benefit, customer lists or other information that HM transferred to~~
8 ~~Youngevity. Id. Further, those individuals cannot engage in a business or~~
9 ~~enterprise that qualifies as a “competing business” until at least August, 2017, or~~
10 ~~solicit or attempt to solicit sales or licenses of any competing businesses, interfere~~
11 ~~with, disrupt, or attempt to disrupt the relationship between HM, Youngevity and~~
12 ~~their customers, suppliers, agents, consultants, officers or employees relating to the~~
13 ~~Heritage Makers’ products sold to Youngevity. Id.~~

14 87. In August, 2015, Andreoli, acting as President of Youngevity, had
15 Youngevity’s key employees, its marketing team, comprised of Mike Casperson,
16 Brytt Cloward, and Patti Gardner, fly to Andreoli’s Youngevity office in New
17 Hampshire purportedly to work on Youngevity’s marketing. On information and
18 belief, however, Andreoli had those three Youngevity employees travel to New
19 Hampshire to discuss in secret Wakaya and their prospective employment by that
20 competing company. While at Youngevity, Cloward reported directly to Andreoli.

21 88. Patti Gardner was employed by Youngevity as Vice President of
22 Sales. Gardner was in charge of making Youngevity’s travel reservations and
23 making reservations for Youngevity’s events. Gardner has a “travel agent
24 number” which allows her to receive commissions on such reservations. While in
25 Youngevity’s employ, Gardner was required to forward all commissions she
26 earned from making reservations for Youngevity back to Youngevity. Gardner
27 currently owes Youngevity in excess of \$20,000.00 from such commissions.
28

1 89.—While at Youngevity, Gardner reported directly to Andreoli and
2 became close with Andreoli. When Gardner left Youngevity, she failed to return
3 several binders of information to Youngevity, which included contact information
4 for Youngevity’s distributors. Gardner is now the Vice President of Sales at
5 Wakaya. While at Youngevity, Marin Barney reported directly to Cloward.
6 Casperson, Cloward, and Barney all resigned from Youngevity, at the same time as
7 Andreoli, in October 2015 to “pursue some other options” and “work on some new
8 projects.”

9 90.—Youngevity maintained valid and enforceable Nondisclosure
10 agreements with Casperson, Cloward, Barney, and Gardner. See Nondisclosure
11 Agreements, attached as Exhibit H.

12 91.—As part of their resignation, Casperson, Cloward, and Barney all asked
13 to keep their Youngevity work computers. Youngevity refused to release those
14 work computers, and sent an employee to the Utah office to retrieve the computers
15 where Casperson, Cloward, and Barney worked. That employee discovered each
16 computer’s hard drive and memory were completely erased of content so that
17 Youngevity could not retrieve any of its confidential information contained therein
18 and any of Casperson’s, Cloward’s, or Barney’s work product. Those laptop
19 computers had contained sensitive and proprietary Youngevity data and work
20 product. The laptops also included Youngevity marketing materials, graphics, and
21 data belonging exclusively to Youngevity.

22 92.—Barney is now the Senior Creative Director, Corporate Visual
23 Branding, at Wakaya. Mike Casperson and Brytt Cloward are also employed at
24 Wakaya in different capacities. New publications and promotional content
25 published by Wakaya have adopted the format and content developed on those
26 computers by these same employees for Youngevity during the times Barney,
27 Cloward, and Gardner were employed at Youngevity. On information and belief,
28 Wakaya or its agents facilitated, aided, abetted, and orchestrated the departure of

1 ~~Youngevity employees and the conversion to Wakaya’s use of sensitive and~~
2 ~~proprietary Youngevity data and work product. Wakaya benefitted from that~~
3 ~~departure, and has used Youngevity proprietary information gleaned from those~~
4 ~~departing employees to its economic advantage and to Youngevity’s economic~~
5 ~~disadvantage.~~

6 ~~93.—Brytt Cloward and Patti Gardner violated their obligations under the~~
7 ~~Heritage Makers Agreement. By working for Wakaya, they are engaging in a~~
8 ~~business venture that directly competes with Youngevity, in violation of the HM~~
9 ~~Agreement. Cloward and Gardner further violated the HM Agreement by using~~
10 ~~Youngevity’s proprietary information, including Youngevity’s customer and~~
11 ~~distributor lists, to develop work product for and to solicit and attempt to solicit~~
12 ~~sales for Wakaya at Youngevity’s expense.~~

13 ~~94.—In October 2015, Youngevity began to experience injury from~~
14 ~~Wakaya’s campaign to induce Youngevity employees and distributors to break~~
15 ~~their contracts with Youngevity. As discussed *supra*, several Youngevity~~
16 ~~executives and employees suspiciously departed within the same two week~~
17 ~~window, including: Brytt Cloward (Youngevity Vice President of Marketing);~~
18 ~~Patti Gardner (President of Youngevity’s Heritage Makers); Marin Barney~~
19 ~~(Youngevity Senior Creative Director); Mike Randolph; Mike Casperson; and~~
20 ~~President, Bill Andreoli. Those individuals departed Youngevity abruptly,~~
21 ~~declining to identify their new positions or business plans. Marin Barney indicated~~
22 ~~on social media that she was “starting a new project [in] November 2015” and that~~
23 ~~she had left Youngevity to “fill new Creative Management Position at a new~~
24 ~~corporation, launching 2016.”~~

25 ~~95.—All of those individuals have become executives in, employees of, or~~
26 ~~distributors for Wakaya Perfection.~~

27 ~~96.—Those employees abruptly departed Youngevity in unison under~~
28 ~~suspicious circumstances that reflect a conspiracy—a uniform effort or agreement~~

1 to participate in Wakaya and disadvantage Youngevity long before discontinuing
2 their service to or within Youngevity. Those employees were in constant and
3 direct contact with Defendants, including Youngevity's former President,
4 Andreoli. Those employees, executives, and distributors were bound by various
5 non-compete agreements and non-disclosure agreements that would have
6 prevented their involvement with Wakaya, and would have particularly prevented
7 their cross-recruiting of Youngevity distributors and their disclosure of Youngevity
8 proprietary business information to and conversion of Youngevity work product to
9 Wakaya.

10 ~~97. Dave Piteock was the owner of Livinity, Inc. On or about July 10,~~
11 ~~2012, Piteock sold Livinity, Inc.'s assets to Youngevity. As part of that~~
12 ~~transaction, Livinity and Youngevity entered into a Consulting Agreement with~~
13 ~~valid non-disclosure and non-circumvent clauses, wherein Piteock agreed to serve~~
14 ~~as a Consultant for Youngevity. See Livinity Consulting Agreement, attached as~~
15 ~~Exhibit I.~~

16 ~~98.1. That agreement prohibited Livinity and Piteock from disclosing any~~
17 ~~confidential information and from using confidential information, including~~
18 ~~business contacts, information regarding distributors/vendors/supplies and other~~
19 ~~business associates of Youngevity, for the purpose of circumventing Youngevity's~~
20 ~~business operations. Id. at §§ 4(e) (d). Furthermore, Livinity was required, at all~~
21 ~~times, to refer to Youngevity in terms that further Youngevity's business~~
22 ~~objectives and not refer to Youngevity in a manner that damages Youngevity's~~
23 ~~position in the marketplace. Id. at § 6. The Livinity Consulting Agreement~~
24 ~~provides for extensive relief to Youngevity, including an "injunction, monetary~~
25 ~~damages, punitive damages, and specific liquidated damages in the amount of the~~
26 ~~prior year's earnings for disclosure of Confidential Information and/or use of such~~
27 ~~information to solicit Youngevity's customers." Id. at § 4(e).~~

1 99.—~~Dave Pitcock and his wife, Barb Pitcock, are now distributors for the~~
2 ~~Wakaya venture. They were the joint owners of Youngevity distributor accounts~~
3 ~~and co-mingled their funds.—~~

4 100.—~~The documentary and testimonial evidence demonstrates that Wakaya~~
5 ~~founders, investors, distributors, executives, and participants operated an unlawful~~
6 ~~scheme to prey upon Youngevity’s distributor networks, business interests,~~
7 ~~proprietary information, accounts, sales, commissions, and goodwill. Wakaya,~~
8 ~~through its agents, has interfered with Youngevity business operations, has~~
9 ~~interfered with Youngevity distributor relationships, and has induced Youngevity~~
10 ~~employees and distributors to violate their contracts with the company. Wakaya~~
11 ~~unlawfully benefitted (or sought to benefit) from Youngevity’s proprietary and~~
12 ~~confidential business information, in part, by using that information to recruit~~
13 ~~participants in Wakaya and promote Wakaya’s business at Youngevity’s expense.—~~

14 101.—~~Wakaya, through its agents, facilitated and encouraged the breach of~~
15 ~~Youngevity employment contracts. Those actions were taken by individuals—like~~
16 ~~Smith, Vaughn, Pitcock, Graham, Cloward, Gardner, Casperson, and Andreoli—~~
17 ~~who had knowledge of Youngevity’s contractual relationships, and who were~~
18 ~~aware that their conduct was in violation of same (or would result in violation of~~
19 ~~same). Indeed, the Defendants, specifically former Youngevity leaders Smith and~~
20 ~~Graham, and former Youngevity President Andreoli, were the same people~~
21 ~~responsible in prior years for enforcing or causing distributors to uphold~~
22 ~~Youngevity’s Policies and Procedures—including Youngevity’s prohibition~~
23 ~~against cross-recruiting. They held positions of prominence in Youngevity that~~
24 ~~caused Youngevity distributors to view them with trust and confidence. Thus, the~~
25 ~~Defendants’ solicitation to join Wakaya conveyed implicit as well as explicit false~~
26 ~~connotations that doing so would not offend Youngevity, would be legally~~
27 ~~protected, and would be accepted by Youngevity without further recourse.—~~

1 ~~102. Wakaya, through its agents, intentionally converted Youngevity~~
2 ~~business opportunities through misrepresentation, deceit, and trickery. Wakaya~~
3 ~~met with potential Youngevity acquisitions while holding its agents out as~~
4 ~~Youngevity representatives, only to direct those accounts to Wakaya through~~
5 ~~subterfuge, concealment, and misrepresentation.~~

6 ~~103. Wakaya's agents, including its co-founder Smith, displayed a~~
7 ~~consciousness of potential liability. He repeatedly coerced or encouraged~~
8 ~~individuals to maintain secrecy surrounding his unlawful and anti-competitive~~
9 ~~activities. Through misrepresentation, he solicited the secrecy of distributors and~~
10 ~~potential Youngevity clients.~~

11 ~~104. The intentional targeting of Youngevity resources, and the~~
12 ~~manipulation of Youngevity's business from within—all for the economic~~
13 ~~advantage of Wakaya—violated business ethics and constituted actionable tortious~~
14 ~~conduct. Youngevity distributors, employees, and executives are free to work~~
15 ~~outside of Youngevity during or after their time with Youngevity. They are not,~~
16 ~~however, free to use Youngevity resources, confidential information, contacts, and~~
17 ~~opportunities against Youngevity while purporting to hold interests with~~
18 ~~Youngevity. That latter conduct is unlawful, and is the subject of this lawsuit. All~~
19 ~~Defendants were aware of the contractual obligations prohibiting the conduct~~
20 ~~alleged herein and maliciously violated those obligations, fiduciary duties, and~~
21 ~~trust.~~

22 ~~105. Wakaya and the Defendants have made unauthorized use of~~
23 ~~Youngevity's distributor lists to facilitate interference with Youngevity contractual~~
24 ~~relations and induce breach of contract by Youngevity distributors. They have~~
25 ~~used Youngevity's name and intellectual properties to cross-recruit.~~

26 ~~106. The individual Defendants used their well-known identities within~~
27 ~~Youngevity as President, in the case of Andreoli, and as corporate employees or as~~
28 ~~prominent top-level distributors, in the case of the other individual named~~

1 ~~Defendants, to mislead Youngevity distributors into believing that they could~~
2 ~~become Wakaya distributors and recruit additional Youngevity distributors into~~
3 ~~Wakaya without loss of their Youngevity distributorships and commissions, thus~~
4 ~~causing those distributors wittingly or unwittingly to breach their Youngevity~~
5 ~~contracts as a result of the Defendants' exercise of artifice, guile,~~
6 ~~misrepresentation, and deceit.~~

7 ~~107. The Defendants, specifically Andreoli, Smith, and Graham, held~~
8 ~~prominent positions within Youngevity or its distributor hierarchy which enabled~~
9 ~~them to enjoy distributor trust and confidence, which trust and confidence they~~
10 ~~manipulated to induce distributors to breach their Youngevity contracts in the~~
11 ~~mistaken belief that Youngevity would not take any adverse action as a result of~~
12 ~~those breaches.~~

13 ~~108. Defendants' conduct is unfair competition. Defendants have also~~
14 ~~manipulated commercial markets through false and deceptive advertising and~~
15 ~~promotional claims. Defendants have lured distributors into its venture through the~~
16 ~~promise of unreasonable income generation. Acting through its agents, Defendants~~
17 ~~have published or disseminated demonstrably false information concerning~~
18 ~~Youngevity's business. Defendants' dissemination of false information was~~
19 ~~intended to disparage Youngevity. In an effort to secure more business from~~
20 ~~Youngevity directly, Defendants have attempted to cast Youngevity as a~~
21 ~~financially bereft corporation on the brink of bankruptcy when in fact it is~~
22 ~~financially robust and profitable, having experienced considerable success and~~
23 ~~growth.~~

24 ~~109. Defendants' conduct includes false and misleading claims.~~
25 ~~Defendants have represented that Wakaya distributors can earn large incomes. In~~
26 ~~fact, to date no Wakaya distributors are earning large commission-generated~~
27 ~~incomes and the substantial majority of Wakaya distributors will not earn the~~
28 ~~amount of income Wakaya has represented they will earn; indeed, most will not~~

1 even recoup their investments in the company. Todd Smith, Dave Pitcock, and
2 Andre Vaughn, among others, have made such illegal income claims.

3 110. ~~Wakaya is a company formed almost entirely from a select few
4 disgruntled Youngevity employees, distributors, and executives who came to
5 believe that a competing direct network MLM venture would bring greater fortune
6 than possible through Youngevity alone, despite their high salaries and large
7 volume commissions from Youngevity. Rather than expanding their fledgling
8 venture through traditional means, however, the Defendants have relied
9 substantially on business stolen or converted from Youngevity's operations. The
10 Defendants have attempted to secure business opportunities through unlawful
11 means.~~

12 **COUNT ONE**

13 **Intentional Interference with Prospective Economic Advantage**
14 **(All Defendants)**

15 111. ~~The allegations of paragraphs 1 through 11 are incorporated herein by
16 reference.~~

17 112. ~~Defendants Smith, Graham, and Wakaya interfered with Youngevity's
18 prospective economic relationship with Mr. David Smith, the owner of GAC.~~

19 113. ~~Youngevity had a prospective economic relationship with GAC when
20 Smith, as a purported Youngevity representative, met with GAC, and that
21 relationship had the probability of conferring future economic benefit on
22 Youngevity.~~

23 114. ~~At all times relevant herein, Defendants Smith, Graham, and Wakaya
24 were aware of the prospective relationship between GAC and Youngevity.~~

25 115. ~~Defendants Smith, Graham, and Wakaya engaged in intentional acts
26 to disrupt Youngevity's prospective relationship with GAC. For example, Smith
27 and Graham met with GAC falsely as representatives of Youngevity, told GAC to
28 cancel its meeting with Youngevity's Dr. Joel Wallach without Youngevity~~

1 authorization, concealed their meetings with GAC from Youngevity, and used their
2 positions within Youngevity to mislead GAC into consummating a contract with
3 Wakaya.

4 116. As a result of Smith's, Graham's and Wakaya's action, GAC now
5 provides products for sale exclusively through Wakaya, and continues to develop
6 products at Wakaya's direction.

7 117. Wakaya's agents have described the GAC bentonite clay product as a
8 unique and exclusive product that can only be sourced from the GAC mines.

9 118. Defendants Smith, Graham, and Wakaya caused Youngevity harm
10 because, but for Smith's, Graham's, and Wakaya's interference with GAC and
11 Youngevity's relationship, GAC would be producing products for sale through
12 Youngevity and at Youngevity's direction and all profits to Wakaya from the sale
13 of GAC products would instead flow to Youngevity.

14 119. All Defendants have interfered with Youngevity business
15 opportunities by unlawfully diverting potential profits and sales away from
16 Youngevity into the Wakaya enterprise. Defendants accomplished that diversion
17 by encouraging the breach of Youngevity agreements, and through exploitation of
18 Youngevity's proprietary and confidential information.

19 120. Defendants were aware that their actions would deliberately target and
20 disrupt Youngevity's prospective relationships with customers and potential
21 distributors. Defendants corruptly and unlawfully interfered with those
22 relationships, in part, by encouraging the breach of Youngevity agreements and
23 persuading Youngevity distributors to breach existing contractual duties.

24 121. Defendants formed and operated a conspiracy to interfere with
25 Youngevity's prospective economic advantages. For example, Defendants Smith,
26 Graham, and Wakaya conspired to, and succeeded in, diverting Youngevity's
27 opportunity for an economic relationship with GAC and also conspired to, and
28 succeeded in, encouraging Youngevity distributors to breach their agreements with

1 ~~Youngevity causing Youngevity's prospective business relations with potential~~
2 ~~customers to be diverted to Wakaya. Defendants' conspiracies caused Youngevity~~
3 ~~damage, including lost business opportunities with GAC and lost profits and sales.~~

4 **LANHAM ACT FALSE OR MISLEADING ADVERTISING**

5 **COUNT TWO**

6 **Intentional Interference with Contract/Inducing Breach of Contract**
7 **(All Defendants)**

8 ~~122. The allegations of paragraphs 1 through 122 are incorporated herein~~
9 ~~by reference.~~

10 ~~123. All Defendants interfered with contracts Youngevity had with third~~
11 ~~parties, and induced those parties to breach their contracts with Youngevity.~~

12 ~~124. Youngevity maintains valid and enforceable contracts with all of its~~
13 ~~distributors. Exh. A pp. 76-113. Youngevity also maintained valid non-disclosure~~
14 ~~agreements with Patti Gardner, Mike Casperson, Brytt Cloward, and Marin~~
15 ~~Barney, Exh. H, and a valid asset purchase contract with Gardner and Cloward~~
16 ~~through Youngevity's purchase of Heritage Makers, Inc. See Exh. G.~~

17 ~~125. At all times relevant herein, all Defendants were aware that~~
18 ~~Youngevity maintained valid and enforceable contracts with all of its distributors.~~
19 ~~Further, at all relevant times herein, Wakaya and Andreoli were aware that~~
20 ~~Youngevity maintained valid non-disclosure agreements with Patti Gardner, Mike~~
21 ~~Casperson, Brytt Cloward, and Marin Barney, and were aware that Youngevity~~
22 ~~maintained a valid contract with Gardner and Cloward through Youngevity's~~
23 ~~purchase of Heritage Makers, Inc.~~

24 ~~126. All Defendants intentionally induced Youngevity distributors to~~
25 ~~breach their contracts with Youngevity. The Defendants contacted Youngevity~~
26 ~~distributors directly to tell them about Wakaya and recruit them to join Wakaya.~~
27 ~~For example, Defendant Graham sent an unauthorized e-mail and text to all~~
28 ~~Youngevity distributors, acting as though Youngevity endorsed the e-mail, and~~

1 explained that Todd Smith is engaging in a new enterprise. Exh. E. That e-mail
2 had the effect of encouraging Youngevity distributors to be aware of Wakaya and
3 to comprehend joining Wakaya to be an option acceptable to Youngevity, when it
4 was in fact a contractual breach damaging to Youngevity and its distributor
5 networks. Cross-recruiting is prohibited under Youngevity's Contract with
6 distributors. Exh. A, p. 85 § E12. Defendants Wakaya and Andreoli induced
7 Casperson, Gardner, Cloward, and Barney to violate their agreements with
8 Youngevity by, *inter alia*, engaging in an enterprise that competes with
9 Youngevity, Wakaya.

10 127. The actions of Defendants Smith, Andreoli, Wakaya, TNT, Graham,
11 Vaughn, and Piteock caused Youngevity distributors to breach their Youngevity
12 contracts, *inter alia*, by cross-recruiting for Wakaya. The action of Defendants
13 Andreoli and Wakaya caused Patti Gardner, Mike Casperson, Brytt Cloward, and
14 Marin Barney to breach their contracts with Youngevity by, *inter alia*, using
15 Youngevity's proprietary information and resources to benefit Wakaya.

16 128. Defendants were aware that their actions would deliberately target and
17 disrupt Youngevity's prospective relationships with customers and potential
18 distributors. Defendants corruptly and unlawfully interfered with those
19 relationships, in part, by encouraging the breach of Youngevity agreements and
20 persuading Youngevity distributors to breach existing contractual duties.

21 129. Youngevity has suffered damages and continues to suffer damages as
22 a result of those distributors and employees' violations of their contracts with
23 Youngevity and inducement of others to violate their contracts with Youngevity.

24 ~~130.1. Defendants formed and operated a conspiracy to interfere with~~
25 ~~Youngevity's contractual relations and induce breach of those contractual relations~~
26 ~~by conspiring to contact Youngevity distributors and encouraging them to breach~~
27 ~~their agreements with Youngevity. Defendants' conspiracy caused Youngevity~~
28

1 ~~damage, including lost profits and sales resulting from distributors leaving~~
2 ~~Youngevity.~~

3 ~~**COUNT THREE**~~

4 ~~**Breach of Contract**~~
5 ~~**(Defendants Andreoli, Pitcock, Gardner, Cloward)**~~

6 ~~131. The allegations of paragraphs 1 through 131 are incorporated herein~~
7 ~~by reference.~~

8 ~~132. Defendants Andreoli, Pitcock, Gardner, and Cloward have all entered~~
9 ~~into valid contracts with Youngevity. Exhs. F-I.~~

10 ~~133. Youngevity has performed all obligations required under those~~
11 ~~contracts.~~

12 ~~134. Defendants Andreoli, Pitcock, Gardner, and Cloward have all~~
13 ~~breached their contracts with Youngevity. All of those defendants breached the~~
14 ~~implied covenant of good faith and fair dealing present in every contract. Further,~~
15 ~~Defendant Andreoli breached his employment contract with Youngevity by, for~~
16 ~~example, failing to devote all of his working time and attention to Youngevity,~~
17 ~~disclosing confidential customer information and using Youngevity's trade secrets~~
18 ~~to compete with Youngevity, attempting to divert business opportunities of~~
19 ~~Youngevity to Wakaya, and failing to promptly notify Youngevity about those~~
20 ~~business opportunities. Pitcock violated his consulting agreement with Youngevity~~
21 ~~by using confidential information, including business contacts, information~~
22 ~~regarding distributors/vendors/supplies and other business associates of~~
23 ~~Youngevity, for the purpose of circumventing Youngevity's business operations~~
24 ~~and by referring to Youngevity in terms that do not further Youngevity's business~~
25 ~~objectives. Gardner and Cloward violated the HM Agreement by, for example,~~
26 ~~working for Wakaya, a business that competes directly with Wakaya, and by using~~
27 ~~Youngevity's confidential information, including customer and distributor lists, to~~
28 ~~solicit business for Wakaya at Youngevity's expense.~~

1 ~~135. As a direct, proximate, and legal result of the breaches by Defendants~~
2 ~~Andreoli, Pitcock, Gardner, and Cloward, Youngevity has been damaged in an~~
3 ~~amount to be proven at trial.~~

4 ~~136.1. Defendants Andreoli, Pitcock, Gardner, and Cloward agreed and~~
5 ~~conspired to breach their contracts with Youngevity. Those breaches caused~~
6 ~~Youngevity damage in an amount to be proven at trial.~~

7 ~~**COUNT FOUR**~~

8
9 ~~**Misappropriation of Trade Secrets**~~
10 ~~**(Cal. Civ. Code § 3426)**~~
11 ~~**(All Defendants)**~~

12 ~~137. The allegations of paragraphs 1 through 137 are incorporated herein~~
13 ~~by reference.~~

14 ~~138. Defendants misappropriated Youngevity's trade secrets, including~~
15 ~~distributor and customer lists, and Youngevity marketing and business information~~
16 ~~to benefit Wakaya at the expense of Youngevity.~~

17 ~~139. All Defendants aggressively solicited Youngevity's employees and~~
18 ~~distributors to leave Youngevity and work for and/or become distributors for~~
19 ~~Wakaya. By virtue of their experience and positions within Youngevity,~~
20 ~~Defendants are well aware of the contractual restrictions placed on Youngevity's~~
21 ~~distributors and employees, in particular the obligation to refrain from using or~~
22 ~~divulging Youngevity's customer lists and distributor lists.~~

23 ~~140. The proprietary information, including customer and distributor lists,~~
24 ~~is, and at all relevant times has been, the subject of Youngevity's reasonable efforts~~
25 ~~under the circumstances to maintain its secrecy. Youngevity has taken reasonable~~
26 ~~measures to prevent the unauthorized disclosure or use of its proprietary customer~~
27 ~~and distributor lists.~~

28 ~~141. The Defendants' actions constitute misappropriation of trade secrets~~
~~in violation of Cal. Civil Code sections 3426.1 and 3426.2 because Defendants~~

1 ~~knew or had reason to know that Youngevity's trade secrets were acquired or were~~
2 ~~accomplished under circumstances that gave rise to a duty to maintain the secrecy~~
3 ~~of Youngevity's customer and distributor lists. Moreover, every time the~~
4 ~~Defendants' accessed their Distributor back door office, they were required to~~
5 ~~acknowledge and agree that the information was confidential and not to be used to~~
6 ~~Youngevity's detriment. Defendants were well aware of the numerous policies~~
7 ~~Youngevity has about the nature and protection of its confidential, proprietary~~
8 ~~information.~~

9 ~~142. Defendants misappropriated Youngevity's trade secrets by, among~~
10 ~~other things, retaining or utilizing Youngevity's distributor and customer~~
11 ~~information and confidential Youngevity work product for the purpose of~~
12 ~~soliciting, directing or advising Youngevity's customers and distributors to switch~~
13 ~~their business away from Youngevity and to Wakaya's competing business. For~~
14 ~~example, Defendant Graham used Youngevity's distributor lists to support the~~
15 ~~resignation of Defendant Smith, reveal Wakaya as a competing MLM business~~
16 ~~opportunity, and mislead Youngevity distributors into believing that Smith's~~
17 ~~resignation and new venture were not objected to by Youngevity.~~

18 ~~143.1. As a direct and proximate result of Defendants' misappropriation of~~
19 ~~Youngevity's trade secrets, Youngevity has suffered and will continue to suffer~~
20 ~~damage. Furthermore, Defendants have been unjustly enriched by their~~
21 ~~misappropriation and use of Youngevity's trade secrets and confidential~~
22 ~~information.~~

23 ~~144.1. Defendants' conduct was done and continues to be done willfully and~~
24 ~~maliciously. Youngevity is therefore entitled to exemplary damages pursuant to~~
25 ~~Civil Code section 3426.3, subdivision (c), and reasonable attorneys' fees pursuant~~
26 ~~to Civil Code section 3426.4.~~

27 ~~145. Defendants and agreed and conspired to misappropriate Youngevity's~~
28 ~~trade secrets and confidential information to recruit Youngevity distributors into~~

1 ~~Wakaya and to promote Wakaya using Youngevity's trade secrets. That~~
2 ~~misappropriation caused Youngevity damage in lost sales and profits from loss of~~
3 ~~those distributors.~~

4
5 ~~**COUNT FIVE**~~

6 ~~**Misappropriation of Name and Likeness**~~
7 ~~**(Cal. Civ. Code § 3344)**~~
8 ~~**(Defendants TNT, Graham, Smith)**~~

9 146. ~~The allegations of paragraphs 1 through 146 are incorporated herein~~
10 ~~by reference.~~

11 147. ~~Defendants TNT, Graham, and Smith have used and continue to use~~
12 ~~Dr. Joel Wallach's name, likeness, and identity without his permission. Dr.~~
13 ~~Wallach granted Youngevity an exclusive license to use of his name, likeness, and~~
14 ~~identity.~~

15 ~~148.1. Those Defendants have gained a commercial benefit and advantage by~~
16 ~~using Dr. Wallach's name, likeness, and identity in commerce.~~

17 149. ~~The Defendants named herein this Count have used Dr. Wallach's~~
18 ~~mark, brand, and likeness on websites such as www.wallachonline.com and~~
19 ~~www.yteamtools.com, and through the phone number 1-800-Wallach, without~~
20 ~~Youngevity permission and despite Youngevity demands for immediate cessation~~
21 ~~of the unauthorized uses.~~

22 150. ~~Youngevity and its founder, Dr. Joel D. Wallach, have been harmed~~
23 ~~by the unlawful and improper misappropriation and use of his name, likeness, and~~
24 ~~identity.~~

25 151. ~~The Defendants have used the websites to divert Youngevity~~
26 ~~consumer traffic away from Youngevity. At the very least, Youngevity continues~~
27 ~~to lose business opportunities that would otherwise flow from the websites herein~~
28 ~~identified.~~

1 ~~152. The Defendants' conduct was a substantial factor in causing that~~
2 ~~harm.~~

3 ~~153. Dr. Wallach's privacy interests, including the right to limit use of~~
4 ~~commercial trading on his name, likeness and identity outweigh any public interest~~
5 ~~served by the Defendants' improper use of Dr. Wallach's name, likeness, and~~
6 ~~identity.~~

7 ~~154. To the extent any implied license ever existed (and Youngevity does~~
8 ~~not concede that such license existed), that license has been revoked or rescinded.~~
9 ~~Yet the Defendants continue to hold and use websites and domains that feature Dr.~~
10 ~~Wallach's name and likeness and protected content.~~

11 ~~155.1. Defendants TNT, Graham, and Smith agreed and conspired to~~
12 ~~misappropriate Dr. Wallach's name and likeness by continuing to profit from his~~
13 ~~name and likeness through 1-800-WALLACH, yteamtools.com, and~~
14 ~~wallachonline.com. That conspiracy to misappropriate caused Youngevity and Dr.~~
15 ~~Wallach damage in diversion of sales, profit, internet traffic, and consumer contact~~
16 ~~information that should have gone to Youngevity and authorized Youngevity~~
17 ~~distributors.~~

18 **COUNT SIX**

19 **Lanham Act False or Misleading Advertising**

20 **15 U.S.C. § 1125**

21 **(All Defendants Wakaya and Smith)**

22 ~~156. The allegations of paragraphs 1 through 158 are incorporated herein~~
23 ~~by reference.~~

1 27. Wakaya and Smith, and all others found through discovery to have
2 acted in concert with them, are primarily engaged in the business of selling goods
3 and services through Wakaya.

4 28. Wakaya and Smith, and all others found through discovery to have
5 acted in concert with them, made the below identified false and misleading
6 statements to induce individuals to become Wakaya distributors and/or sell
7 Wakaya products, at the expense of Youngevity.

8 29. Wakaya and Smith, and all others to be discovered in this action to
9 have acted in concert with them, made the below identified false and misleading
10 statements to individuals who were Youngevity distributors or potential
11 distributors or Youngevity customers or potential customers. The conduct
12 described herein below violates federal law.

13
14 **A. False and Misleading Advertising:—Income Claims**

15 ~~157.30.~~ Defendants Defendants Wakaya and Smith, and all others found
16 through discovery to have acted in concert with them, have made false statements
17 of fact in commercial advertisements about allegedly superior commercial
18 opportunities available to Wakaya distributors, by claiming, for example, that
19 Wakaya distributors would be able to earn \$100,000.00 per month or even
20 \$250,000 per month (“income claims”). ~~Those statements by Wakaya are false on~~
21 ~~their face or by necessary implication, inaccurate, and/or the statements are likely~~
22 ~~to mislead or confuse a substantial portion of their intended audience.~~

23 ~~158.31.~~ Wakaya’s agents have pledged that individuals will have \$600-
24 \$800 in earnings simply by signing ~~on with~~ to become Wakaya distributors and
25 without performing any work.

1 ~~159.32. _____ Its agents have promised significant income results for all~~
2 ~~members. In one promotional call,~~ Wakaya agents promised that “a year from
3 now, many of us will be million dollar earners.”³

4 ~~160.33. _____ During promotional events,~~ Wakaya encouraged product sales
5 and memberships by informing individuals that they could be “million dollar
6 earners.”⁴

7 ~~161.34. _____~~ Wakaya representatives, ~~including Defendant Andre Vaughn~~
8 ~~(part of Wakaya’s leadership team),~~ claimed that participants could easily earn
9 more than \$85,000 within ninety days. ~~He later represented and~~ that participants
10 could earn “a quarter million dollars in one month.”

11 ~~162.35. _____~~ Wakaya’s founder, ~~Defendant Todd Smith,~~ explained on April
12 ~~24, 2016 (and has reiterated several times)~~ Wakaya represented that individuals
13 participating in Wakaya will be able to replace their living wages through money
14 earned in Wakaya.

15 ~~163. _____~~ On April 24, 2016, Mr. Smith provided the following warning along
16 ~~with a guarantee~~ Wakaya represented to participants ~~in Wakaya:~~

17
18 ~~164.36. _____~~ ~~One of the things that I want to leave you with is kind of a word~~
19 ~~of warning, maybe a word of counsel, because I started out at the beginning~~
20 ~~congratulating you for being on this call, because those of you who are seriously~~
21 ~~looking at participating right now and getting people involved, you’re going to be~~
22 ~~paid very, very well. I’m telling you right now, you’re going to earn a lot of~~
23 ~~money. And, I’m not shy in telling you that. I’ve been showing the plan to~~
24 ~~people; I’ve been sitting through multiple meetings today with distributors; and~~
25 ~~introducing and explaining the plan. And I want you to know that those of you~~

26
27 ³See, e.g., <https://www.youtube.com/watch?v=4dW5-yCgJRE> (last visited
28 ~~April 25~~ July 12, 2016).

⁴<https://youtu.be/qpVPTIKiVmw> (last visited ~~April 27~~ July 12, 2016).

1 ~~who take this with both hands and go to work, the amounts of money you're going~~
2 ~~to earn in this program are—right now, you that they will earn amounts of money~~
3 ~~that they~~ “won't even be able to imagine. ~~They” and that “are almost incalculable~~
4 ~~... because of the way this is set up. ...”~~

5
6 ~~165. Defendant Smith then encouraged prospective Wakaya participants to~~
7 ~~avoid letting the “incredible income that you earn, and the prestige, and the~~
8 ~~popularity, and all the fame and everything—don't let it change you.”~~

9 ~~166. In truth, Wakaya's income claims are utterly false and misleading.~~
10 ~~Wakaya's compensation model cannot produce the financial benefits claimed for~~
11 ~~the large majority of new recruits or enrollees and few, if any, individuals will be~~
12 ~~able to replace their existing income with income from Wakaya that is equal to or~~
13 ~~greater than their current salaries.~~

14 ~~167.37. The Defendants' unsubstantiated income claims and its agents'~~
15 ~~statements of fact concerning the amount of income Wakaya distributors will make~~
16 ~~actually deceived or have had the potential tendency to deceive a substantial~~
17 ~~segment of the intended audience. Those statements have induced Youngevity~~
18 ~~distributors to breach their contracts and enroll in Wakaya, and have misled the~~
19 ~~audience into believing that they can and will earn \$100,000.00 per month or even~~
20 ~~\$250,000 per month working as a distributor for Wakaya, which is utterly false its~~
21 ~~audience because the audience would likely believe that Wakaya's false income~~
22 ~~claims were truthful.~~

23 ~~38. Defendants~~ The income claims are material because, if true, the
24 intended audience would likely contract to become Wakaya distributors to earn the
25 promised substantial income.

26 39. Wakaya and its agents have made unsubstantiated income claims
27 through conference calls and internet webcasts, causing those claims to enter
28 interstate commerce.

1 40. Youngevity has suffered injury as a result of Wakaya’s false income
2 claims because Youngevity distributors, or potential distributors, have joined
3 Wakaya instead of Youngevity or have reduced their sales promotions of
4 Youngevity products to spend more time in sales promotions of Wakaya products
5 in reliance on those claims.

6 41. Those income claims are, in fact, false or misleading. No Wakaya
7 distributor has earned the amounts claimed above and none is likely to ever earn
8 the money promised by Wakaya’s agents. In fact, only the top-level distributors or
9 founders are ever likely to see a profit, if at all, from their participation in Wakaya,
10 which is a corporation operating in the red without any serious prospect of
11 becoming profitable.

12
13 **B. False and Misleading Advertising—David Gilmour**

14 42. Defendants Wakaya and Smith, and all others acting in concert (to be
15 determined through discovery), have promoted the Wakaya business as a joint
16 venture with David Gilmour, the ~~wealthy~~ billionaire founder of ~~the~~ Fiji Water
17 company and the owner of the ~~Wakaya~~ tropical island. ~~Wakaya.~~

18 43. Wakaya advertising describes ~~Mr.~~ Gilmour as a “partner” or
19 “founder” of ~~the~~ Defendant Smith’s Wakaya venture.

20 44. Wakaya’s promotional brochures feature ~~Mr.~~ Gilmour’s likeness and
21 include quotations from ~~Mr. Gilmour.~~ him.

22 45. Wakaya holds ~~Mr.~~ Gilmour out as an individual who personally
23 participates in the Wakaya venture, ~~or~~ and who backs the Wakaya venture
24 financially.

25 46. Wakaya informational videos refer to “Mr. Gilmour, the founder of
26 our company.”

1 ~~47.~~ Wakaya routinely ~~provided Mr.~~provides Gilmour's information,
2 including books and literature, to prospective Wakaya members, and ~~held~~
3 ~~Toddhold~~ Smith out as ~~Mr.~~Gilmour's "partner."

4 ~~48.~~ Wakaya sales pitches and promotional material frequently rely on ~~Mr.~~
5 Gilmour's biography and successes.

6 ~~49.~~ Wakaya intended ~~those~~ promotional statements associating Gilmour
7 with Defendant Smith's Wakaya to create ~~an~~the impression that Gilmour, ~~a~~
8 ~~billionaire~~, was intimately involved in the direct-selling venture ~~or~~and a financial
9 supporter of same. ~~For instance, which representations are false.~~

10 ~~50.~~ Wakaya agents proclaim during sales presentations that "Mr. David
11 Gilmour is our founder; the same founder of Fiji water." ~~At other times,~~

12 ~~168-51.~~ Wakaya agents have also said that "a billionaire's backing it,"
13 referring to ~~David~~Gilmour while promoting the Wakaya venture. Other
14 promotional videos have stated that ~~David~~Gilmour is "backing everything" related
15 to the company.⁵

16 ~~169-52.~~ In conference calls promoting Wakaya, Defendant
17 Smith Wakaya pledged that all Wakaya ~~members~~distributors would meet ~~Mr.~~
18 Gilmour, and spoke about "how excited Mr. Gilmour is to see and meet every
19 single one of you [Wakaya participants]." ~~Defendants thus marketed the Wakaya~~
20 ~~enterprise by touting financial support of and involvement in Wakaya by Mr.~~
21 ~~Gilmour, even pledging that Wakaya participants would have an opportunity to~~
22 ~~meet and work with Mr. Gilmour. Defendants have thus marketed Wakaya~~
23 ~~through Mr. Gilmour's reputation. Those efforts were designed to lend credibility~~
24 ~~to the Wakaya venture so that prospective recruits would think the business had~~
25 ~~facial legitimacy.~~

26
27
28 ⁵See, e.g., <https://youtu.be/OHNNj-0BjPI> (last visited ~~April 25~~July 12, 2016).

1 ~~170. In a promotional webinar, one Defendants thus marketed the Wakaya~~
2 ~~recruiter sold the opportunity through the following statement:~~

3
4 ~~The great part about this particular company is that it's founded by~~
5 ~~Davidenterprise by falsely touting Gilmour...[M]any people probably~~
6 ~~on this line didn't really know who David Gilmour was, but they~~
7 ~~knew about Fiji Water. They knew about Clairtone stereos. They~~
8 ~~knew about all as the financial backer of these other companies [that~~
9 ~~Gilmour started]. And all of those companies went through~~
10 ~~exactly what we're going through.⁶~~

11 ~~171.53. Thus, and as directly involved in promotion Smith's Wakaya-~~
12 ~~promoted itself by trading on Mr. Defendants have thus marketed Wakaya upon~~
13 ~~Gilmour's name and reputation and by falsely representing his relationship. Those~~
14 ~~efforts were designed to lend credibility to Smith's Wakaya venture by suggesting~~
15 ~~that Gilmour's interests were tied with the Utah-based direct-selling network-~~
16 ~~ventureSmith's Wakaya.~~

17 ~~54. In reality, Defendant Todd-Smith is the sole founder of the Wakaya~~
18 ~~Perfection direct-selling network, a startup business that purchased the Wakaya~~
19 ~~Perfection brand from Mr. Gilmour. Mr. Gilmour created the Wakaya Perfection-~~
20 ~~brand in 2011, and sold his products at retail. Mr. Gilmour later sold the rights to~~
21 ~~the Wakaya brand to Todd Smith. Defendant Smith is the sole owner and operator~~
22 ~~of the Wakaya Perfection LLC venture based out of Utah. Mr. Gilmour. Smith's~~
23 ~~own father, Steve Smith, himself not a billionaire, is the primary financial backer~~
24 ~~of Wakaya to date.~~

25 ~~55. Defendant Smith has not purchased an exclusive right to use the~~
26 ~~Wakaya brand. Many online retailers and vendors sell Wakaya brand products at~~

27 ⁶~~See, e.g.,~~
28 ~~<https://www.youtube.com/watch?v=2Spz1BlaxjA&feature=youtu.be> (last visited~~
~~April 27, 2016).~~

1 prices lower than those offered through the Wakaya system—thus undercutting
2 any incentives to Wakaya members.

3 ~~472-56.~~ Gilmour is not involved with ~~the~~Smith's Wakaya Perfection
4 LLC direct-selling network and is not an owner of Wakaya Perfection LLC,
5 despite ~~Defendants~~Defendants' advertisements to the contrary. ~~Mr. Gilmour has~~
6 ~~not appeared at Wakaya events, including "pre-launch" events. He has not~~
7 ~~participated in marketing "conferences."~~ Mr. Gilmour is not involved in the
8 ~~Wakaya Perfection direct-selling network.~~

9 57. The Defendants' Wakaya's statements concerning Gilmour's
10 involvement in Wakaya, serving as a business partner of Smith in Wakaya, and
11 financially backing Wakaya, are false and tend to deceive or actually deceive
12 prospective Wakaya distributors who are induced by those representations to pay
13 to become Wakaya distributors and buy Wakaya products.

14 ~~473-58.~~ Wakaya's and its agents' advertising claims concerning ~~Mr.~~
15 Gilmour's involvement and the false income statements ~~were~~are material to
16 consumers purchasing Wakaya's products and prospective recruits entering
17 Wakaya.

18 59. Wakaya and its agents have made false and misleading claims
19 concerning Gilmour through internet webcasts and telephone conference calls,
20 causing those statements to enter interstate commerce.

21 60. Youngevity has suffered injury as a result of Wakaya's false claims
22 concerning David Gilmour because Youngevity distributors, or potential
23 distributors, have joined Wakaya instead of Youngevity and because consumers
24 have purchased Wakaya products instead of Youngevity products thinking that the
25 Wakaya products are backed by Gilmour.

26
27 **C. False and Misleading Advertising—Youngevity's Finances**
28

1 61. Defendants Wakaya, and Smith, Graham, TNT, Pitecock, and
2 Vaughn and all others acting in concert (to be determined in discovery), have
3 maliciously and unlawfully promoted Wakaya through false and misleading claims
4 about Youngevity.

5 ~~174.62.~~ To lure business opportunities away from Youngevity,
6 Defendants have falsely claimed that Youngevity has financial troubles.
7 Defendants have falsely claimed that Youngevity was unable to pay commissions.
8 Defendants have thus attempted to characterize Youngevity as a failing
9 organization.

10 ~~175.63.~~ In fact, Youngevity's financial health has never been stronger.
11 ~~The company~~ In fact, Youngevity maintains excellent ratings with the Dunn &
12 Bradstreet corporate credit monitoring organization. Youngevity's sales and
13 profits have grown consistently over the past decade. As a publicly traded
14 corporation, #Youngevity most recently posted sales revenues over \$156 million.
15 ~~The Defendants have not informed prospective Wakaya customers that Youngevity~~
16 ~~terminated their accounts for cause.~~

17 64. Wakaya and its agents have made false statements of fact concerning
18 Youngevity's financial status when promoting and marketing Wakaya.

19 65. Wakaya's false statements concerning Youngevity's financial status
20 were likely to deceive and did deceive the intended audience.

21 66. Wakaya's statements concerning Youngevity's finances are material
22 in that they have caused Youngevity distributors, or potential distributors, to leave
23 Youngevity, violate Youngevity distributor agreements, and/or not actively
24 promote and sell Youngevity products.

25 67. Wakaya and its agents have made false and misleading claims
26 concerning Youngevity's finances through internet webcasts and telephone
27 conference calls, causing those statements to enter interstate commerce.
28

1 68. Youngevity has suffered injury as a result of Wakaya’s false
2 statements concerning Youngevity’s finances because Youngevity distributors
3 have left Youngevity or reduced their sales and promotion activity for Youngevity
4 because of those statements and because potential new Youngevity distributors
5 have been dissuaded from so becoming as a result of those statements.
6 Additionally, Youngevity has suffered injury in harm to its reputation and goodwill
7 as a result of Wakaya’s false statement concerning Youngevity’s finances.

8
9 **D. False and Misleading Advertising—Origin of Wakaya Products**

10 176-69. Defendants Wakaya and Smith, and all others acting in concert
11 (to be determined through discovery), have advertised products based on their
12 alleged origin claims that those products originate in the Fijian islands.

13 70. A significant source of Wakaya’s promoted value for products comes
14 from the “Fijian” qualities said to be inherent in the products sold. For instance,
15 177-71. Wakaya has marketed the following products primarily based
16 on their origin the claim that they originate in the Fijian islands and the on benefits
17 and qualities inherent in products source said to be due to sourcing from Fiji:

18 Wakaya Bula Bottles, Wakaya Sava Cosmetics, Wakaya Detox Caps, Wakaya
19 Essential Oils.

20 178-72. Those products are in fact do not originate in the Fijian islands
21 and are not sourced from Fiji. The Bula Bottles are produced primarily in Idaho.
22 The Detox Caps are manufactured primarily in Idaho. The Essential Oils are
23 manufactured in Kansas.

24 73. The Defendants’ The statements concerning the origin of Wakaya’s
25 products are likely to deceive and did deceive Wakaya distributors and potential
26 distributors into believing that Wakaya products are all sourced from Fiji.

27 179-74. Wakaya’s misleading claims are material and are likely to
28 influence the willingness of the audience to become Wakaya distributors by

1 purchasing that business opportunity. ~~Wakaya's false and misleading claims were~~
2 ~~designed to, and did, usurp business from Youngevity on the promise of false hope~~
3 ~~for those who enrolled in the Wakaya venture.~~

4 ~~180. Defendants profited directly from the false and misleading claims.~~

5 ~~181.75. The Defendants' Wakaya~~ caused ~~their~~its false statements to
6 enter interstate commerce by publishing those statements on the internet.

7 76. Youngevity is or is likely to be injured as a result of the Defendants'
8 false ~~income claims by direct diversion of statements~~ because Youngevity
9 distributors ~~to and~~ have left Youngevity or reduced their sales and promotion
10 activity for Youngevity because of those statements and because potential new
11 Youngevity distributors have been dissuaded from so becoming as a result of
12 competing products by those statements.

13
14 **E. False and Misleading Advertising —Unsafe Products**

15 ~~182.77. Defendants~~ Wakaya, and Smith, and all others acting in concert
16 (to be determined through discovery), market and sell a line of products known as
17 “pure Calcium Bentonite Clay.”

18 78. The “pure Calcium Bentonite Clay” products include the Calcium
19 Bentonite Clay Powder (referred to herein as the “Clay Product”).

20 79. Wakaya recommends that consumers ingest 1 teaspoon of Calcium
21 Bentonite Clay with 2 ounces of water. See Decl. of Eric J. Awerbuch, attached as
22 Exh. A, at Attach. 1 (Wakaya Powdered Clay Label).

23 80. Wakaya claims that its Clay Product has “AMAZING health
24 benefits!” Wakaya does not include any warnings against use of the Clay Product
25 by children or warning of risk of injury due to elevated arsenic and lead.

26 81. Wakaya recommends oral consumption of the Clay Product multiple
27 times daily, for continued use over prolonged periods of time.

1 82. Wakaya claims that its Clay Product provides the following health
2 benefits:

- 3 a. Used on the Skin to Heal Eczema, Dermatitis & Psoriasis;
- 4 b. Used in the Bath as a Soaking Liquid to Remove Toxins;
- 5 c. Allows Cells to Receive More Oxygen;
- 6 d. Alkalizes the Body;
- 7 e. Boosts Probiotics;
- 8 f. Relieves Digestive Problems (Constipation, IBS, Nausea, etc.);
- 9 g. Boosts Immunity by Killing Harmful Bacteria and Viruses;
- 10 h. Improves the Health of Teeth and Gums; and
- 11 i. Purifies Water.

12 [See Exh.](#)

13 [A \(Decl. of Eric J. Awerbuch\), at Attach 2 \(Facebook Post\).](#)

14 83. Wakaya claims that its Clay Product has “powerful detoxifying
15 benefits.”

16 84. Wakaya claims that its Clay Product aids nutrient absorption, weight
17 loss, and overall good health. In corporate-sponsored presentations, Wakaya has
18 advertised its Clay Product as effective for treatment of “serious health problems.”⁷

19 85. In fact, Wakaya’s Clay Product contains lead at dose levels high
20 enough that when taken daily over extended periods pose a significant risk of
21 serious health consequences, including damage to the central nervous system,
22 kidneys, and immune system, not least of which are neurological disorders, lead
23 encephalopathy, tremors, hallucinations, paralysis, coma, and even death.

24 86. Instead of detoxifying and conveying health benefits, Wakaya’s Clay
25 Product poisons those who consume it, posing a significant risk of serious health
26 consequences.

27 _____
28 ⁷See, e.g., <http://wakayaleaders.podbean.com/e/calcium-bentonite-clay-product-call/> (last visited July 6, 2016).

1 87. The FDA recently warned consumers not to ingest clay products
2 similar to Wakaya’s Clay Products⁸, explaining that “laboratory analysis of the
3 [clay] product found elevated lead levels” and that “[e]xposure to lead can cause
4 serious damage to the central nervous system, the kidneys, and the immune
5 system.”

6 88. Wakaya’s statements concerning its Clay Product outlined above are
7 false and misleading because the Clay Product contains toxic levels of lead, often
8 in excess of state and federal standards when used as directed, making them
9 injurious to the health of all users.

10 89. Wakaya has made no effort to warn consumers, including children, of
11 the risks posed by its Clay Product.

12 90. Wakaya’s statements about its Clay Product have a tendency to
13 deceive and have deceived consumers into mistakenly believing that Wakaya’s
14 Clay Products are healthy and beneficial to human health when they are in fact
15 unhealthy and a risk to human health.

16 91. Wakaya’s false and misleading statements concerning its Clay
17 Product are material in that they have caused consumers to purchase and use the
18 Clay Product and have also caused Youngevity distributors, or potential
19 Youngevity distributors, to become Wakaya distributors and unwittingly sell the
20 unsafe Clay Product believing them to be safe. The Wakaya Clay Product is
21 specifically marketed and sold as “detox” or “detoxification” products despite
22 having substantially elevated levels of lead and arsenic that are toxic. The “detox”
23 claims are therefore false and misleading.

24 92. Youngevity has been harmed and continues to be harmed by
25 Wakaya’s false and misleading statements concerning Wakaya’s Clay Product.
26 Youngevity would have earned more sales for its own competing health products

27 _____
28 ⁸See <http://www.fda.gov/Drugs/DrugSafety/ucm483838.htm> (last visited
July 1, 2016).

1 but for Wakaya’s false and misleading statements concerning its Clay Product.
2 Further, Youngevity is harmed by Wakaya’s statements concerning its Clay
3 Product because those statements have caused Youngevity distributors or potential
4 distributors to become Wakaya distributors.

5
6 **B.F. False and Misleading Advertising — Unlawful Pyramid**
7 **Scheme:**

8 ~~183. The allegations of paragraphs 1 through 183 are incorporated herein~~
9 ~~by reference.~~

10 ~~184.93. Wakaya drives its Defendants Wakaya and Smith, and all others~~
11 ~~found through discovery to have acted in concert with them, drive their~~
12 compensation plan heavily through sign-up bonuses designed to compensate the
13 acquisition of downline members in a marketing “matrix,” as opposed to direct
14 consumer sales. Wakaya pays “bonuses” based on the enrollment of new
15 members. Wakaya’s agents have explained that members must “join the program
16 at \$499.”⁹

17 94. Wakaya’s agents have promoted a “10k” push in an effort to obtain
18 10,000 Youngevity distributors, thus indicating Wakaya’s attempt to profit from
19 Youngevity’s distributor base.

20 ~~185.95. The Wakaya product “Packs” are sold at exorbitant cost, and~~
21 ~~Wakaya encourages new members to purchase those packs for at least \$499 per~~
22 ~~order. New members must purchase those packs at \$499 per month to remain~~
23 ~~eligible for profits within the system. Those goods are sold at considerable~~
24 ~~markup, indicating little value attributed to the goods themselves—meaning that~~
25 ~~the purported value actually comes exclusively through the business opportunity.~~

26
27
28 ⁹See, e.g., <https://youtu.be/BKUWHmKHaHY> (last visited ~~April. 26~~ July 12, 2016).

1 ~~186-96.~~ For example, beforeBefore Wakaya Perfection began its direct-
 2 marketing business in 2016, a package of three Wakaya Beauty and Wellness
 3 products (e.g., Ginger Body Soak (16oz), Ginger Body Scrub (15oz), and Organic
 4 Pink Fijian Ginger (5.8oz)) sold online through Costco for \$49.00.⁴⁰ Those
 5 products are currently available through eBay.com for as little as \$39.89. See Exh.
 6 A (Decl. of Eric J. Awerbuch), at Attach. 3 (eBay page). Those same three
 7 products now cost \$187.90 through the Wakaya Perfection direct-selling network,
 8 which actually represents a discount at the “preferred customer” rates displayed
 9 online: \$38.25 for Pink Ginger Body Scrub 18oz; \$84.40 for Pink Fijian Ginger
 10 Body Soak (16.9oz); and \$65.25 for Organic Pink Fijian Ginger Powder (6.7oz).

11 ~~187-97.~~ That significant price markup is necessary to support the
 12 significant “bonuses” and “commissions” promised to distributors participating in
 13 the direct-selling business.

14 98. Wakaya’s price markup is inherently problematic because Wakaya
 15 does not maintain a closed distribution network. Retail consumers are thus able to
 16 purchase the Wakaya products from online retailers (e.g., Amazon.com) for
 17 substantially less money than through the Wakaya program.

18 ~~188-99.~~ Wakaya’s compensation plan pays bonuses for recruitment of
 19 new enrollees, including so-called qualifying, coding, or other bonuses linked
 20 exclusively to recruitment of new Wakaya distributors, *not* product sales or
 21 customer acquisition. Wakaya compensation is thus largely tied to recruiting new
 22 members rather than product sales.

23 ~~189-100.~~ Wakaya enrollment bonuses are tied to the number of members
 24 Wakaya participants can enroll. Wakaya pledges to pay distributors \$100 per
 25 enrollee in the system, and that bonus is not contingent on product sales. It
 26 promises “matrix bonuses” that also compensate upline members solely for the

27 _____
 28 ⁴⁰~~See, e.g., <http://www.costco.com/Wakaya-Perfection-Beauty-and-Wellness-Collection-product.100168158.html> (last visited April 26, 2016).~~

1 recruitment of new participants without regard to product sales. The system
2 encourages reps to recruit new members rather than sell product.

3 ~~190.101.~~ The Wakaya promotional campaign ~~focuses on~~emphasizes
4 luxury lifestyles, large financial gains, cruises, and other ~~indication~~strappings of
5 wealth, ~~rather than product attributes, price points, or consumer need.~~ The false
6 promise of luxury and wealth absent commercial substance and the need to appeal
7 to outside “customers” indicates that Wakaya is primarily a pyramid scheme
8 without regard to product sales.

9 ~~191.102.~~ ~~Wakaya markets niche luxury products with little commercial~~
10 ~~utility through the use of distraction and hope.~~ Wakaya’s marketing focuses on
11 bucolic images of sandy beaches and tropical islands. Its sales pitches promise
12 rags-to-riches success, even pledging that participation in Wakaya will help
13 families “avoid foreclosure” or procure additional funds for luxury living. ~~Wakaya~~
14 ~~dangles “car bonuses” for those willing to participate in the program.~~ In reality,
15 ~~all~~none but a few top corporate participants will be eligible for ~~those benefits~~the
16 promised riches, if at all.

17 ~~192.103.~~ The Wakaya venture’s primary (if not exclusive) source of
18 revenue and income is sourced from *within* the Wakaya organization, meaning the
19 only individuals purchasing product are those involved in the business opportunity
20 itself: rather than outside customers. Wakaya has no significant independent
21 source of income. The reinvestment of income from downline members is thus
22 essential for the promised payment of upline bonuses and commissions.

23 104. Wakaya ~~Perfection~~ compels new distributors or enrollees to purchase
24 goods monthly in an effort to “qualify” accounts for earnings (e.g., commissions
25 and bonuses). ~~Wakaya compels new enrollees to purchase), including~~ the Paradise
26 Starter Packs (at \$500). It also compels new enrollees to accept a monthly auto-
27 ship (i.e., a continuity plan where credit cards are charged automatically) at a cost
28 of \$150 per month. See Exh. A (Decl. of Eric. J. Awerbuch), at Attach. 4 (Wakaya

1 Ambassador Application, ~~attached as Exhibit J. Therefore, Wakaya distributors~~
 2 ~~become the primary source of product purchases.~~)

3 ~~193.105.~~ New enrollees are considered “qualified” only if they also pay
 4 the \$500 “starter pack” fee. Although products ship along with the \$500 fee, the
 5 “starter pack” is designed as an initial fee for new enrollees, which funds help to
 6 pay “bonuses” promised to upline distributors. The Wakaya scheme therefore
 7 reaps profits almost exclusively based on new acquisition of enrollees and not from
 8 product sales, a hallmark of unlawful pyramid schemes.¹¹

9 ~~194.106.~~ Wakaya offers a product line consisting of luxury beauty and
 10 cosmetic products (e.g., body scrubs and facial products), along with ~~several a~~
 11 ~~small number of~~ nutrition or “wellness” products at exorbitant prices. Those
 12 products are unlikely to generate substantial residual income streams, particularly
 13 from Wakaya’s flagship offerings that are, essentially, culinary spices commonly
 14 available at retail like Ginger and Turmeric powder. Wakaya sells Turmeric
 15 Powder for \$65.25 (7.5oz), Pink Ginger for \$65.25 (6.7oz), and Kosher Sea Salt
 16 for \$39.35 (12oz). Moreover, at those elevated prices, individuals looking to
 17 replace living wages through the Wakaya system are unlikely to find any value in
 18 Wakaya’s compulsory product purchases.

19
 20
 21 ¹¹ Wakaya’s compensation plan does allow distributors to qualify through
 22 personal retail sales in excess of \$1,000 over a three month window. Distributors
 23 must be “qualified” before they can earn commissions and bonuses within the
 24 Wakaya business engine. However, those distributors would otherwise “qualify”
 25 through one purchase of the \$499 Paradise Starter Pack. Thus, Wakaya made the
 26 most expedient and affordable method for qualifying an account the purchase of a
 27 Starter Pack by those distributors within Wakaya’s organization. Moreover, those
 28 sponsoring participants benefit most directly and efficiently by having their
 enrollees purchase the Paradise Starter Pack, making the sponsors’ interests
 primarily geared towards that qualification process as they introduce prospects into
 the Wakaya system. Again, the Wakaya system is designed almost exclusively to
 drive recruitment—*NOT* product sales—a hallmark of unlawful pyramid schemes.

1 ~~195-107.~~ Wakaya’s promotional events, marketing, videos, and literature
2 focus exclusively on the business opportunity and growth of “downline”
3 distributors. Wakaya’s promotional content provides no guidance, instructions, or
4 encouragement related to product sales outside of the organization to legitimate
5 customers.

6 108. Wakaya participants and agents have explained that the system is a
7 pyramid. See Exh. A (Decl. of Eric J. Awerbuch), at Attach. 5 (Ashley Duncan
8 Facebook Post).

9 ~~196-109.~~ Indeed, because Wakaya’s direct-selling network supplies
10 Wakaya products at a considerable premium over market rate, few legitimate
11 “customers” would be expected outside of the Wakaya business plan.

12 ~~197-110. In truth, the Wakaya~~Wakaya’s business plan promotes false and
13 misleading earnings and opportunity claims, because the “residual” income
14 promised by the Company is mathematically ~~impractical~~impossible to achieve for
15 all but a few top-level distributors with high placements in the corporation.~~The~~
16 ~~Wakaya venture is thus designed to produce large profits for “founders” or top-~~
17 ~~level corporate participants at the expense of those lower in the business hierarchy.~~
18 ~~Based on the Wakaya compensation plan, only a few individuals can expect to earn~~
19 ~~any significant income, including so-called “residual” income through product~~
20 ~~commissions.~~

21 111. Wakaya’s method of advertisement as a pyramid scheme has the
22 tendency to deceive and does deceive the advertising audience into believing they
23 can earn sustainable income by only encouraging others to join Wakaya without
24 selling any actual product.

25 ~~198-112.~~ Most Wakaya participants will spend more money to participate
26 in Wakaya than they will earn through their involvement with the company, and
27 the majority of Wakaya representatives will not make the substantial incomes
28 promised.

1 ~~199.113.~~ Those Wakaya advertising claims concerning the business
2 opportunity are therefore false and misleading. The average Wakaya participant
3 will not experience significant financial gains through the Wakaya startup venture.

4 ~~200.114.~~ The Federal Trade Commission has determined that similar
5 business structures that share elements of the Wakaya business methodology are
6 unlawful pyramid schemes, in part, based on similar fact presented herein in this
7 Complaint. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014)
8 (affirming district court’s holding that the defendant was an illegal pyramid
9 scheme); *see also F.T.C. v. Vemma Nutrition Co.*, No. CV-15-01578-PHX-JJT (D.
10 Ariz. Aug. 21, 2015) (Order granting preliminary injunction against illegal
11 pyramid scheme); *F.T.C. v. Fortune Hi-Tech Mktg., Inc.*, No. 5:13-cv-123-KSF
12 (E.D. Ky. May 9, 2014) (Stipulated Order for Permanent Injunction and Monetary
13 Judgment against illegal pyramid scheme).

14 ~~201.115.~~ The following reveal Wakaya ~~has many hallmarks of to be~~ an
15 unlawful pyramid scheme:–

- 16 a. Wakaya requires payments for entry into the business
17 organization, which entrance fees are then used to pay existing
18 participants;
- 19 b. The Wakaya income is based predominantly on the number of
20 people that are recruited into the program, and not based on how
21 much product is actually sold.
- 22 ~~b.c.~~ The Wakaya marketing materials focus solely on recruiting
23 other representatives or affiliates.
- 24 d. The Wakaya venture requires new enrollees to purchase product
25 through a continuity plan, meaning that most of the product
26 “sales” are derived from within the business organization itself.
- 27 e.e. Wakaya requires a continuity plan equivalent to \$150/month or
28 \$1,800/year, the same value the FTC found unlawful in its

1 Vemma lawsuit. *F.T.C. v. Vemma Nutrition Co.*, No. CV-15-
2 01578-PHX-JJT, 2015 WL 9694632 (D. Ariz. Sept. 18, 2015)
3 (explaining that “[t]he FTC objects to Vemma’s proposed
4 compensation plan on the grounds that it still incentives
5 recruitment of Affiliates over retail sales”).

6 ~~d.f.~~ The Wakaya promotional materials promise luxurious living,
7 luxury cars, vacations, etc., without disclosing the average or
8 expected yields to those distributors who become downline
9 participants.

10 ~~g.~~ The Wakaya products provide little value when compared with,
11 or in exchange for, the investment in the business opportunity.

12 ~~e.h.~~ Wakaya’s direct-selling products commonly available at retail are
13 marked up substantially over the prices previously offered at
14 retail in prior years predating the direct-selling organization.

15 ~~f.i.~~ The Wakaya venture has few (if any) “customers” that are
16 beyond the business organization itself. Sales occur only
17 between people inside the pyramid structure or to new recruits
18 joining the structure. ~~The lack of retail sales is a common
19 indication of an unlawful pyramid scheme.~~

20 ~~g.j.~~ The Wakaya venture lures new recruits by touting the exotic and
21 luxurious qualities of Wakaya’s products sourced from “Fijian
22 Islands.” The benefits of the “Fijian” sourcing are difficult for
23 consumers to verify and, indeed, misleading to the extent
24 Wakaya suggests that the Fijian source produces any significant
25 health or commercial benefit. New recruits are led to disregard
26 the commercial impracticalities through distractive emphasis on
27 the foreign-sourced, luxury or tropical branding.
28

1 ~~202.116.~~ Unlawful pyramid schemes ~~are,~~ by definition ~~false and~~
2 ~~misleading, materially mislead consumers.~~ New recruits, distributors, and
3 participants are encouraged to participate in the scheme without critical disclosures
4 or warnings related to the risk of monetary loss.

5 ~~203.117.~~ Wakaya has misrepresented the true nature of its business
6 opportunity. Defendants cannot reasonably expect that the Wakaya venture will be
7 as lucrative as advertised.

8 ~~204.118.~~ Wakaya has embraced the false and misleading nature of its
9 pyramid scheme. It has encouraged blind enrollment in the Wakaya “matrix” and
10 targeted vulnerable recruits looking for quick profit and wealth. At public Wakaya
11 events and on corporate webinars, several Wakaya agents have described the
12 desired enrollment process as “ignorance on fire.”

13 ~~205.119.~~ One Wakaya recruiter described the recruitment process as a
14 means to keep prospective recruits ignorant of key business aspects:

15 We don’t want people to know everything. We want people –
16 even Andre [Vaughn], when we were at the [Wakaya Prelaunch]
17 event this weekend, Andre was like ‘I know like 15% of
18 everything that’s, you know, where this company is concerned.’
19 He said ‘I’m ignorance on fire right now.’ And that’s what we
20 want. We don’t want to have a bunch of experts running around
21 thinking that they need to tell everybody everything about anything
22 because then your prospects are going to think that they need to
23 know and do the same thing.’¹²

24 ~~206.120.~~ Another recruiter separately explained that she had enrolled
25 individuals without even having the name of the Wakaya company:

26 [T]alk about ignorance on fire, the first person I signed up on this
27 was my rep Dave. And [in] our phone conversation ... I had

28 ¹²See, e.g.,
<https://www.youtube.com/watch?v=2Spz1BlaxjA&feature=youtu.be> (last visited
April 27 July 12, 2016).

1 forgotten to ask what the name of the company was. So here I am
2 signing Dave up and he's like, 'what's the name?' I said 'do you
3 want to know the name of the company?' He said 'no I don't
4 care.' And I said 'that's good [because] I forgot to ask.' I had no
5 idea. But you know what, I was so excited that it didn't matter.
6 Does it really matter what the name is? No.¹³

7 121. Wakaya's and its agents' statements concerning Wakaya have been
8 made through internet webcasts and in phone calls, thereby causing them to enter
9 interstate commerce.

10 ~~207.122. Youngevity suffers direct and proximate injury stemming from~~
11 ~~the false and misleading Wakaya advertising and business model. Youngevity~~
12 ~~competes directly with Wakaya in the direct-selling network business. Wakaya~~
13 ~~competes directly against Youngevity in the multi-level marketing field.~~
14 ~~Youngevity sells products that compete directly with Wakaya, including, but not~~
15 ~~limited to: ginger products, essential oils, natural detoxification products, turmeric~~
16 ~~products, and cosmetic~~ Wakaya solicits Youngevity distributors to become Wakaya
17 distributors through that advertising and model and to devote time to Wakaya
18 distributor recruitment that would otherwise be spent selling and promoting
19 Youngevity's products.

20 **COUNT TWO**

21 **FALSE ADVERTISING**

22 **Cal. Bus. & Prof. Code §§ 17500, et seq.**

23 ~~Wakaya therefore profits at Youngevity's expense because revenues flowing to~~ **(Defendants**
24 **Wakaya and linked Smith)**

25 123. Defendants have made or caused to be made or disseminated to
26 Wakaya's unlawful activity would otherwise be available to Youngevity the public
27 false and Youngevity's misleading statements.

28 ¹³ *Id.*

1 124. Those false statements include statements concerning:

- 2 a. The amount of income Wakaya distributors ~~who supply can earn~~
3 by joining Wakaya, *see supra* at ¶¶ 30–41;
4 b. David Gilmour’s relationship with Wakaya, *see supra* at ¶¶ 42–60;
5 c. Youngevity’s financial state, *see supra* at ¶¶ 61–68;
6 a.d. ~~The origin of Wakaya’s products in the same competitive field,~~
7 *see supra* at ¶¶ 69–76;
8 e. ~~Youngevity has suffered direct and proximately losses from~~
9 Wakaya’s ~~false advertising.~~ Wakaya’s ~~scorporate~~ structure, *see*
10 *supra* at ¶¶ 93–122;
11 f. The safety and health benefits of the Wakaya Clay Product, *see*
12 *supra* at ¶¶ 77–92.

13 125. Defendants, through the exercise of reasonable care should have
14 known the above identified statements were false and ~~deceptive marketing has~~
15 ~~convinced~~ misleading when made.

16 ~~208-126.~~ Defendants’ false statements identified above have harmed
17 Youngevity in an amount to be proven at trial because those statements have the
18 effect of causing Youngevity distributors and potential Youngevity distributors to
19 leave Youngevity’s business organization for Wakaya’s business model become
20 Wakaya distributors, sell products in competition with Youngevity, and reduce
21 their promotion and sale of Youngevity products.

22 ~~209.~~ Therefore, the Defendants’ representations discussed herein Count
23 Seven are false or misleading and constitutes a deceptive act or practice in
24 violation of the Lanham Act, 15 U.S.C. § 1125.

25 ~~210-127.~~ Defendants agreed and Wakaya and its agents have also
26 conspired to violate the Lanham Act by making false representations concerning
27 the nature of Wakaya and David Gilmour’s interest in Wakaya, California’s false
28 advertising law as described above. ~~Those misrepresentations caused~~ That

1 ~~conspiracy has damaged~~ Youngevity ~~to suffer damage~~, including
2 ~~convincing causing~~ Youngevity ~~distributors to leave Youngevity's business-~~
3 ~~organization for Wakaya's business model competitive injury.~~

4
5
6
7
8
9 **COUNT SEVENTHREE**

10 **UNFAIR COMPETITION**
11 **Cal. Bus. & Prof. Code § 17200**
12 **(All Defendants)**

13
14 **Breach of Fiduciary Duty**
15 **(Defendant Andreoli)**

16 ~~211. The allegations of paragraphs 1 through 210 are incorporated herein by~~
17 ~~reference.~~

18 ~~212.1. Bill Andreoli, as President of Youngevity, owed fiduciary duties to~~
19 ~~Youngevity. Those duties included notifying Youngevity and obtaining~~
20 ~~authorization from Youngevity before force qualifying any individuals or entities.~~
21 ~~Those duties also obligated actions from Andreoli that served the interests of~~
22 ~~Youngevity over competing ventures. Those duties also required Andreoli to~~
23 ~~exercise reasonable care and to maintain his loyalty to Youngevity.~~

24 ~~213. Andreoli breached his fiduciary duties to Youngevity, in part, by force~~
25 ~~qualifying his friends and family without obtaining authorization from Youngevity.~~
26 ~~He breached his fiduciary duties by encouraging the infliction of financial loss to~~
27 ~~Youngevity's business by other Youngevity distributors and employees.~~

1 ~~220. Defendant TNT’s, Graham’s, and Smith’s use of Dr. Joel Wallach’s~~
2 ~~name, likeness, and identity without permission constitutes unlawful conduct under~~
3 ~~California Business and Professions Code § 17200 et seq.~~

4 ~~221. Defendants’ violation of the Lanham Act by making false income and~~
5 ~~other claims constitutes unlawful conduct under California Business and~~
6 ~~Professions Code § 17200 et seq.~~

7 ~~222. Defendants’ violation of the California’s False Advertising Law by~~
8 ~~making advertising claims constitutes unlawful conduct under California Business~~
9 ~~and Professions Code § 17200 et seq.~~

10 ~~223. Defendant Andreoli’s breach of fiduciary duty to Youngevity~~
11 ~~constitutes unlawful conduct under California Business and Professions Code §~~
12 ~~17200 et seq.~~

13 ~~224. Defendants’ participation in, organization of, and operation of an~~
14 ~~unlawful pyramid scheme violates federal law, is unlawful under California law,~~
15 ~~and constitutes an unlawful practice under California law.~~

16 ~~225. TNT’s selling of commercial goods, including CDs, DVDs, flyers,~~
17 ~~and clothing, bearing Youngevity’s name is an unfair act because it infringes on~~
18 ~~Youngevity’s registered trademark, to wit, “Youngevity.”~~

19
20 **A. Unlawful Endless Chain Scheme:**

21 ~~226. The allegations of paragraphs 1 through 225 are incorporated herein~~
22 ~~by reference.~~

23 ~~227.~~129. Cal. Penal Code § 327 (“Section 327”) prohibits a person from
24 willfully contriving, preparing, setting up, or operating an organization which
25 “gives compensation to some person when that compensation is given by the
26 organization to the person for the chance to receive compensation for introducing
27 one or more additional persons into participation in the scheme, or, for the chance
28 to receive compensation when a person introduced by the participant introduces a

1 new participant.” *People v. Frederick*, 48 Cal. Rptr. 3d 585, 598 (Cal. Ct. App.
2 2006).

3 ~~228.130.~~ Even if Wakaya’s distributors make “retail sales, [those sales]
4 do not legalize the pyramid marketing scheme which violates Penal Code section
5 327... the question is whether the focus of [Wakaya]—rather than the product
6 sales themselves—was the recruitment of more members into the scheme.” *People*
7 *v. Sweeney*, 175 Cal. Rptr. 3d 31, 37–38 (Cal. Ct. App. 2014).

8 ~~229.131.~~ ~~As the facts alleged herein demonstrate,~~ Wakaya is an unlawful
9 endless chain scheme as defined by Section 327. Wakaya gives compensation to
10 individuals who enroll other individuals into Wakaya. The primary focus of
11 ~~Wakay~~Wakaya is the recruitment of more members into the scheme. *See supra at*
12 ~~¶¶ 93–122.~~

13 ~~230.132.~~ Defendants willfully contrived, prepared, set up, and operated
14 Wakaya in violation of Section 327.

15 ~~231.133.~~ As a result of Defendants’ wrongful conduct, Youngevity has
16 suffered and will continue to suffer damages and injuries according to proof at
17 trial.

18 **B. Unlawful Sale of Misbranded and Adulterated Foods or Dietary**
19 **Supplements**

20 134. Wakaya sells a Bentonite Clay Product as natural and safe detoxifying
21 agents; it is not; it contains toxic levels of lead. *See supra at* ¶¶ 77–92.

22 135. Wakaya recommends in corporate materials and advertising
23 (including social media) that consumers ingest its Clay Product as a detoxifying
24 agent when, in fact, it imparts toxic levels of lead to the body.

25 136. Wakaya’s promotional materials advertise the Clay Product for use
26 with “detoxification and weight loss.”

1 137. Wakaya therefore advertises an intended use of the Clay Product as
2 dietary supplements regulable under state and federal laws. See 17 Cal. Code
3 Regs. § 10200 (defining “dietary supplement”).

4 138. As a dietary supplement, Wakaya’s Clay Product is adulterated and
5 misbranded and, thus, unlawful for sale. See, e.g., Cal. Health & Safety Code §§
6 110100, 110665, 110670, 110673, 110675, 110710, 110720.

7 139. Wakaya’s Clay Product is marketed without required labels or
8 labeling sufficient to inform consumers of the contents contained within the
9 product. Federal and state laws require proper disclosures of Supplement Facts for
10 all dietary supplements marketed to California consumers. See Cal. Health &
11 Safety Code §§ 110100, 110665 (Nutrition labeling not in conformity with federal
12 requirements), 110670 (Nutrition content or health claims not in conformity with
13 federal requirements), 110675 (packaged food; labeling requirements), 110710
14 (definition and standard of identity; failure to include on label or otherwise
15 conform), 110720 (common or usual name if no standard of identity exists; failure
16 of label to state).

17 140. Wakaya’s Clay Product, intended to be digested orally, is a “food” or
18 “dietary supplement” under California’s Sherman Laws. Cal. Health & Safety
19 Code § 109935.

20 141. Foods and dietary supplements are adulterated if they contain any
21 poisonous or deleterious substance that may render the product injurious to health.
22 Cal. Health & Safety Code § 110545.

23 142. As described above, Wakaya’s Clay Product contains amounts of lead
24 which render it injurious to those who consume it. See supra, at ¶¶ 77–92.
25 Wakaya’s Clay Product is therefore misbranded under Cal. Health & Safety Code
26 § 110545.

1 143. It is unlawful under California’s Sherman Laws “to manufacture, sell,
2 deliver, hold, or offer for sale any food that is adulterated.” Cal. Health & Safety
3 Code § 110620.

4 144. Wakaya sells, delivers, holds, and offers for sale the Clay Product.

5 145. Wakaya violates the California Health and Safety Code by selling,
6 delivering, holding, and offering for sale the Clay Product.

7 146. Wakaya’s violations of the California Health and Safety Code
8 constitute “unlawful” conduct under the California Unfair Competition Law. Cal.
9 Health & Safety Code § 17200 et seq.

10 147. As a direct competitor with Wakaya, Youngevity suffers economic
11 injury as a result of Wakaya’s promotions and sales in violation of the California
12 food and drug code sections. Wakaya’s use of unlawful labeling and claim
13 language provides an unfair and unlawful market advantage. Moreover, in light of
14 Defendants use of web sites that trade upon the name of Youngevity and name and
15 likeness of Dr. Wallach, Defendants convey the impression that Youngevity
16 endorses or supports Wakaya’s products, including its toxic clay, thereby
17 irreparably injuring the good will of Youngevity and the reputation of Dr. Wallach.

18 148. Youngevity has lost business, or is likely to lose business, to the
19 extent Youngevity distributors and consumers at large buy Wakaya’s Clay
20 Products rather than Youngevity’s competing health products.

1
2 **C. General Allegations Concerning Defendants' Violations of**
3 **California's UCL**

4 232.149. Defendants conspired to violate California's unfair competition
5 law by agreeing to take actions that are unlawful, unfair, and fraudulent as
6 described aboveherein. As a result of Defendants' conspiracy to violate
7 California's unfair competition law, Youngevity has suffered and will continue to
8 suffer damages and injuries according to proof at trial.

9 150. The Defendants' conduct, as alleged herein through Counts One, Two,
10 and Three constitutes unlawful, unfair, and/or fraudulent business practices, as
11 defined in the California Business and Professions Code § 17200 et seq.

12 151. Plaintiffs bring this Cause of Action on behalf of themselves and on
13 behalf of the public pursuant to Business & Professions Code § 17204.

14 152. Defendants' misleading and false statements identified above at
15 Paragraphs 30–122 constitute an ongoing harm on the public at large and on
16 California citizens.

17 153. Defendants' sale of unsafe products, while advertising them as safe
18 detoxifying products (see supra at ¶¶ 134–48), constitutes an ongoing harm to the
19 public at large and California citizens in particular.

20 154. Plaintiffs and the public are subject to a real and immediate threat of
21 continuing or additional injury from Defendants. Defendants continue to make the
22 false and misleading claims identified in this Complaint and to sell the harmful
23 Clay products identified in this Complaint.

24 155. Pursuant to Business & Professions Code § 17204, Plaintiffs seek an
25 order of this Court enjoining Defendants from continuing to engage in unlawful
26 commerce and commercial promotions as set forth in Counts One, Two, and
27 Three.

28 156. Plaintiffs and the public will be irreparably harmed if such an order is
not granted.

1 157. The Defendants' conduct presents a matter of substantial public
2 concern and interest necessitating injunctive relief that will limit the potential for
3 false and misleading claims and the sale of unsafe products.

4
5 **COUNT FOUR**

6 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE**
7 **ECONOMIC ADVANTAGE**
8 **(All Defendants)**

9 158. Youngevity alleges the tort of Intentional Interference with
10 Prospective Economic Advantage as follows:

11
12 **A. Todd Smith, Blake Graham, and Wakaya's Tortious Interference**
13 **with the Great American Clay Company**

14 159. For over a year before July 2015, Youngevity distributor Mia
15 Magistro had an economic relationship with the Great American Clay Company,
16 owned and operated by David Smith. A GAC product purchaser and associate of
17 David Smith, Youngevity distributor Magistro sought to arrange for Youngevity to
18 purchase and sell GAC products. GAC coordinated with Magistro to contact
19 Youngevity for the purpose of negotiating the purchase of GAC products and/or
20 GAC itself. A distributor in Todd Smith's downline, Magistro followed
21 Youngevity protocol by asking her upline Smith to inquire whether Youngevity
22 management would consider entering into a contract with GAC for sale of GAC
23 products.

24 160. When Youngevity distributor Magistro informed Defendant Todd
25 Smith of GAC's interest in contracting with Youngevity, Smith, and shortly
26 thereafter Graham and Wakaya, knew that GAC wished to contract with
27 Youngevity.

1 161. Defendants Smith, Graham, and Wakaya, acted intentionally to divert
2 the GAC business opportunity intended for Youngevity to Wakaya, while posing
3 in negotiations of the deal as contracting agents for Youngevity.

4 162. Wakaya, Smith, and Graham did divert the GAC product purchasing
5 agreement intended for Youngevity to Wakaya, entering into an exclusive purchase
6 and sale agreement with GAC for Wakaya sale of GAC products.

7 163. Youngevity suffered economic harm through the loss of the GAC
8 business opportunity, combined with Wakaya’s competitive market advantage
9 gleaned from the GAC contract.

10 164. In or about July, 2015, a distributor in Todd Smith’s Youngevity
11 “downline,” Mia Magistro, introduced Todd Smith to David Smith, the owner of
12 GAC based in Austin, Texas (hereinafter “GAC”).¹⁴ See Decl. of Mia Magistro,
13 attached as Exh. B at ¶ 7.

14 165. Youngevity Downline distributors work under their “upline”
15 distributors, who are generally the individuals responsible for enrolling, training
16 and guiding downline distributors in the Youngevity business.

17 166. GAC expressed interest in forming an economic relationship with
18 Youngevity that would have Youngevity sell GAC’s products. *Id.* at ¶¶ 5–7, 9,
19 11–12. GAC also indicated its willingness to work with Dr. Joel Wallach on a
20 book publishing project related to Youngevity’s business. *Id.* at ¶ 11.

21 167. On August 25, 2015, Todd Smith, Blake Graham, David Smith, Lynn
22 Jenkins (a part owner of GAC), and Mia Magistro met at TNT’s offices in Pleasant
23 Grove, Utah. *Id.* at ¶ 9.

24 168. At that meeting, Graham and Smith became aware that GAC wanted
25 to establish an economic relationship with Youngevity and Dr. Wallach.

26
27
28 ¹⁴David Smith and Todd Smith are unrelated and have no familial
connections.

1 169. Magistro identified Todd Smith as a Youngevity distributor in her
2 upline who had direct access to Youngevity management and Youngevity CEO
3 Steve Wallach, and Todd Smith met with GAC as a representative of Youngevity.
4 *Id.* GAC thought that it was meeting Youngevity representatives who would
5 negotiate a GAC product purchase agreement on Youngevity’s behalf.

6 170. At the time, however, and undisclosed to Youngevity CEO Steve
7 Wallach, to GAC, or to Magistro, Todd Smith and Blake Graham were operating
8 in their own self-interest with an intent to divert the GAC purchase agreement
9 intended for Youngevity to their competing Wakaya venture, which venture had
10 not then been publicly disclosed and was unknown to the Plaintiffs or to Magistro.

11 171. Smith and Graham therefore abused their apparent authority to act on
12 Youngevity’s behalf to secure an opportunity for Wakaya with GAC.

13 172. Todd Smith and Blake Graham thereby diverted a business
14 opportunity intended for Youngevity to Wakaya, never disclosing to Youngevity
15 CEO Steve Wallach the interest of GAC in selling its products through
16 Youngevity.

17 173. Todd Smith led GAC owner David Smith to understand that he, Todd
18 Smith—and he alone—was the point of contact for Youngevity in negotiation of
19 the GAC contract. That representation was false. The only person with authority
20 to negotiate the GAC contract was Youngevity CEO Steve Wallach or those
21 expressly authorized so to do by him for the benefit of Youngevity.

22 174. GAC had been scheduled to meet with Dr. Joel D. Wallach, the
23 founder of Youngevity and the father of Youngevity CEO Steve Wallach, in
24 November of 2015 in North Carolina. *Id.* at ¶ 14.

25 175. Todd Smith told GAC to cancel the meeting with Wallach, stating
26 falsely that he (Todd Smith) was already working on the account and had been
27 given Youngevity’s authorization to develop new products himself. *Id.* at ¶¶ 15–
28 16. Those representations were false.

1 176. Todd Smith had no authority from Youngevity to determine whether
2 Youngevity would contract with GAC. Youngevity was unaware that Todd Smith
3 was meeting with GAC.

4 177. Todd Smith asked GAC not to disclose the reasons he gave David
5 Smith for cancelling GAC's meeting with Dr. Wallach and asked David Smith to
6 keep all communications between Todd Smith and David Smith confidential. *Id.*
7 at ¶¶ 12, 18.

8 178. Until approximately mid-December, 2015, Todd Smith continued his
9 negotiations with GAC for the development and formulation of four GAC products
10 for sale exclusively by Wakaya all the while still purporting to do so on
11 Youngevity's behalf. *Id.* at ¶¶ 19–20.

12 179. Todd Smith then prepared a contract for GAC which named as
13 contracting parties not Youngevity and GAC, but Wakaya and GAC. That led
14 GAC's owner to engage in email correspondence expressing confusion as to why
15 Wakaya and not Youngevity was listed as the named contracting party. Given
16 further assurances by Todd Smith, GAC then contracted with Wakaya to prepare
17 its four clay products developed at Todd Smith's request for exclusive sale by
18 Wakaya.

19 180. At no point did Todd Smith inform Youngevity or Dr. Joel D.
20 Wallach that GAC had been seeking to contract with Youngevity or that Smith had
21 canceled the previously scheduled meeting between GAC's owner and
22 Youngevity's Dr. Wallach. *See* Decl. of Steve Wallach, attached as Exh. C at ¶ 12;
23 Decl. of Joel D. Wallach, attached as Exh. D at ¶ 10.

24 181. The actions of Todd Smith and Blake Graham on behalf of Wakaya
25 disrupted the prospective economic relationship between GAC and Youngevity.

26 182. GAC now provides products exclusively for sale through Wakaya.
27 The Wakaya-GAC products include nutritional supplements or products that now
28 compete directly with Youngevity's nutritional products.

1 183. Wakaya's agents have described the GAC bentonite clay product as a
2 safe, unique and exclusive product that can only be sourced from the GAC mines
3 and only purchased through Wakaya.

4 184. Had Youngevity been aware of the opportunity to contract with GAC,
5 Youngevity would have evaluated that business opportunity seriously, negotiating
6 with GAC for the testing, acquisition, manufacture, and sale of the Great American
7 Clay products through Youngevity for commercial and non-ingestible uses, or into
8 negotiations to purchase the Great American Clay Company itself. See Ex. C
9 (Decl. of Steve Wallach) at ¶ 12. To the extent the GAC products contain unsafe
10 levels of lead and arsenic, Youngevity would have determined how best to remove
11 those harmful metals from GAC products through further processing to permit
12 alternative, safe commercial and non-ingestible uses for the GAC clay in
13 accordance with applicable federal and state laws.

14 185. The actions outlined above therefore caused Youngevity to suffer
15 economic harm because, but for Smith's, Graham's, and Wakaya's interference
16 with GAC and Youngevity's relationship, GAC would likely be producing
17 products for sale through Youngevity and at Youngevity's direction and all profits
18 to Wakaya from the sale of GAC products would instead flow to Youngevity.

19 186. Had Dr. Wallach known about the potential opportunities with David
20 Smith and Great American Clay, he would have been interested in pursuing those
21 opportunities. See Ex. D (Decl. of Joel D. Wallach) at ¶ 11. Dr. Wallach would
22 have been interested in pursuing the opportunity to learn more about the Great
23 American Clay products, in investigating the potential for safe commercial and
24 public uses of GAC products, in pursuing the opportunity to co-author a book
25 concerning the Great American Clay products, in pursuing the opportunity for
26 establishing an arrangement to promote Great American Clay through media
27 appearances, and in pursuing the opportunity to create a viable commercial
28 relationship between Youngevity and Great American Clay for the commercial or

1 public sale of GAC products. *Id.* The actions outlined above therefore caused Dr.
2 Wallach to suffer economic harm.

3 187. There was an economic relationship between Plaintiffs and GAC
4 because GAC contacted Youngevity distributor Mia Magistro who invited GAC to
5 contract with Youngevity, and GAC intended to contract with Youngevity.

6 188. Defendants Smith, Graham, and Wakaya were aware that GAC
7 intended to enter into an economic relationship with Youngevity and posed as
8 agents authorized by Youngevity to consummate a deal on Youngevity's behalf
9 with GAC but then diverted the deal to Wakaya.

10 189. Defendants Smith, Graham, and Wakaya took intentional acts to
11 interfere in the economic relationship between GAC and Plaintiffs because they
12 mislead and lied to David Smith of GAC and misrepresented their authority in
13 Youngevity.

14 190. Defendants Smith, Graham, and Wakaya actually interrupted
15 Plaintiffs' relationship with GAC because, as a result of Defendants' actions, GAC
16 and Plaintiffs were never able to profit from their economic relationship.

17 191. Plaintiffs suffered economic harm resulting from the acts of
18 defendants Smith, Graham, and Wakaya because they were not able to secure a
19 product purchase and sales contract with GAC.

20 **B. All Defendants' Tortious Interference with Youngevity's**
21 **Distributor Relationships**

22 192. Youngevity alleges tortious interference with prospective contractual
23 relations against all named defendants as follows.

24 193. While still employed by or serving as Youngevity distributors,
25 Defendants encouraged other high ranking Youngevity distributors and
26 Youngevity employees to work for, or enroll as distributors in, Wakaya and further
27 recruit to Wakaya other Youngevity distributors with the aim of depleting
28

1 Youngevity's entire distributor force while those so recruiting simultaneously
2 continued to receive distributor commission payments from Youngevity.

3 194. Defendants advised and encouraged those they induced to breach their
4 Youngevity distributor agreements to maintain secrecy about their involvement
5 with Wakaya until after public announcement of the company by Todd Smith.

6 195. Defendants induced married couples and business partners to breach
7 their Youngevity distributor agreements through nominal and false conveyances of
8 Youngevity distributorships from one spouse or business partner to another.

9 Defendants misleadingly informed married couples who were both Youngevity
10 distributors, and business partners who were both Youngevity distributors, that
11 they could keep their full Youngevity distributor commissions if those couples and
12 partners engaged in what Defendants called "the split." "The split" involved the
13 conveyance of nominal and false representations to Youngevity that a spouse or a
14 business partner had transferred his or her Youngevity distributorship to the other
15 spouse or the other business partner, thereby enabling the transferor to become a
16 Wakaya distributor yet in fact retain access to the full economic benefit of
17 commissions previously received by the couple or the partnership from
18 Youngevity, and retain full access to Youngevity business materials and
19 distributors. In fact, Defendants encouraged use of this act of legerdemain and
20 misrepresentation to induce Youngevity distributors to breach their Youngevity
21 contracts which forbid such transfers without prior Youngevity evaluation and
22 consent, which prior evaluation and consent was never given in any case, and
23 which forbid Youngevity distributors while serving as Youngevity distributors
24 from aiding in the recruitment of other Youngevity distributors into competing
25 MLM's.

26 196. Graham has admitted that individuals employed and under his
27 management of then-Youngevity distributor and defendant TNT (who were also
28 Youngevity distributors) were invited by Graham to consider becoming Wakaya

1 distributors while retaining their Youngevity distributor positions, thereby inducing
2 breach of their contracts with Youngevity. Those so employed who became
3 Wakaya distributors assisted in inducing other Youngevity distributors to breach
4 their contracts with Youngevity.

5 197. Wakaya has thus relied on Youngevity distributors to serve and
6 promote Youngevity competitor Wakaya and thereby breach their distributor
7 agreements with Youngevity for the economic benefit of Wakaya. Wakaya's
8 conduct has been to the economic benefit of Wakaya and the corresponding
9 economic loss of Youngevity.

10 198. Defendants made their statements to Youngevity distributors solely
11 for Defendants' own financial gain, and as a promotional tool to lure Youngevity
12 business into Wakaya.

13 199. In October 2015, while under contract with Youngevity and while
14 -serving as Youngevity's President, Andreoli contacted specific Youngevity
15 distributors and employees and invited them to become distributors or employees
16 of Wakaya, and further recruit other Youngevity distributors to do the same.
17 Andreoli made additional contacts with other Youngevity distributors in November
18 2015 to induce those distributors to breach their Youngevity distributor agreements
19 by simultaneously becoming Wakaya distributors or employees and further recruit
20 other Youngevity distributors to do the same.

21 200. In reliance on their prominent positions as leading distributors in
22 Youngevity, Defendants Pitcock, Vaughn, and Todd Smith, while still Youngevity
23 distributors, encouraged or solicited other Youngevity distributors to breach their
24 distributor agreements with Youngevity by simultaneously becoming Wakaya
25 distributors and further recruiting other Youngevity distributors to do the same.
26 Those subsequent acts of cross-recruiting at the Defendants behest were in
27 violation of Youngevity's distributor agreement. For their personal and pecuniary
28

1 gain, the Defendants thus encouraged, aided, and abetted the disruption of
2 Youngevity's business and relationships with Youngevity's distributors.

3 201. In January 2015, Vaughn, Andreoli, and Todd Smith participated in
4 meetings with Youngevity distributors wherein they falsely represented that
5 Youngevity had made bad business decisions against their advice with resulting
6 financial losses that would imperil Youngevity, encouraging those Youngevity
7 distributors to fear remaining in Youngevity. Andreoli took those actions while
8 serving as President of Youngevity. That conduct misled Youngevity distributors
9 into violating their distributor agreements with Youngevity by enrolling in the
10 competing Wakaya as distributors and actively soliciting other Youngevity
11 distributors to do the same. Defendants' statements about Youngevity were false
12 and motivated by Defendants' need to secure new business for the nascent Wakaya
13 venture.

14 202. Defendants Vaughn, Pitcock, and Smith also used internet webcasts
15 and telephone conference calls to interfere with Youngevity's economic
16 relationships with its distributors. In those webcasts and telephone calls,
17 defendants Vaughn, Pitcock, and Smith made false or misleading statements of fact
18 about Wakaya's business operations, and, either implicitly or explicitly, about
19 Youngevity's business operations, including false representations that Youngevity
20 was in financial distress. Defendants Vaughn, Pitcock, and Smith made those
21 statements during promotional presentations for Wakaya, which were intended
22 solely to generate commercial gains for Defendants.

23 203. On February 22, 2016, defendant Graham without prior authorization
24 from Youngevity sent an email and text letter to all Youngevity distributors using
25 Youngevity's confidential distributor list. In that email Graham, then still a top
26 level Youngevity distributor and co-owner of TNT, falsely conveyed the
27 impression that Youngevity acquiesced in Smith's formation of a competing
28 company (which was then engaged in cross-recruitment of Youngevity

1 distributors) and wished Smith success in that new venture. See Graham e-mail,
2 attached as Exh. E.

3 204. The statements made by Graham, Pitcock, Vaughn, and Smith in their
4 webcasts, emails, and conference calls, were made solely to further Defendants’
5 pecuniary interests, whereby they would receive from Wakaya commissions upon
6 causing other Youngevity distributors simultaneously to become Wakaya
7 distributors and thereafter induce and further recruit other Youngevity distributors
8 to likewise breach their Youngevity distributor agreements by simultaneously
9 becoming Wakaya distributors and so on.

10 205. Defendants Cloward and Gardner acted tortiously by using
11 Youngevity’s confidential distributor lists and information to interfere with
12 Youngevity’s economic relationships. During the course of their employment
13 and/or association with Youngevity, each of the Defendants came into possession
14 of Youngevity confidential distributor lists. They have each used those lists to
15 assist Wakaya to interfere with Youngevity’s relationship with its distributors by
16 variously falsely alleging that Youngevity is in financial extremis and falsely
17 alleging Youngevity is engaged in unlawful conduct; by inducing Youngevity
18 distributors to believe that if they simultaneously become Wakaya distributors they
19 will earn from Wakaya tens of thousands or hundreds of thousands of dollars in
20 commissions each month; and by inducing Youngevity distributors to believe that
21 if they engage in “the split” they will be able to retain their full Youngevity
22 commissions while simultaneously profiting from distributorships in Wakaya.

23 206. As a direct result of the Defendants’ tortious interference with
24 Youngevity’s relationships with its distributors, Youngevity has suffered a loss in
25 its distributor sales force and in sales revenues.

26 207. Many of Wakaya’s initial participants and endorsers were Youngevity
27 distributors or former Youngevity distributors recruited by Todd Smith or at Todd
28

1 Smith’s request, evidencing Wakaya’s concerted effort to procure Youngevity
2 business.

3 208. As of April 22, 2016, approximately 125 of Wakaya’s 268
4 participants (about 46.6%) are Ambassadors¹⁵ who are current or former
5 Youngevity distributors. Exh. C (Decl. of Steve Wallach), at ¶ 11.

6 209. As of April 22, 2016, approximately 77 of Wakaya’s 125 “Founder
7 Qualified” Wakaya ambassadors (about 61%) are current or former Youngevity
8 distributors. *Id.*

9 210. As of July 10, 2016, all of the individuals who are administrators on
10 the Facebook.com page entitled “Wakaya Leaders” are former Youngevity
11 distributors, employees, or officers. *See* Exh. A (Decl. of Eric J. Awerbuch), at
12 Attach. 6 (Wakaya Leaders Facebook Page).

13 211. Wakaya has launched “challenges” for its participants, asking them to
14 target and secure Youngevity distributors for Wakaya.

15 212. All Defendants were aware that Youngevity maintains an economic
16 relationship with its distributors because all Defendants were former distributors,
17 employees, or executives of Youngevity themselves.

18 213. All Defendants took intentional actions to disrupt the economic
19 relationships between Youngevity and their distributors because they contacted
20 Youngevity distributors and encouraged them simultaneously to join Wakaya and
21 to urge other Youngevity distributors simultaneously to join Wakaya.

22 214. Defendants interfered with Youngevity’s distributor relations through
23 improper means, to wit, by encouraging or soliciting those distributors to breach
24 Youngevity’s distributor agreement.

25 215. All Defendants are primarily engaged in the business of selling goods
26 and services through Wakaya.

27
28 ¹⁵Wakaya refers to its distributors as “ambassadors.”

1 216. Youngevity's economic relationship with many of its distributors was
 2 disrupted because many Youngevity distributors did in fact lessen or halt their
 3 promotion and sales of Youngevity products while simultaneously mounting
 4 efforts to promote and sell the competing Wakaya products, thus causing
 5 Youngevity to experience a loss in sales revenues and in active distributors for its
 6 products.

7
 8 **COUNT FIVE**

9 **BREACH OF CONTRACT**
 10 **(Defendants Andreoli, Pitcock, Gardner, Cloward)**

11 217. Defendants Andreoli, Pitcock, Gardner, and Cloward all entered into
 12 valid contacts with Youngevity. See Andreoli Employment Contract, attached as
 13 Exh. F; Pitcock Consulting Agreement, attached as Exh. G; Heritage Makers
 14 Agreement, attached as Exh. H.

15 218. Youngevity has performed its obligations required under those
 16 contracts. Youngevity therefore alleges the following facts and legal allegations.

17
 18 **A. Defendant Andreoli Breached His Contract with Youngevity**

19 219. In August 13, 2011, as part of the sale of Andreoli's company, FDI, to
 20 Youngevity, Andreoli and Youngevity entered into an Employment Agreement
 21 which included non-circumvent and non-disclosure clauses. See Exh. F (Andreoli
 22 Employment Agreement). That agreement contains the following relevant terms:

- 23 =
- 24 • Andreoli must "devote his full working time, attention, and energy to
 25 [Youngevity ...] and shall not ... be engaged in any other business
 26 activity if pursued for gain, profit, or other pecuniary advantage without
 27 [Youngevity's] prior written consent" Id. at § 7.
 - 28 • Andreoli cannot disclose any confidential information, including
customer information, to any third party. Id. at § 9(a)

1 • Andreoli cannot use any of Youngevity's trade secrets to compete with
2 Youngevity. *Id.* at § 9(b).

3 • Andreoli was required to promptly disclose any new discoveries or
4 improvements that he developed to Youngevity. *Id.* at §10.

5 220. Youngevity entered that Agreement as part of its acquisition of
6 Andreoli's holdings. Andreoli was made President of Youngevity after
7 Youngevity's acquisition of FDI. The contractual clauses were designed, in part,
8 to ensure that Youngevity received the ongoing value and goodwill of FDI.

9 221. Andreoli breached his contract with Youngevity because he
10 participated in, and helped facilitate, the directly competing Wakaya network
11 marketing venture while serving as President of Youngevity and while under
12 contractual obligations to refrain from such participation, facilitation, and
13 competition against Youngevity. Andreoli's contractual agreements with
14 Youngevity expressly precluded and prohibited his involvement with other
15 network marketing companies while also employed with Youngevity.

16 222. Andreoli, while serving as Youngevity's President in August 2015,
17 acted to encourage widespread dissention from Youngevity during key distributor
18 meetings and on occasional visits to other Youngevity offices. He worked against
19 Youngevity in favor of Wakaya while holding a top level corporate position within
20 Youngevity.

21 223. In October 2015 Andreoli, again while under contract with
22 Youngevity and while serving as Youngevity's President, contacted other
23 Youngevity distributors in an effort to induce contract breaches by causing them to
24 become distributors for Wakaya Perfection while simultaneously serving as
25 Youngevity distributors. Andreoli contacted distributors in November 2015, again
26 soliciting their involvement in the Wakaya venture while simultaneously serving as
27 Youngevity distributors. Andreoli hosted Wakaya corporate events at the New
28

1 Hampshire offices wherein Youngevity distributors invited to attend were
2 simultaneously solicited to become Wakaya distributors.

3 224. In August 2015, Andreoli, acting as President of Youngevity,
4 arranged to have Youngevity's top level employees, including its marketing team
5 comprised of Mike Casperson, Brytt Cloward, and Patti Gardner, fly to Andreoli's
6 Youngevity office in New Hampshire purportedly to work on Youngevity's
7 marketing projects. On information and belief, however, Andreoli had those three
8 Youngevity employees travel to New Hampshire to discuss in secret the formation
9 of Wakaya and their prospective employment by that competing company.

10 225. Andreoli's conduct described herein this Count violated his
11 contractual obligations to Youngevity while still employed with Youngevity.

12 226. Youngevity has suffered and continues to suffer damage as a result of
13 Andreoli's breach of his contract with Youngevity because that breach resulted in
14 lost Youngevity employees Casperson, Barney, Cloward, and Gardner and lost
15 revenues to the competing venture he helped create and promote, Wakaya.

16
17 **C. Defendant Pitcock Breached His Contract with Youngevity**

18 227. Defendant Pitcock was the owner of Livinity, Inc. On or about July
19 10, 2012, Pitcock sold Livinity, Inc.'s assets to Youngevity. As part of that
20 transaction, Livinity and Youngevity entered into a Consulting Agreement with
21 valid non-disclosure and non-circumvent clauses, wherein Pitcock agreed to serve
22 as a Consultant for Youngevity. See Exh. G (Pitcock Consulting Agreement).

23 228. That agreement prohibited Livinity and Pitcock from disclosing any
24 confidential information and from using confidential information, including
25 business contacts, information regarding distributors/vendors/supplies and other
26 business associates of Youngevity, for the purpose of circumventing Youngevity's
27 business operations, specifically requiring Pitcock to:
28

- 1 • maintain in strict confidence, and not use or disclose except pursuant
2 to written instructions from [Youngevity], any Confidential
3 Information (as defined below) of [Youngevity], for so long as the
4 pertinent data or information remains Confidential;
- 5 • not use any of the Confidential Information and/or business contacts,
6 information regarding distributors/vendors/suppliers and other
7 business associates of [Youngevity], or other types of confidential and
8 proprietary business information transmitted to [Pitcock] by
9 [Youngevity], for the purpose of circumventing [Youngevity's]
10 business operations.

11 *Id.* at §§ 4(c)–(d).

12 229. Furthermore, Livinity was required, at all times, to refer to
13 Youngevity in terms that further Youngevity's business objectives and not refer to
14 Youngevity in a manner that damages Youngevity's position in the
15 marketplace. *Id.* at § 6 (requiring Pitcock to “refer to [Youngevity] and its
16 operating units in terms that further its business objectives” and to “not refer to
17 [Youngevity] or its operating units in a manner that damages [Youngevity's]
18 position in the marketplace”).

19 230. Those contractual provisions were designed to ensure that Youngevity
20 received full benefit of its bargain in acquiring Pitcock's holdings in Livinity.
21 Enabling Pitcock to activity promote product or ventures against Youngevity
22 would clearly devalue Youngevity's interest in Livinity and its remaining business.

23 231. The Pitcock Consulting Agreement provides for extensive relief to
24 Youngevity, including an “injunction, monetary damages, punitive damages, and
25 specific liquidated damages in the amount of the prior year's earnings for
26 disclosure of Confidential Information and/or use of such information to solicit
27 Youngevity's customers.” *Id.* at § 4(e).

28 232. Pitcock has violated his contract with Youngevity. On conference
calls and/or internet webcasts, in meetings with Youngevity distributors, and in
person, either implicitly or explicitly, he has referred to Youngevity in terms that

1 do not further Youngevity's business objectives and instead disparage Youngevity,
2 including personal attacks calling into question the fitness to serve and fiduciary
3 integrity of Youngevity's CEO Steve Wallach and Youngevity's COO Michelle
4 Wallach on a company cruise in January, 2015.

5 233. Youngevity has suffered and continues to suffer injuries as a result of
6 Pitcock's breach because Pitcock's comments disparaging Youngevity and efforts
7 to induce Youngevity distributors to violate their distributor agreements by
8 becoming Wakaya distributors who solicit additional Youngevity distributors to
9 likewise become Wakaya distributors, have harmed Youngevity's reputation and
10 have caused Youngevity to suffer economic loss from lost Youngevity product
11 sales diverted unlawfully to Wakaya.

12 **D. Defendants Gardner and Cloward Breached Their HM**
13 **Agreement with Youngevity**

14 234. On or about August 7, 2013, Youngevity purchased Heritage Makers,
15 Inc. HM owners Patti Gardner and Brytt Cloward signed that Agreement (the
16 "HM Agreement"). See Exh. H (Heritage Makers Agreement).

17 235. Both Gardner and Cloward are bound by the HM Agreement.

18 236. Article XI of the HM Agreement contains confidentiality and non-
19 competition clauses:

20 **Confidentiality.** At all times after the Closing Date, HM and the
21 Representing Parties shall retain in strictest confidence, and shall
22 not use for its benefit or for the benefit of others all confidential
23 information comprising or related to the Assets described in this
24 Agreement including, without limitation, the technology, trade
25 secrets, customer lists transferred hereby to YGYI, pricing
26 policies, marketing plans or strategies, product development
27 techniques or plans, or technical processes, designs and design
28 projects respecting the Business.

Non-Competition. (a) (i) For a period of four (4) years from and
after the Closing Date, HM shall not, directly or indirectly: (i)
engage in a business or enterprise (either as proprietor, partner,

1 employee, agent, consultant, or controlling stockholder) that
2 qualifies as a “competing business” (as defined in subsection (b)
3 hereof) or (ii) solicit or attempt to solicit sales or licenses of any
4 competing businesses, interfere with, or disrupt or attempt to
5 disrupt the relationship (contractual or otherwise) between HM,
6 YGYI and their customers, suppliers, agents, consultants, officers
7 or employees relating to the Product; and (ii) each of the
8 Representing Parties agrees to the confidentiality and non-
9 competition provisions set forth in their respective employment
10 agreements, if any.

11 See id. at Art. XI.

12 237. Under that article, neither Gardner nor Cloward may use, for their or
13 Wakaya’s benefit, customer lists or other information that HM transferred to
14 Youngevity. Id. Further, those individuals cannot engage in a business or
15 enterprise that qualifies as a “competing business” until at least August, 2017, or
16 solicit or attempt to solicit sales or licenses of any competing businesses, interfere
17 with, disrupt, or attempt to disrupt the relationship between HM, Youngevity and
18 their customers, suppliers, agents, consultants, officers or employees relating to the
19 Heritage Makers’ products sold to Youngevity. Id.

20 238. That contractual language was drafted to protect Youngevity’s
21 investment in the Heritage Makers acquisition, in part, by preventing its former
22 owners (Gardner and Cloward) from competing directly against Youngevity’s
23 acquisition.

24 239. Gardner and Cloward have violated the HM Agreement by using
25 Youngevity’s customer lists to benefit Wakaya; by working for Wakaya which is a
26 business that directly competes with Youngevity; and by interfering in the
27 relationships between Youngevity and its customers and distributors.

28 240. Cloward’s and Gardner’s breach of the HM Agreement with
Youngevity has caused Youngevity damage because their use of Youngevity’s
customer lists for the benefit of Wakaya and employment for Wakaya has
benefitted Wakaya to the detriment of Youngevity; has exposed Youngevity’s

1 confidential methods and information to a direct competitor; and has diverted
2 employment resources and skills away from Youngevity to a direct competitor.

3 241. Defendants Andreoli, Pitcock, Gardner, and Cloward agreed and
4 conspired to breach their contracts with Youngevity. Those breaches caused
5 Youngevity damage in an amount to be proven at trial.

6 **COUNT SIX**

7
8 **INTENTIONAL INTERFERENCE WITH CONTRACT/INDUCING**
9 **BREACH OF CONTRACT**
10 **(Defendants Wakaya, TNT, Smith, Graham, Pitcock, Andreoli, and Vaughn)**

11 242. Defendants Wakaya, TNT, Smith, Graham, Pitcock, Andreoli, and
12 Vaughn have interfered with Youngevity contracts and have induced third parties
13 to breach their contracts with Youngevity, as follows:

14 **A. Defendants' Wakaya, TNT, Smith, Graham, Pitcock, and**
15 **Vaughn's International Interference with Youngevity's Contracts**
16 **with Distributors**

17 243. Youngevity hereby alleges the following facts with respect to
18 Defendants Wakaya, TNT, Smith, Graham, Pitcock, and Vaughn.

19 244. Youngevity's Policies and Procedures impose strict prohibitions
20 against "cross-recruiting" as provided in Section E12 of the Youngevity
21 Distributor Agreement:

22 Distributors are strictly forbidden from Cross-Recruiting, and shall
23 not sell, recruit, propose, or in any other way induce or attempt to
24 induce any other Distributor to purchase any product or service, or
25 to participate in any other income opportunity, investment,
26 venture, or commit any other activity deemed, at the full discretion
27 of the Company, as cross-recruiting. This includes any such
28 activities across any divisions of the Company, should any separate
divisions with different compensation plans or hierarchy structures
exist, unless, and as specifically stated otherwise. The integrity of
the hierarchy and the relationships therein is of paramount
importance to every Distributor as well as to the Company. Any

1 Distributor violating this provision may be subject to immediate
2 termination for cause, forfeiting any and all commissions due him
3 or her.

4 See Exh. C (Decl. of Steve Wallach), at Attach. 2 (Youngevity’s Policies and
5 Procedures).

6 245. Youngevity maintains valid and enforceable distributor agreements
7 containing this provision with all of its distributors. See Exh. C (Decl. of Steve
8 Wallach), at ¶ 5.

9 246. Defendants Wakaya, TNT, Smith, Graham, Pitcock, and Vaughn are
10 all aware of the foregoing provision not only because Smith (who owns Wakaya)
11 and Graham (who owns TNT) were themselves Youngevity distributors bound by
12 the contract but also because each urged or aided in enforcement of this very same
13 provision against other Youngevity distributors who violated the provision.

14 247. The intentional actions of Defendants Smith, Wakaya, TNT, Graham,
15 Vaughn, and Pitcock, described above in Paragraphs 192–216 were intended to
16 induce Youngevity distributors to breach their Youngevity contracts by inducing
17 them to cross-recruit for Wakaya while still serving as Youngevity distributors.

18 248. Defendants encouraged other Youngevity distributors to “cross-
19 recruit” within the Youngevity business, conduct that would violate the
20 Youngevity agreements and render those cross-recruiting defendants in breach and
21 subject to termination by Youngevity.

22 249. The intentional acts of Defendants Smith, Wakaya, TNT, Graham,
23 Vaughn, and Pitcock, described above in Paragraphs 192–216, did cause
24 Youngevity distributors to cross-recruit other Youngevity distributors to become
25 Wakaya distributors, in violation of Youngevity’s distributor agreement.

26 250. Youngevity suffered economic losses from lost sales revenues as a
27 direct result of defendants Smith, Wakaya, TNT, Graham, Vaughn, and Pitcock
28 inducing those distributors to breach their distributor agreements with Youngevity
by simultaneously becoming Wakaya distributors.

1 251. But for Defendants inducement of Youngevity distributors to breach
2 their distributor agreements, those distributors would have sold more Youngevity
3 product and devoted more time to promotion and sales of Youngevity products.

4 252. Defendants Smith, Wakaya, TNT, Graham, Vaughn, and Pitcock’s
5 interference was wrongful beyond the fact of the interference itself. Defendant
6 Pitcock violated Section 4 of his Livinity Sales Contract with Youngevity, Exh. G
7 (Pitcock Consulting Agreement), at ¶ 4, by inducing distributors to breach their
8 agreements with Youngevity, see supra at ¶¶ 227–33. Defendants Wakaya,
9 Vaughn, Pitcock and Smith made false statements of fact concerning Youngevity
10 to induce distributors to violate their agreements with Youngevity, see supra at ¶¶
11 27–122. Defendants TNT and Graham infringed Youngevity’s trademark while
12 inducing Youngevity distributors to violate their agreements with Youngevity, see
13 infra at ¶¶ 318–28. Defendants TNT and Graham misappropriated Dr. Wallach’s
14 name and likeness while inducing Youngevity distributors to violate their
15 agreements with Youngevity, see infra at ¶¶ 286–317.

16 **B. Wakaya’s and Andreoli’s Intentional Interference with**
17 **Youngevity’s Employment Contracts**

18 253. On or about August 7, 2013, Youngevity acquired Heritage Makers,
19 Inc. (the “HM Agreement”); Defendants Patti Gardner and Brytt Cloward, owners
20 of HM, signed the HM Agreement and are bound by it. See Exh. H (HM
21 Agreement).

22 254. Article XI of the HM Agreement contained confidentiality and non-
23 competition clauses:

24 **Confidentiality.** At all times after the Closing Date, HM and the
25 Representing Parties shall retain in strictest confidence, and shall
26 not use for its benefit or for the benefit of others all confidential
27 information comprising or related to the Assets described in this
28 Agreement including, without limitation, the technology, trade
secrets, customer lists transferred hereby to YGYI, pricing
policies, marketing plans or strategies, product development

1 techniques or plans, or technical processes, designs and design
2 projects respecting the Business.

3 **Non-Competition.** (a) (i) For a period of four (4) years from and
4 after the Closing Date, HM shall not, directly or indirectly: (i)
5 engage in a business or enterprise (either as proprietor, partner,
6 employee, agent, consultant, or controlling stockholder) that
7 qualifies as a “competing business” (as defined in subsection (b)
8 hereof) or (ii) solicit or attempt to solicit sales or licenses of any
9 competing businesses, interfere with, or disrupt or attempt to
10 disrupt the relationship (contractual or otherwise) between HM,
11 YGYI and their customers, suppliers, agents, consultants, officers
12 or employees relating to the Product; and (ii) each of the
13 Representing Parties agrees to the confidentiality and non-
14 competition provisions set forth in their respective employment
15 agreements, if any.

16 See id. at p. 33.

17 255. Neither Gardner nor Cloward may engage in a business or enterprise
18 that qualifies as a “competing business” until at least August, 2017, or solicit or
19 attempt to solicit sales or licenses of any competing businesses, interfere with,
20 disrupt, or attempt to disrupt the relationship between HM, Youngevity and their
21 customers, suppliers, agents, consultants, officers or employees relating to the
22 Heritage Makers’ products sold to Youngevity. *Id.*

23 256. The HM Agreement was executed in conjunction with a sale of
24 Heritage Makers to Youngevity. The non-compete clause in Article XI of the HM
25 Agreement was intended to preclude Cloward and Gardner from undermining
26 Youngevity’s investment in Heritage Makers. To the extent Cloward and Gardner
27 compete directly against Youngevity, they act to undermine the value Youngevity
28 has invested in HM.

29 257. In August, 2015, Andreoli, acting as President of Youngevity, had
30 Youngevity’s high level employees, including defendants Gardner and Cloward,
31 fly to Andreoli’s Youngevity office in New Hampshire purportedly to work on
32 Youngevity’s marketing. On information and belief, however, Andreoli had those

1 Youngevity employees travel to New Hampshire to discuss in secret the formation
2 of Wakaya and their prospective employment in Wakaya (a competing company).

3 258. While at Youngevity, Cloward reported directly to Andreoli and
4 became a close associate of Andreoli.

5 259. While at Youngevity, Gardner reported directly to Andreoli and
6 became a close associate of Andreoli.

7 260. Cloward resigned from Youngevity at the same time as Andreoli in
8 October 2015 to “pursue some other options” and “work on some new projects.”
9 Gardner gave notice to Youngevity that she was resigning in October 2015, before
10 officially resigning from Youngevity in December, 2015.

11 261. Patti Gardner is the Vice President of Wakaya. Brytt Cloward is also
12 employed at Wakaya.

13 262. Through the HM Agreement, Youngevity maintained a valid contract
14 with Gardner and Cloward.

15 263. Andreoli, and Wakaya through Andreoli, were aware that Youngevity
16 maintained a valid contract with Gardner and Cloward because Andreoli was the
17 President of Youngevity and knew of its contractual relationships.

18 264. Andreoli’s conduct taken on Wakaya’s behalf was intended to cause
19 Gardner and Cloward to breach the HM Agreement by becoming employees of
20 Wakaya, a venture in direct competition with Youngevity.

21 265. Cloward’s and Gardner’s departure through Andreoli’s plan caused
22 Cloward and Gardner to violate the HM Agreement because they now work for
23 Wakaya, a company that competes directly against Youngevity.

24 266. Youngevity suffered damage as a result of Cloward and Gardner
25 leaving Youngevity for Wakaya because Gardner and Cloward converted and then
26 used Youngevity’s proprietary information to benefit Wakaya and because
27 Youngevity was forced to pay to search for and then to replace Gardner and
28 Cloward with new employees.

1 267. Andreoli’s acts were wrongful by some measure beyond the fact of
2 the interference itself because Andreoli breached his own contractual and fiduciary
3 duties to Youngevity when inducing Gardner and Cloward to breach the HM
4 Agreement. As the President of Youngevity at the time, Andreoli had a legal and
5 contractual duty to pursue the best interests of Youngevity, which is directly
6 disserved by inducing the loss of valued employees and engaging them in work for
7 a competing enterprise.

8 268. Defendants formed and operated a conspiracy to interfere with
9 Youngevity’s contractual relations and induce breach of those contractual relations
10 by conspiring to contact Youngevity distributors and encourage them to breach
11 their agreements with Youngevity. Defendants’ conspiracy caused Youngevity
12 damage, including lost profits and sales resulting from distributors leaving
13 Youngevity.

14 **COUNT SEVEN**

15 **MISAPPROPRIATION OF TRADE SECRETS**

16 **(Cal. Civ. Code § 3426)**

17 **(Defendants Wakaya, Andreoli, Pitcock, Gardner, and Cloward)**

18 269. Youngevity holds trade secrets in the form of confidential and
19 proprietary customer and distributor lists and confidential and proprietary
20 intellectual property related to Youngevity marketing, marketing strategy, and
21 business know-how.

22 270. Defendants Andreoli, Pitcock, Gardner, Cloward, and Wakaya
23 (through those individual defendants) acquired Youngevity’s trade secrets,
24 including confidential and proprietary customer and distributor lists, by virtue of
25 their positions as employees of Youngevity.

26 271. Defendants Gardner and Cloward also acquired Youngevity’s
27 confidential and proprietary intellectual property used for marketing Youngevity
28 products by virtue of their positions as employees of Youngevity.

1 272. Defendants Andreoli, Pitcock, Gardner, Cloward were under specific
2 contractual obligations not to use Youngevity's trade secret information to harm
3 Youngevity or to benefit Youngevity competitors.

4 273. Defendant Andreoli's contract stated that Andreoli cannot disclose
5 any confidential information, including customer information, to any third
6 party. Exh. F (Andreoli Employment Agreement), at § 9(a). That contractual
7 provision prohibited Andreoli from using any of Youngevity's trade secrets to
8 compete with Youngevity. *Id.* at § 9(b).

9 274. Defendant Pitcock's contract with Youngevity prohibits Pitcock from
10 disclosing any confidential information and from using confidential information,
11 including business contacts and information regarding
12 distributors/vendors/supplies and other business associates of Youngevity, for the
13 purpose of circumventing Youngevity's interests in the Livinity sale or Pitcock's
14 consulting services. Exh. G (Pitcock Consulting Agreement), at §§ 4(c)-(d).

15 275. Under their contract with Youngevity, neither Gardner nor Cloward
16 may use, for their or Wakaya's benefit, customer lists or other proprietary
17 information that HM transferred to Youngevity. Exh. H (HM Agreement), at Art.
18 XI.

19 276. Defendants Andreoli, Pitcock, Gardner, Cloward, and Wakaya
20 misappropriated Youngevity's trade secrets, including distributor and customer
21 lists, and Youngevity marketing and business information removed by or at the
22 direction of Andreoli, Pitcock, Gardner, and Cloward from Youngevity computers
23 to benefit Wakaya at the expense of Youngevity.

24 277. Defendants Andreoli, Pitcock, Gardner, and Cloward used
25 Youngevity's trade secrets through improper means because those defendants were
26 under a contractual obligation not to use those trade secrets to harm Youngevity
27 and/or to benefit Youngevity's competitor, Wakaya.

1 278. The proprietary information, including customer and distributor lists,
2 is, and at all relevant times has been, the subject of Youngevity's reasonable efforts
3 under the circumstances to maintain their use exclusively by Youngevity and its
4 top level distributors. Youngevity has taken reasonable measures to prevent the
5 unauthorized disclosure or use of its proprietary customer and distributor lists by
6 limiting access to the whole list to only specific officers, distributors, and
7 employees who have a need to know.

8 279. Defendants Andreoli, Pitcock, Gardner, and Cloward misappropriated
9 Youngevity's trade secrets by, among other things, retaining and/or using
10 Youngevity's distributor and customer information, and confidential Youngevity
11 work product, for the purpose of soliciting, directing or advising Youngevity's
12 customers and distributors to switch their business away from Youngevity and to
13 Wakaya's competing business.

14 280. Defendants Cloward and Gardner misappropriated Youngevity's trade
15 secrets by using Youngevity's proprietary intellectual property to create marketing
16 material for Wakaya.

17 281. Defendants Cloward and Gardner misappropriated Youngevity
18 computers when they left Youngevity to work for Wakaya. Cloward and Gardner
19 refused to return complete laptops that held valuable and confidential Youngevity
20 information.

21 282. Wakaya's distribution of promotional content and its prompt
22 connection and enrollment of Youngevity distributors evidences the use of
23 Youngevity's confidential and proprietary information by Wakaya and Defendants.
24 The majority of Wakaya founders and ambassadors are sourced from Youngevity's
25 ranks.

26 283. As a direct and proximate result of Defendants Andreoli, Pitcock,
27 Gardner, and Cloward misappropriating Youngevity trade secrets, Youngevity has
28 suffered and will continue to suffer economic injuries. Furthermore, Defendants

1 have been unjustly enriched by their misappropriation and use of Youngevity's
2 trade secrets and confidential information.

3 284. Defendants' conduct was done and continues to be done willfully and
4 maliciously. Youngevity is therefore entitled to exemplary damages pursuant to
5 Civil Code section 3426.3, subdivision (c), and reasonable attorneys' fees pursuant
6 to Civil Code section 3426.4.

7 285. Defendants agreed and conspired to misappropriate Youngevity's
8 trade secrets and confidential information to recruit Youngevity distributors into
9 Wakaya and to promote Wakaya using Youngevity's trade secrets. That
10 misappropriation caused Youngevity damage in lost product sales.

11 **COUNT EIGHT**

12 **MISAPPROPRIATION OF NAME AND LIKENESS**

13 **(Cal. Civ. Code § 3344)**

14 **(Defendants TNT and Graham)**

15 286. Dr. Wallach is a celebrity within the field of nutrition and in the
16 direct-sales, network-marketing field. He is a frequent speaker or lecturer on
17 nutritional science and medicine.

18 287. There is substantial value in selling and promoting nutritional
19 supplements and similar products through use of Dr. Wallach's name and likeness.

20 288. Dr. Wallach has granted Youngevity an exclusive license to trade on
21 his name and likeness. Exh. D (Decl. of Joel D. Wallach) at ¶ 6.

22 289. Defendants TNT and Graham and any others acting in concert with
23 them as discovery may reveal (collectively "TNT" under this cause of action) were
24 previously Youngevity authorized distributors.

25 290. TNT, while an authorized Youngevity distributor, traded on Dr.
26 Wallach's name and likeness for decades without objection from Youngevity.

27 291. While an authorized Youngevity distributor, TNT created the websites
28 www.wallachonline.com and www.yteamtools.com and the phone number 1-800-

1 WALLACH. Exh. C (Decl. of Steve Wallach), at ¶¶ 6–7. TNT also created and
2 owns www.myyoungevity.com which automatically redirects to
3 www.wallachonline.com. Through those websites and phone number, TNT sold
4 Youngevity approved products along with tools designed for Youngevity
5 distributors. Distributors could purchase those business “tools” to help promote
6 their own downlines within the Youngevity system.

7 292. While TNT was an authorized Youngevity distributor, it enjoyed a
8 bundle of rights Youngevity provides to its authorized distributors. Those rights
9 include, *inter alia*, the right to enroll other distributors in Youngevity downlines,
10 order Youngevity products, and sell those products under the Youngevity mark and
11 Wallach name and likeness. Exh. C (Decl. of Steve Wallach), at Attach. 2
12 (Youngevity’s Policies and Procedures) at §§ F1, H1; *Id.* at 31 at § E1, 41 at §§
13 I9(c)–(e), (j).

14 293. Under the Distributor Agreement that Youngevity executes with all
15 distributors, Youngevity expressly reserves the right in its sole discretion to revoke
16 consent to the use of its logos, slogans, and trademark “without notice or reason
17 and solely at the discretion of Youngevity.” See Exh. C (Decl. of Steve Wallach)
18 at Attach. 2 (Youngevity’s Policies and Procedures) at § 19(c), 46 at § J 10(c).
19 That authority is necessary to protect the Youngevity brand and maintain a
20 compliant direct-selling business and state and federal laws.

21 294. While Youngevity never affirmatively authorized TNT to make
22 commercial use of Dr. Wallach’s name or likeness or Youngevity’s mark, Exh. C
23 (Decl. of Steve Wallach, at ¶ 7) TNT enjoyed an implied license to trade on Dr.
24 Wallach’s name and likeness while TNT remained an authorized Youngevity
25 distributor.

26 295. So long as TNT served as a Youngevity distributor, TNT had the right
27 to order and sell Youngevity products; implicit in that right is the right to use Dr.
28 Wallach’s name and likeness, but solely in the capacity as a Youngevity distributor

1 and in accordance with Youngevity’s distributor agreement and Youngevity
2 policies and procedures.

3 296. TNT’s implied license to trade on Dr. Wallach’s name and likeness
4 ended with the notice of termination of the distributorships memorialized in
5 Youngevity’s March 21, 2016 letter to TNT wherein Youngevity stated that TNT
6 “may not continue” to sell or distribute items bearing Dr. Wallach’s name and
7 likeness and prohibited TNT “from making any further use of web sites or web
8 addresses that purport to be those of, or make commercial use of the names of, Dr.
9 Joel D. Wallach, Youngevity, or any Youngevity product, material, or service.”
10 Exh. C (Decl. of Steve Wallach), at Attach. 4.

11 297. Youngevity suspended TNT and Graham’s distributor accounts in
12 March 2016 after learning that those Defendants had actively promoted, aided, and
13 abetted the formation of Wakaya as a competing business. Youngevity discovered
14 that TNT and Graham had exploited their relationships within Youngevity to aid
15 and abet the Wakaya venture, which would have violated the operative Youngevity
16 agreements.

17 298. Despite that March 21, 2016 letter, TNT has used and continues to
18 knowingly use Dr. Joel Wallach’s name, likeness, and identity without his or
19 Youngevity’s permission and for its own commercial benefit.

20 299. Despite Youngevity’s revocation of the TNT Youngevity
21 distributorship and demand that TNT no longer make commercial use of the
22 Youngevity mark and Dr. Wallach’s name and likeness, TNT sent postcards
23 bearing Dr. Wallach’s name and likeness with Youngevity’s mark to Youngevity
24 distributors. See Decl. of Richard Renton, attached as Exh. I at ¶ 5, at Attach. 1.
25 Those postcards encouraged Youngevity distributors to purchase Youngevity
26 product from TNT by calling 1-800-WALLACH or visiting Wallachonline.com.
27 Id. at Attach. 1.

1 300. Despite Youngevity revocation of his Youngevity distributorship and
2 demand that he no longer make commercial sue of the Youngevity mark and Dr.
3 Wallach’s name and likeness, Defendant Graham hosted a “Youngevity”
4 distributor meeting in Salt Lake City, Utah, wherein he sold newly published
5 “YTeam Tools” to distributors, which purport to aid in the sale of Youngevity
6 products, and from which TNT exclusively profits. See Decl. of Leia Anderson,
7 attached as Exh. J at ¶ 6.

8 301. Those new tools are not authorized by Youngevity but contain Dr.
9 Wallach’s name and likeness, specifically his image and a short biography. See id.
10 at Exh. B. Both tools are copyrighted “2016 yteamtools.com” which evidences
11 TNT’s recent republication of Dr. Wallach’s name and likeness and Youngevity’s
12 mark this very year. Id. at ¶¶ 6–7.

13 302. Youngevity requires all such “tools” to have corporate approval—a
14 necessary measure to prevent unauthorized advertising claims and business
15 methods that could violate law or damage Youngevity’s business.

16 303. TNT and Graham continue, as recently as July 13, 2016, to hold
17 events for Wakaya ambassadors at TNT headquarters, despite continuing to profit
18 from the website www.wallachonline.com and the phone number 1-800-
19 WALLACH. See Exh. A (Decl. of Eric J. Awerbuch), at Attach. 7 (Blake Graham
20 Facebook Post).

21 304. TNT has gained a commercial benefit and advantage by using Dr.
22 Wallach’s name, likeness, and identity in commerce.

23 305. TNT continues to use Dr. Wallach’s mark, brand, and likeness on
24 websites s www.wallachonline.com and www.yteamtools.com, and through the
25 phone number 1-800-Wallach, without Plaintiffs’ permission and despite
26 Youngevity’s demands for immediate cessation of the unauthorized uses. TNT
27 also continues to use Dr. Wallach’s name and likeness in other promotional
28 material despite demand for immediate cessation of the unauthorized uses.

1 306. TNT’s continued misappropriation of Dr. Wallach’s name and
2 likeness causes Youngevity and Dr. Wallach irreparable harm.

3 307. Youngevity and Dr. Wallach are injured by the unlawful and improper
4 misappropriation and use of Dr. Wallach’s name, likeness, and identity. TNT has
5 used the websites and the other promotional material containing Dr. Wallach’s
6 name and likeness to divert Youngevity consumer traffic away from Youngevity.

7 308. Youngevity and Dr. Wallach have lost their control over Dr.
8 Wallach’s online identity. The unauthorized TNT website “Wallachonline.com” is
9 the first site returned in most online searches for content related to Dr. Joel
10 Wallach. The website is based on Dr. Wallach’s image and likeness.

11 309. TNT has used Dr. Wallach’s name and likeness to mislead consumers
12 when selling products. Consumers who have purchased purportedly “Youngevity”
13 product from www.wallachonline.com have in fact received mislabeled
14 Youngevity “product,” with the product label bearing Japanese language. See
15 Additional Declaration of Joel D. Wallach, attached as Exh. K at ¶¶ 5–7. TNT’s
16 use of Dr. Wallach’s name and likeness to sell products held out by TNT to be
17 Youngevity products when in fact those products are not Youngevity approved
18 products harm Dr. Wallach’s reputation.

19 310. TNT similarly uses Dr. Wallach’s name and likeness to attract
20 Youngevity distributors to events held out by TNT to promote Youngevity, but are
21 in fact events to promote Wakaya and unauthorized TNT products.

22 311. On March 30, 2016, Jonny Steele, a Youngevity Distributor and
23 cousin of defendant Todd Smith, sent an e-mail to Steve Wallach, Youngevity’s
24 Chief Executive Officer. See Steele e-mail, attached as Exh. L. That e-mail
25 explained how and why TNT’s control over Wallachonline.com and
26 Yteamtools.com cause Youngevity and its distributors irreparable harm. Steele
27 explained that “[i]f Todd [Smith] and Blake [Graham] **continue to operate**
28 **wallachonline and yteamtools, they will have the potential to negatively affect our**

1 downline and our livelihood.” *Id.* “The damage [to Youngevity distributors] can
2 be devastating and long term, even if they continue to operate for only a couple
3 more weeks let alone for the next few months or years.” *Id.*

4 312. TNT continues to use Dr. Wallach’s name and likeness on its website,
5 through its phone number 1-800-WALLACH, when selling goods and products,
6 and when promoting Wakaya.

7 313. TNT’s misappropriation of Dr. Wallach’s name benefits TNT and
8 Wakaya because it uses Dr. Wallach’s valuable reputation to entice others to join
9 Wakaya as distributors and/or purchase Wakaya and TNT products and goods.
10 The website relies on Dr. Wallach’s image and likeness to generate traffic online.
11 That site then places Defendants TNT and Wakaya in direct contact with
12 Youngevity distributors, potential distributors, or potential customers. Wakaya
13 thus profits from lead generation through Dr. Wallach’s image. TNT’s website is
14 designed to appear as Youngevity-authorized content.

15 314. TNT lacks consent to trade on Dr. Wallach’s name and likeness
16 because Plaintiffs revoked that consent in March 2016.

17 315. Plaintiffs are harmed by TNT’s misappropriation of Dr. Wallach’s
18 name and likeness because they lose business opportunities that would otherwise
19 flow from the websites and phone number herein identified directly to Youngevity.
20 But for TNT’s misappropriation of Dr. Wallach’s name and likeness, Youngevity
21 customers would have purchased Youngevity product not from TNT but from
22 authorized Youngevity distributors. The purchase of products and unauthorized
23 “tools” from an unauthorized individual or entity not within the Youngevity system
24 causes direct loss to those authorized distributors, and threatens to undermine
25 Youngevity’s closed distribution network—which closed-system is an integral
26 element in a direct-sales business like Youngevity. Plaintiffs suffer harm to their
27 reputations and goodwill resulting from consumers being misled to believe that
28 Plaintiffs endorse or condone toxic Wakaya products, including the Clay Product.

1 316. Dr. Wallach is further harmed by TNT’s misappropriation of his name
2 and likeness because his privacy interests, including the right to limit use of
3 commercial trading on his name, likeness and identity outweigh any public interest
4 served by the Defendants’ improper use of Dr. Wallach’s name, likeness, and
5 identity.

6 317. TNT agreed and conspired to misappropriate Dr. Wallach’s name and
7 likeness by continuing to profit from his name and likeness through 1-800-
8 WALLACH, yteamtools.com, and wallachonline.com. That conspiracy to
9 misappropriate caused Youngevity and Dr. Wallach damage in diversion of sales,
10 profit, internet traffic, and consumer contact information that should have gone to
11 Youngevity and authorized Youngevity distributors.

12
13 **COUNT NINE**

14 **False Advertising**

15 ~~Cal. Bus. & Prof. Code §§ 17500, et seq.~~

16 **(~~ALL~~ LANHAM ACT TRADEMARK INFRINGEMENT**

17 **15 U.S.C. § 1114**

18 **(Defendants TNT and Graham)**

19 ~~233. The allegations of paragraphs 1 through 232 are incorporated herein~~
20 ~~by reference.~~

21 The

22 318. Youngevity owns a valid trademark through the United States
23 Patent and Trademark Office in the mark “Youngevity.” Exh. C (Decl. of Steve
24 Wallach), at ¶ 4.

25 319. Defendants ~~have acted cooperatively~~ TNT and Graham and any others
26 acting in concert with them as discovery may reveal (collectively “TNT” under this
27 cause of action) currently own the websites www.yteamtools.com and
28 www.wallachonline.com.

320. Until March of 2016, TNT was an authorized Youngevity distributor.
While an authorized Youngevity distributor, TNT maintained, among other rights,

1 an implied right to sell Youngevity goods and trade on Youngevity's mark. See
2 supra at ¶¶ 292–95.

3 321. In March 2016, Youngevity terminated TNT's distributorships and
4 revoked any implied right to trade on Youngevity's mark. See supra at ¶¶ 296–97.
5 Nevertheless, on those websites and through other promotional material, TNT
6 continues to use the mark "Youngevity" to sell and promote and encourage
7 unauthorized products, including Wakaya products.

8 234.—TNT sells products through www.myyoungevity.com,
9 www.wallachonline.com. TNT also sells product through www.yteamtools.com.
10 TNT uses the Youngevity mark on those websites and in its products sold on those
11 websites to imply falsely to consumers to join Wakaya.

12 235.—As detailed herein, the Defendants have used and stated false and/or
13 misleading advertising claims to encourage consumers to join Wakaya. Those
14 false and misleading advertising statements include, but are not limited to:

15 322. Defendant Graham using the email, text communication, and the
16 confidential distributor list to convey the false impression that Youngevity had no
17 issues with Todd's departure or formation of a competing MLM, thus implying
18 that further moves by and Youngevity distributors to that TNT is an authorized
19 Youngevity distributor and that the products it sells bearing the Youngevity mark
20 are Youngevity approved products.

21 323. In fact, TNT is not an authorized Youngevity distributor and
22 Youngevity does not approve all of the products TNT sells to consumers and
23 Youngevity distributors.

24 324. TNT sells unauthorized and misbranded Youngevity "goods" on
25 www.wallachonline.com. When consumers believe they are purchasing legitimate
26 Youngevity products from www.wallachonline.com, TNT in fact sends them
27 unapproved Youngevity products with a Japanese label. See Exh. K (Additional
28 Decl. of Joel D. Wallach), at ¶¶ 5–7.

1 325. Youngevity does not object to TNT’s use of the Youngevity mark
2 only to the extent TNT sells Youngevity products which TNT purchased from
3 Youngevity while still acting as an authorized Youngevity distributor.

4 326. Defendant Blake Graham and TNT also use the Youngevity mark to
5 attract Youngevity distributors to what Graham and TNT advertise to be
6 Youngevity events but at which those Defendants engage in a bait and switch
7 whereby they solicit Youngevity distributors in attendance to buy Wakaya
8 products and become Wakaya distributors.

9 327. TNT’s use of the Youngevity mark is likely to, and does, confuse
10 consumers into believing falsely that TNT is an authorized Youngevity distributor
11 and that Youngevity approves of the sale of Wakaya products and the enrollment
12 of Youngevity distributors in Wakaya.

13 328. TNT’s illegal use of the Youngevity mark has harmed Youngevity,
14 including harm to Youngevity’s reputation and in diluting the value of the
15 Youngevity mark, in an amount to be proven at trial. Youngevity also suffers
16 harm to its reputation and goodwill resulting from consumers being misled to
17 believe that Youngevity endorses or condones toxic Wakaya products, including
18 the Clay Product.

19
20 **COUNT TEN**

21 **Breach of Fiduciary Duty**
22 **(Defendant Andreoli)**

23 329. ~~would likewise not offend~~Defendant Andreoli served as President of
24 Youngevity from October, 2011 through November, 2015.

25 330. As President of Youngevity, Andreoli owed fiduciary duties to
26 Youngevity.

27 331. Andreoli in his capacity as President of Youngevity authorized in
28 excess of a dozen “forced qualifications” or automatic rank advancements to be

1 bestowed upon individuals and entities who did not earn those advancements
2 through increased product sales volumes, as required by Youngevity rules.

3 ~~236-332.~~ The effect of those forced qualifications was to cause the
4 company- to pay those individuals and entities higher than justified commissions,
5 bonuses, and car bonuses.

6 333. Among those given forced qualifications were Andreoli's parents, his
7 wife and children, defendant Andre Vaughn, and Monique Vaughn.

8 334. As a result of Andreoli's forced qualification of Andre Vaughn,
9 Youngevity paid Vaughn \$40,000.00 in car bonuses and in excess of \$600,000.00
10 in commissions and other bonuses over a four year period.

11 335. Through those forced qualifications, Andreoli breached his fiduciary
12 duty to Youngevity and caused Youngevity funds to be converted for the unjust
13 enrichment of those friends and family members he wished to financially benefit
14 without the prior knowledge or advanced approval of Youngevity's CEO Steve
15 Wallach.

16 336. Andreoli's duties as Youngevity President included notifying
17 Youngevity's CEO and obtaining authorization from him before force qualifying
18 any individuals or entities. ~~Those duties also obligated actions from Andreoli that~~
19 ~~served the interests of Youngevity over competing ventures. Those duties also~~
20 ~~required Andreoli to exercise reasonable care and to maintain his loyalty to~~
21 ~~Youngevity.~~

- 22 ~~• Defendant Vaughn representing that Wakaya distributors can earn a~~
- 23 ~~free cruise in only 12 hours.~~
- 24 ~~• The Defendants' attempts to cast Youngevity as a financially bereft~~
- 25 ~~corporation on the brink of bankruptcy.~~
- 26 ~~• The Defendants' representations that Wakaya distributors can earn~~
- 27 ~~large incomes, including ones of \$100,000 or even \$250,000 per month.~~

- 1 • ~~The Defendants false representations that Wakaya is a joint venture~~
- 2 ~~with David Gilmour, the wealthy founder of the Fiji Water company~~
- 3 ~~and the owner of the Wakaya tropical island.~~
- 4 • ~~The Defendants misleading promotion of an unlawful pyramid or~~
- 5 ~~“endless chain” scheme.~~

6 237. ~~The Defendants knew or should have known that their statements to~~
7 ~~consumers were false.~~

8 238. ~~The Defendants dissemination of false and misleading advertising is~~
9 ~~likely to deceive—and has deceived—end consumers.~~

10 239. ~~The Defendants’ false advertising has caused Youngevity competitive~~
11 ~~injury.~~

12 240. ~~The Defendants have therefore acted in concert to violate California~~
13 ~~statutory restrictions on false or misleading advertising, causing harm to~~
14 ~~Youngevity.~~

15 241. ~~The Defendants have also conspired to violate California’s false~~
16 ~~advertising law as described above. That conspiracy has damaged Youngevity,~~
17 ~~including causing Youngevity competitive injury.~~

18 337. He further breached his fiduciary duties by encouraging the infliction
19 of financial loss to Youngevity’s business by inducing and condoning breaches of
20 Youngevity distributor’s agreements with Youngevity and violation of
21 Youngevity’s contracts with the other named Defendants by aiding and abetting
22 those Defendants in forming and promoting the competing company Wakaya.

23 338. Andreoli’s breach of his fiduciary duties to Youngevity proximately
24 caused Youngevity damages. Youngevity then paid those individuals and entities
25 higher than justified commissions and bonuses over the course of four years,
26 unjustly enriching them at the direct and substantial expense of Youngevity.

27
28 **PRAYER FOR RELIEF:**

1 WHEREFORE, ~~Youngevity prays~~Plaintiffs pray for judgment in its favor
2 and against Defendants and requests that this Court ~~award NIC the following~~:

3 A. ~~An award of~~Award Plaintiffs exemplary or punitive damages under
4 Cal. Civ. Code § 3294, 15 U.S.C. § 1117, and other applicable laws and statutes
5 for Defendants' conduct undertaken with intent to injure ~~Plaintiff~~Plaintiffs, or with
6 a willful and conscious disregard of ~~Youngevity's~~Plaintiffs' rights. This is an
7 exceptional case that involves a Company's top officers, employees, and
8 distributors conspiring together, while employed at Youngevity, to create a
9 business in direct competition with Youngevity. An award of punitive damages
10 sufficient to deter and prevent that misconduct in future is appropriate in this case.

11 B. ~~A~~Issue against Defendants a permanent injunction enjoining the
12 Defendants, their officers, shareholders, agents, servants, employees, attorneys,
13 successors and assigns, subsidiaries, affiliated companies or entities, all those in
14 privity with same, and all those in active concert or participation who receive
15 actual notice of the judgment: (1) from using any of Youngevity's proprietary and
16 confidential information in any manner not expressly authorized by Youngevity;
17 (2) from profiting from any of their illegal activities, including profits made from
18 Wakaya employees and/or distributors who were employed by and/or distributors
19 for Youngevity; (3) from ~~recruiting any additional~~inducing Youngevity ~~employees~~
20 ~~or distributors~~; (4) ~~from maintaining distributorships and employees to breach their~~
21 ~~contracts~~ with ~~those recruited from~~ Youngevity ~~through unlawful means, including~~
22 ~~through cross-recruiting~~; (5) from operating an unlawful pyramid scheme; (6) from
23 making any further commercial use of the name and likeness of Joel D. Wallach,
24 BS, DVM, ND, including, but not limited to, making commercial use of the name
25 and likeness of Joel D. Wallach, BS, DVM, ND through the websites
26 wallachonline.com and yteamtools.com, and through the phone number 1-800-
27 WALLACH; and (7) from making any further commercial use of the namemark
28 "Youngevity," including, but not limited to, making commercial use of the name

1 “Youngevity” through the websites wallachonline.com and yteamtools.com, ~~and~~
2 ~~through the phone number 1-800-WALLACH.~~

3 C. ~~An Order requiring~~ the Defendants to file with this Court a
4 compliance plan under oath describing the method and manner in which
5 Defendants intend to comply with the injunction(s), including a description of any
6 new operating procedures and policies, to be filed within 30 days after service of
7 an injunction;

8 D. Order ~~that defendants~~ the Defendants to specifically perform
9 contractual provisions binding on Defendants Smith, Andreoli, ~~Graham~~, Pitcock,
10 Gardner, and ~~Vaughn~~ Cloward that require those ~~defendants~~ Defendants to return all
11 proprietary and confidential information to Youngevity;

12 E. ~~An award to Plaintiff Youngevity of~~ Award Plaintiffs all costs and
13 reasonable attorney fees and expenses incurred by ~~Youngevity~~ Plaintiffs in
14 connection with this action;

15 F. ~~An award to Plaintiff Youngevity of~~ Award Plaintiffs all of
16 Defendants’ profits and ~~incomes~~ income since October, 2015;

17 G. ~~An award to Plaintiff Youngevity of~~ Award Plaintiffs recompense for
18 all damages suffered by ~~Youngevity~~ Plaintiffs as a result of Defendants’ unlawful
19 acts;

20 H. ~~An award to~~ Award Plaintiff Youngevity ~~of~~ all damages allowed under
21 the contracts and agreements between Youngevity and defendants Smith, Andreoli,
22 ~~Graham~~, ~~Vaughn~~, Pitcock, Cloward, and Gardner;

23 I. ~~An award to~~ Award Plaintiff Youngevity ~~of~~ all Wakaya sales receipts
24 and proceeds from the sale of GAC products exclusively licensed to Wakaya;

25 J. An Award Plaintiffs all damages necessary to remedy the injuries to
26 their reputations and goodwill resulting from Defendants’ misrepresentation to
27 consumers that Plaintiff endorses or condones the sale of injurious product, to wit,
28 the Clay Product.

1 J.K. Compel an accounting of all Defendants' profits, revenues, accounts,
2 and proceeds received or obtained, directly or indirectly, since the date Wakaya
3 was founded.

4 ~~K.L. PreAward Plaintiffs pre~~-judgment and post-judgment interest on the
5 above damage awards;

6 ~~L.M. An order adjudging~~ Adjudge all Defendants jointly and severally
7 liable, as the law allows, under each cause of action asserted by Youngevity and
8 for all damages awarded against any Defendant;

9 ~~M.N. Such~~ Grant such other and further relief as this Court deems just.

10
11
12
13
14 DATED: July 13, 2016

15
16 Respectfully submitted,

17
18 YOUNGEVITY INTERNATIONAL,
19 CORP.

20
21 By: /s/ Peter A. Arhangelsky
22 Peter A. Arhangelsky, Esq. (SBN 291325)
23 *Attorney for Plaintiff Youngevity*
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26 3210 S. Gilbert Road, Suite 4
27 Chandler, AZ 85286
28 Phone: (602) 388-8899
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1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on July 13, 2016, I electronically filed the foregoing
5 with the Clerk of the Court using the CM/ECF system which will send notification
6 of such filing to the following:

7 Kyle M. Van Dyke
8 Hurst & Hurst
9 701 B Street
10 Suite 1700
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12 (619) 236-0016
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15 ~~*Attorney for Defendants Todd Smith, Wakaya Perfection, Total Nutrition Team,
16 Blake Graham, Andre Vaughn, Dave Pitcock, Patti Gardner, Brytt Cloward, and
17 Does 1-10*~~

18 Jonathan R. Schofield
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27 jhafen@parrbrown.com

28 ~~*Attorneys for Defendant Wakaya-perfection Defendants*~~

/s/ Peter A. Arhangelsky
Peter A. Arhangelsky

EXHIBIT B

1 Peter A. Arhangelsky, Esq. (SBN 291325)
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6 Attorney for Plaintiff

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 YOUNGEVITY INTERNATIONAL
11 CORP. et al.,

12 Plaintiff,

13 v.

14 TODD SMITH, et al.

15 Defendants.
16
17

Case No.: 16-CV-704 W (JLB)

18 **DECLARATION OF MIA**
19 **MAGISTRO**

20 **DECLARATION OF MIA MAGISTRO**

21 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
22 following is true and correct:

23 1. I, Mia Magistro, am over the age of 18 and competent to testify
24 concerning the matters presented in this declaration. All matters contained herein
25 are of my own personal knowledge unless stated as based upon information and
26 belief.
27
28

1 2. I am a distributor for Youngevity International Corp. (hereinafter
2 referred to as “Youngevity”), the plaintiff in the above entitled action. I reside at
3 1772 Springwater Drive, Orem, UT 84058.

4 3. I am also the founder and owner of Whole Body Cleansing and
5 Wellness (hereinafter referred to as “Whole Body”), located in Orem, Utah.

6 4. In or about July, 2015, my sister, Elisa Magistro, introduced me to
7 Great American Clay (hereinafter referred to as “GAC”). The product which I
8 obtained was first given to me by Elisa, who obtained it from Melissa Jenkins,
9 Elisa’s friend. Melissa’s uncle, Lynn Jenkins, is one of the owners of GAC.

10 5. GAC offers a range of calcium bentonite clay products, which are
11 helpful detoxifying agents and provide other health benefits.

12 6. In or around July, 2015, I met with David Smith and Lynn Jenkins.
13 David and Lynn answered all of my questions concerning GAC and provided me
14 with samples of their products. Thereafter, I immediately began using GAC
15 products with my clients at Whole Body and continue to this day to use those
16 products at Whole Body.

17 7. Also in or around July, 2015, I contacted my upline within
18 Youngevity about GAC. I wanted my upline to help me introduce the GAC
19 product to Youngevity management and acquire approval either for Youngevity to
20 sell the product or to acquire GAC. I informed my immediate upline, Todd Smith,
21 then a trusted top level Youngevity distributor and co-founder of Total Nutrition
22 Team, Inc. (hereinafter referred to as “TNT”), about GAC’s product and my
23 interest in having it sold by Youngevity or in having Youngevity acquire GAC.

24 8. I spoke in person with Todd and Blake Graham, TNT’s other co-
25 founder. They advised me that Youngevity would not be interested in the
26 products, but Todd and Blake nevertheless seemed interested in GAC.

1 9. On August 25, 2015, Todd, Blake, David, Lynn, and I all met at TNT
2 headquarters in Pleasant Grove, Utah. At that meeting Todd seemed impressed by
3 the GAC products and received samples of the products. Todd and Blake told
4 David that they represented Youngevity. I had earlier explained that I was a
5 Youngevity distributor to David. Todd made it clear that he would inform
6 Youngevity management of the opportunity to obtain GAC products or acquire
7 GAC.

8 10. After the August 25, 2015 meeting, Blake told me that Youngevity
9 was not interested in the GAC products because they were not unique products. I
10 told Blake that I would pursue the possibility of making the GAC products more
11 unique. I also persisted and asked Blake to at least try to present GAC products to
12 Steve Wallach, Youngevity's Chief Executive Officer. I was never informed that
13 either Todd or Blake ever presented the GAC products to Steve or anyone else
14 within Youngevity management with the authority to determine whether or not
15 Youngevity would obtain GAC products or acquire GAC.

16 11. In August, 2015, David informed me that he was writing a book about
17 the ingredients in the GAC products. David informed that he had been invited to
18 promote his book through various media outlets. *See* e-mail chain dated August
19 28, 2015, attached as Attachment 1. I told David that Dr. Joel Wallach,
20 Youngevity's founder, may be interested in joining David as a co-author of the
21 book and in participating in those media appearances. *Id.*

22 12. In the fall of 2015, David e-mailed me asking me to put him in contact
23 with Dr. Wallach. *See* e-mail chain dated October 22, 2015, attached as
24 Attachment 2. In those e-mails, David also informed me that Todd asked David to
25 keep all communications between Todd and David confidential, and that Todd's
26 request of confidentiality "ha[d] undertones [David was] not comfortable with."
27 *Id.*

1 13. David also told me that he would see to it that I received a 3%
2 commission on all sales of GAC products through Youngevity for introducing the
3 product to the company. *Id.*

4 14. I then arranged for David to meet with Dr. Wallach in North Carolina.
5 That meeting was scheduled to take place during the first week of November,
6 2015.

7 15. On October 29, 2015, David sent me an e-mail stating that there was a
8 “90%+” chance that he would attend the meeting with Dr. Wallach in North
9 Carolina, because he had not heard from Todd. The only reason he would not
10 attend that meeting would be if Todd gave him a “strong yes” on GAC product
11 acquisition. *See* e-mail chain dated October 30, 2015, attached as Attachment 3.

12 16. On October 30, 2015, David Smith cancelled his meeting with Dr.
13 Wallach, and informed me that Todd told him that he “would handle everything for
14 [GAC] and that [Todd] would find [David] the right person to co-author the book.”
15 *Id.* Based on that e-mail, I thought Todd was working to incorporate GAC into
16 Youngevity.

17 17. When David cancelled the meeting, it was my belief that Todd and
18 Blake were progressing towards bringing the GAC products to Youngevity and a
19 deal was imminent. In November, 2015, and the months thereafter, David and I
20 kept in contact. David repeatedly told me that GAC was close to a deal with Todd.
21 *See* e-mail chain dated November 30, 2015, attached as Attachment 4.

22 18. On February 17, 2016, I spoke with Todd. *See* e-mail chain dated
23 February 20, 2016, attached as Attachment 5. Todd informed me that he had
24 entered into a contract with GAC and that I would thereafter purchase GAC
25 products though Todd and not from GAC directly. *Id.* At that time, based on my
26 conversation with Todd, I thought that Todd had caused GAC and Youngevity to
27 enter into an agreement.
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19. On February 18, 2016, David e-mailed me to inform me that Todd had
been working to develop four GAC products for a business called Wakaya and that
Todd/Wakaya purchased all of GAC's existing stock. *See id.* David also informed
me that Todd had "sworn [David] to secrecy" concerning his involvement with
Wakaya. *Id.*

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20. On February 20, 2016, David e-mailed me again, stating that until 60
days prior, he had assumed that Todd was having GAC develop products for
Youngevity. *Id.* David also informed me that Todd told David to cancel the
meeting with Dr. Wallach "because [Todd] was already working on things and that
he had the authority to move on new products himself." *Id.*

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21. In March 2016, approximately two days before Todd launched
Wakaya Perfection, LLC, Todd called me and informed me that he was launching
Wakaya Perfection, LLC, and that the GAC products were going to be part of
Wakaya Perfection, LLC's product line and not part of Youngevity's product line.

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22. I was never informed that Todd or Blake ever presented the GAC
products to Steve or anyone else within Youngevity who had the authority to
determine whether or not to include the Great American Clay products within
Youngevity's offerings or to acquire GAC.

20
21
23. I was never informed that Todd or Blake ever informed Dr. Wallach
of the opportunity to meet with David or be a co-author of David's book.

22
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24 Executed on this 4 day of May, 2016.

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Mia Magistro

DECLARATION OF MIA MAGISTRO

Attachment 1 to Exh. B

----- Forwarded message -----

From: **David Smith** <david.smith@greatamericanclay.com>

Date: Fri, Aug 28, 2015 at 7:46 AM

Subject: RE:

To: Mia Magistro [REDACTED] >

Cc: Lynn Jenkins [REDACTED]

Hey Mia~

I first want to sincerely thank you for putting together the meeting we had a few days ago. What I took away from that meeting, and what is something that I normally do not experience at that stage of the “get-to-know-you” process, was a level of genuine level of comfort with everyone present in the room. And for that I am grateful as well...

For today, what I want everyone to know is that there is great interest on our part to work with your group in some fashion, as yet determined, whether it be with Todd, Blake, yourself or Dr. Wallach. As for the new book, I have the need to invest probably 30-45 solid days more time to get it to a stage where it can be handed over to an editor. That’s tough for me to do right now, but in the long term, it is the most important thing I can do. You know the weight such a book carries in the grand scope of things... Many, many people are asking for it, and as soon as it is released, the doors of radio programs will be wide open once again. I have a standing invitation with Joyce Riley on the Genesis network for a twice monthly appearance as soon as I am ready. But I certainly don’t want to step into a potential conflict of interest position as Todd and Blake mentioned your presence on the show as well. In actuality, I feel that 2-3 months down the road, we would make an excellent tag team in that arena... As for the old book, now out of print, I will have a couple of photocopied versions off to you early next week. I will also include a syllabus outline of the new book as well.

In furtherance of our common goals, let’s see if we can schedule a call possibly Monday or Tuesday afternoon and discuss how best we can move forward in the sorting out process. Let me know if that works for you. I will tentatively pencil in Monday afternoon at 3PM CST, 2PM your time. Let me know if that works for you, and if not, feel free to suggest a time that works well for you. I have no other appointments etched in stone until Wednesday morning, everything else is flex.

Thanks again for our time together. You are a wonderful host, and in short, your knowledge of the industry and all you represent in your organization was nothing short of amazing.

Have a great weekend!

Thanks,

David



David Smith | Founder/Owner | Great American Clay, LLC.
p: [737-704-9993](tel:737-704-9993) | e: david.smith@greatamericanclay.com |

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From: Mia Magistro [mailto:████████████████████]
Sent: Thursday, August 27, 2015 3:45 PM
To: David Smith
Subject:

Hi David,

This is Mia. I met you recently at Total Nutrition with Melissa, and Todd and Blake. I wanted to follow up with you and see if I can't get a copy of that book from you. I think I can get Dr. Wallach to co author that book with you. I also wanted to talk to you about the distribution end of things. Let me know a good time to talk!

Thanks

Mia

Attachment 2 to Exh. B

----- Forwarded message -----

From: **David Smith** <david.smith@greatamericanclay.com>

Date: Thu, Oct 22, 2015 at 10:09 AM

Subject: RE: Ratios

To: Mia Magistro [REDACTED]

Hey Mia~

Venus just shipped out a couple of shirts and a few bars of soap to you. Hope you enjoy ☺

I found online Dr. Wallach's calendar. It shows an unbelievable schedule for him but it does not show the Nov 2-3 events at Greensborough. It does show Nov. 1st in Durham, NC, and then Nov. 4th in Charlotte... Here is the link I used: <http://youngevity.com/index.cfm/blog-and-resources/events/>

While I am sure you know his schedule better than the link which may not be updated, I just wanted to confirm the dates before we made tentative plans. If you can assist in getting us into his presentation on the 2nd and a meeting of any kind (office, breakfast, pre-event) on the 3rd, please let us know if he would work us into his busy schedule. Lynn and I could confirm within 24 hours of notice that a meeting is in the works... I would like to introduce him to the Clay and the book project as well, and we will keep it as short as he needs.

Please understand that Todd, for some reason unknown to me – I have my ideas – has insisted that everything we have discussed remain confidential, I have to respect his request. I don't like that he has asked this. It has undertones I am not comfortable with. And he communicates very little. We have, at his request, put our growth on hold while he makes a decision. The time elements involved in his decision making process are now causing us concern. I will keep you posted and if ever I need someone to make contact on our behalf and give him a little nudge, I may ask you to be that person. For now, he has two more weeks to make a decision before we go elsewhere. And in turn the timing of this possible meeting with Wallach could not be better!

Please let us know when you need more product. I'm thrilled you have some happy customers and that people are being introduced to the Clay. Thanks for all you do ☺ I really feel like you will end up playing a very substantial role in how this all plays out and what your role will be with the clay for

many years to come... Hope you enjoy your T's and Soaps!!!

Thanks again,

David



David Smith | Founder/Owner | Great American Clay, LLC.

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From: Mia Magistro [REDACTED]
Sent: Wednesday, October 21, 2015 8:23 PM
To: David Smith
Subject: Re: Ratios

Hey David,

Thank you so much for your response. I will pass this info on to my client. I also need to order more, but will have to see what I need. I would love to get some of the soaps. They were amazing.

As for Dr. Wallach. Absolutely. We will be in North Carolina on November 2, 3rd. Maybe there's a chance we can connect something then. Would that work? We have two seminars out there, and it might be worth it to come to the one on Monday night the 2nd. And then meet with him on Tuesday morning.

I'm not sure how much pull he has with Youngevity. He's the founder, but doesn't sit on the board because he lectures 300 days out of the year. With that said, I'm sure he would be the best one to tell us what direction to go in. Has Todd not gotten back to you?

I know him and Blake are busy, but the clay would be such an amazing addition to our line of products. I would love to be involved as I love the clay. That would be a great time to talk about your book as well.

So, we will be in Greensborough the 2nd and 3rd. Let me know if the above would work!!!!

Thanks David.

Oh, and as for the shirts, that would be awesome!!!

I wear a medium and I love scoop necks. I'm excited to see them!

Let me know if there's anything else!

Mia

On Wed, Oct 21, 2015 at 5:16 PM, David Smith <david.smith@greatamericanclay.com> wrote:

Hey Mia~

Great hearing from you! The formula and process is really very simple, but it is a 48 hour process. The clay to water ratio is 8 to 1. That's 8 parts water for 1 part clay. When we mix our big batch tubs for packaging, we put 1 gallon of clay and 8 gallons of water in the mixing tubs. We use commercial mixers and big "Tupperware" type tubs for mixing. If you are making enough to refill a 32 oz. bottle, we recommend you put 1" of dry powder clay in the bottom of an empty bottle. The bottle is 10" tall, and you put in about 8 inches of water, put the lid on and shake vigorously!!! Keep shaking until it appears it is getting smooth. It may take 4-5 minutes. If you see any powder clay sticking to the bottom of the bottle, use something like a chop stick to reach down and free it from the bottom, then shake some more. Then let it set for 24 hours. During this 24 hours you can shake it several more times. You want the clay to colodialize (fully assimilate) with the water. On day two shake again and then let it set for another 24 hours. At the end of 2 full days of shaking and letting it rest, it will be ready to drink. It takes that long before it gets to the creamy and fully activated state. For the Hydrated clay we do a 3 day process to get it where it vibrates when touched. We use Natural, Filtered Spring Water from a local source. Just don't use city water as it can be chlorinated and may have fluoride as well as many other things you want out of your body. A very safe bet is to go to any grocery store and buy a gallon of distilled water. It is deionized and really quite pure. That's usually an easy and convenient way to buy a small quantity of good, safe water.

It's also the most economical way for a customer to use Liquid Clay for detox. The price of a one pound of powder is only \$39.99. You can put just under 4 ounces (1 " is about 3.5 ounces) in the 32 oz. bottle. And one pound will make over 4 big bottles of liquid! Big savings if they want to do 2 days of labor 😊.

On a side note, if you can put us in touch with Dr. Wallach, we would appreciate it. Any type of a short meeting would be appreciated, anywhere and at his convenience... We seem to be at a stand-still with others and we just want to consider all options. We really want to move forward with an MLM and there are three in Salt Lake we would welcome partnering with. And if you put this together with Wallach and it goes, you will be in for 3% of everything forever... That's a really high finder's fee and I would like for it to be yours 😊. And please keep our conversations in confidence.

OK, enough for this evening. Please let me know if there is anything I can do for you. OH, before I forget, we got our T-Shirt reorder in. Please send me your size – we have girls sizes and guys. The girls are a little thinner and have a v-neck or a larger round neck. So, pick girls sizes, or guy sizes and we will send you a few...

Thanks and have a magical day!

David



David Smith | Founder/Owner | Great American Clay, LLC.

p: [737-704-9993](tel:737-704-9993) | e: david.smith@greatamericanclay.com |

www.greatamericanclay.com



From: Mia Magistro [REDACTED]
Sent: Wednesday, October 21, 2015 4:54 PM
To: David Smith
Subject: Ratios

Hi David,

I have a client who wants to do the powder clay. How many parts clay and water do you do in the 32 ounce clay that you drink and what kind of water should he use.

Thank You

Mia

Attachment 3 to Exh. B

----- Forwarded message -----

From: **Mia Magistro** [REDACTED]
Date: Fri, Oct 30, 2015 at 1:32 PM
Subject: Re: follow up...
To: David Smith <davidsmith@satcountry.com>

Hey David,

That sounds good. Dr. Wallach is not the ultimate decision maker, and Todd and Blake have other things, as far as Japan, that don't involve Youngevity. That is why initially I wanted to set up the meeting with Todd and Blake and not Dr. Wallach. But when you hadn't heard from Todd, I wanted to make sure we exhausted all avenues. I'm still hopeful and put in a very good word to Blake yesterday regarding some ideas I had in making the clay unique to Youngevity. He responded well, so hopefully that helped him in terms of Todd. Only time will tell:) Thanks David! Hope everyone is safe out there. Those storms have been devastating.

Thanks for everything

Mia

On Fri, Oct 30, 2015 at 1:03 PM, David Smith <davidsmith@satcountry.com> wrote:

Well, we've got a package missing then. First time that has happened to us! We closed early today because of the horrible storms and flooding so it will be Monday before I will be back to the office and our shipping system. I can then run the tracking number and see if it shows up somewhere... I will either locate it or reship on Monday!

Both Lynn and I have talked and emailed with Todd and he has reassured us that we will be picked up. Apparently it will be a few more weeks but everything sounds positive. When I mentioned we had a meeting scheduled with Dr. Wallach for Mon/Tue and he said he would handle everything for us and that he would find me the right person to co-author the book. Apparently different people within the organization are of different factions and have different ideas about how to move forward. What Lynn and I have decided to do is to do as Todd suggested for now and if in another 3-4 weeks nothing has come to pass, we will move away from that possibility. But for now we feel it will happen with him and I feel we should do as he asks... And I have no idea why things are being compartmentalized as they are, and that is also none of my business. My guess is that there are a lot of perceived Chiefs in the organization and that Dr. Wallach is not at the helm of the decision making process. No one has said that, it's just my read from all of the conversations. And I am very hopeful that all that is transpiring makes more sense to you than it does to me 😊

And again, by Monday we will have either found your package or will reship shirts and powder...

Thanks for everything,

David



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From: Mia Magistro [REDACTED]
Sent: Friday, October 30, 2015 1:08 PM
To: David Smith
Subject: Re: follow up...

Hey David,

Sounds good. Keep me posted. I received my package with the product I purchased but not the shirts:(I didn't receive the any powder clay which I wanted to do some experimenting on with infusing the minerals.

Thanks for everything David. Excited to see where this goes.

Mia

On Thu, Oct 29, 2015 at 12:54 PM, David Smith <davidsmith@satcountry.com> wrote:

Hey Mia~

I want you to know how much I appreciate your efforts! I just got off the phone with Lynn and he is going to make one more attempt at getting a definitive answer from Todd. We will make a final decision on the trip to meet Dr. Wallach no later than Friday evening. Odds are 90% + we will be there unless we somehow get a strong YES from Todd today or tomorrow. As I said on the call, I am open to doing whatever it takes to make this work for everyone involved.

Please let me know if your little box with a few goodies and a couple of shirts does not arrive today. It went out on Monday... I will track it if it does not arrive. I will also process your payment for the order we shipped yesterday and emailed you about...

Thanks again for all your support, creative ideas and belief in our company and the Clay. See you Monday.

David



GREAT AMERICAN CLAY

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Attachment 4 to Exh. B

----- Forwarded message -----
From: **David Smith** <davidsmith@satcountry.com>
Date: Mon, Nov 30, 2015 at 3:55 PM
Subject: RE: Your shirts and powder arrived!
To: Mia Magistro [REDACTED]

Hey Mia~

Yes, the number is my cell, [REDACTED] and I answer it at all hours – literally! I would be happy to speak with your Dad about the clay and to answer any questions he may have. And we ship worldwide, but international does get pricey...

All is going great here. I feel like we are very close to a deal with Todd. He has promised a decision by 12-10. I will keep you posted. We now have 4 flavors we are working on for our liquid and they are coming along just great!... I will get you samplers as soon as we are ready to roll them out.

Have a great week!

David



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From: Mia Magistro [REDACTED]
Sent: Monday, November 30, 2015 4:04 PM

To: David Smith
Subject: Re: Your shirts and powder arrived!

Hey David,

Long time. I was out of town and then sick for a bit. But am feeling better. My dad wants to get a hold of you with some questions he has about the clay. Do you mind if he calls you at the number attached to your emails? He wants to send his family some of the clay and has questions on where you ship and protocols and such. Hope all is well!

mia

On Fri, Nov 6, 2015 at 4:11 PM, David Smith <davidsmith@satcountry.com> wrote:

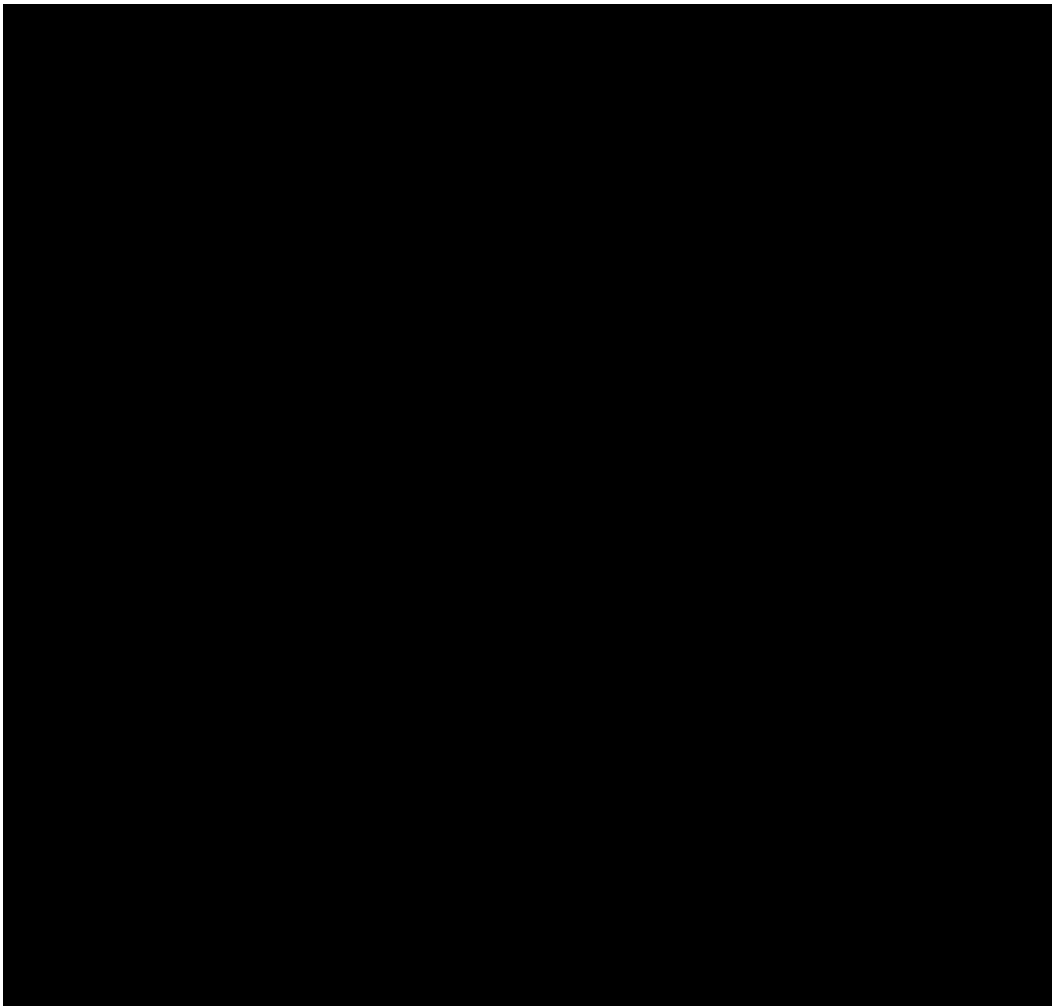
YES!!! Mission accomplished! And no, of course not, keep everything and enjoy all of it! There is always a blessing for everyone concerned every time things such as this transpire. Unusual coincidences and odd occurrences will always have a gift in their hand for you if only we stay open to it and look for the gift. You just wait and see, one year down the road when looking back, at what these two boxes created in our lives! Just watch what happens as a result!

I promise to keep you posted on the Todd and Blake Show 😊 It's feeling close to me...

Have a restful weekend!

David

Attachment 5 to Exh. B



----- Forwarded message -----

From: David Smith
<david.smith@greatamericanclay.com<<mailto:david.smith@greatamericanclay.com>>>
Date: Sat, Feb 20, 2016 at 4:22 PM
Subject: RE: Congrats
To: Mia Magistro [REDACTED]

Hi Mia~

I can't thank you enough for the initial introduction and being the reason this all happened. Now I have to ask, did you know Todd was forming his own MLM and taking people with him? We were kept so much in the dark that until about 60 days ago, we still assumed he was having us develop stuff for Youngevity. Then when we learned he was moving on his own, we had a big decision to make. Remember in October when we were set to meet Dr. Wallach with you in NC? Todd asked us not to do the meeting because he was already working on things and that he had the authority to move on new products himself, so we cancelled with Dr. Wallach. He even asked us not to tell anyone the reason for that cancellation. Anyway, that is all past now. If he hits a homerun he will take us with him. And yes, you will have to "BUY" from Wakaya Perfection as that is what he is now branding his company. I have no idea how he will set up the sales machine end of things. Our only role is in formulating and packaging 4 of his products. I believe he will be rolling out with full info in about 2 weeks...

That being said, there is nothing in our 16 page contract that prohibits us from following up on the private label project for you, nor is there anything in our contract that would prohibit us from “GIVING” product to you under your private label. We cannot sell anything to anyone but him. And I make that offer to you as I am so appreciative of your efforts... And that will have to be our secret now ☺ Please let me know when you have your thoughts together on a brand/logo/label, and we can knock out a couple of proof options in no time. I would love nothing more than to find creative ways we can support your business. I will do all I can to make sure you want for nothing! And it will genuinely be my pleasure...

One last thing, I made Todd promise me that he would do something substantial for you. He said, “I will take care of her”. I asked him again to promise me that he would include you in the loop in some fashion and he again said, “I will take care of her”. If in a month or two he has not tossed something your way, just let me know...

I wish you a beautiful week and know that we will be here for you in any way we can.

Thanks,
David

[GAC LOGO PHOTO - Primary cropped]

David Smith | Founder/Owner | Great American Clay, LLC.
p: 737-704-9993<tel:737-704-9993> | e:
david.smith@greatamericanclay.com<<mailto:david.smith@greatamericanclay.com>>
| www.greatamericanclay.com<<http://www.greatamericanclay.com/>>

[Description: cid:image002.jpg@01CE8E93.3884FF60]
Facebook<<http://www.facebook.com/greatamericanclay>>
[Description: cid:image003.jpg@01CE8E93.3884FF60]
Twitter<<http://www.twitter.com/thebestclay>>

From: Mia Magistro

Sent: Friday, February 19, 2016 8:10 PM
To: David Smith
Subject: Re: Congrats

Hey David,
That's exciting. I'm glad it has worked out. What an exciting venture. Yes, let me know when you guys are in town. Todd will do good with this product. He will put it to good use. I'm excited about the new formulations and where the company will go. It sounds like I will be going through Todd for orders, I just wanted to thank you for all your help and generosity. May only good things come of this.
Mia

On Thu, Feb 18, 2016 at 5:46 PM, David Smith
<david.smith@greatamericanclay.com<<mailto:david.smith@greatamericanclay.com>>>

wrote:
Hi Mia~

I didn't know he had released info to anyone yet. We had been sworn to secrecy since the day after we met. We have developed 4 products for him and Wakaya. They have several real neat things in the pipeline and we are all very excited. And yes, he bought out ALL of our existing stock and we are formulating for him only now. It is a huge contract and we are very excited. I will be visiting Lynn in Sundance in April for about a week. I'll let you know when the dates are fixed. I would love to see you again and go to lunch again at Todd's place. And the good news is that we can now talk openly about things!

Have a great day,

David

[GAC LOGO PHOTO - Primary cropped]

David Smith | Founder/Owner | Great American Clay, LLC.
p: 737-704-9993<tel:737-704-9993> | e:
david.smith@greatamericanclay.com<<mailto:david.smith@greatamericanclay.com>>
| www.greatamericanclay.com<<http://www.greatamericanclay.com/>>

[Description: cid:image002.jpg@01CE8E93.3884FF60]
Facebook<<http://www.facebook.com/greatamericanclay>>
[Description: cid:image003.jpg@01CE8E93.3884FF60]
Twitter<<http://www.twitter.com/thebestclay>>

From: Mia Magistro

[REDACTED]

Sent: Thursday, February 18, 2016 3:24 PM
To: David Smith
Subject: Congrats

Hey David,
I talked to Todd yesterday. Congrats!!!! It sounds like I will be going through him on orders. I'm happy for you guys.
Mia

EXHIBIT C

1 Peter A. Arhangelsky, Esq. (SBN 291325)
parhangelsky@emord.com
2 Emord & Associates, P.C.
3 3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
4 Phone: (602) 388-8899
5 Fax: (602) 393-4361
6 Attorney for Plaintiff

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 YOUNGEVITY INTERNATIONAL
11 CORP. et al.,

12 Plaintiff,

13 v.

14 TODD SMITH, et al.

15 Defendants.
16
17

Case No.: 16-CV-704 W (JLB)

18 **DECLARATION OF STEVE**
19 **WALLACH**

20 **DECLARATION OF STEVE WALLACH**

21 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
22 following is true and correct:

23 1. I, Steve Wallach, am over the age of 18 and competent to testify to
24 the information below. All matters contained herein are of my own personal
25 knowledge unless stated as based upon information and belief.

26 2. I am currently the Chief Executive Officer (CEO) of Youngevity
27 International Corp (“Youngevity”), one of the plaintiffs in the above entitled
28 action.

1 3. Youngevity is a publicly traded multi-level marketing company,
2 founded in 1997, selling in excess of \$156 million annually in consumer products
3 as of 2015, including dietary supplements, gourmet coffee, food products,
4 cosmetics, clothing and jewelry.

5 4. Youngevity has an exclusive license for commercial use of the name
6 and likeness of Dr. Joel D. Wallach. Youngevity has a registered trademark in the
7 name “Youngevity” with the United States Patent and Trademark Office, issued on
8 February 2, 1995. *See* Trademark, attached as Attachment 1.

9 5. Before an individual may sell Youngevity products and solicit
10 individuals to be Youngevity distributors, he or she must agree to Youngevity’s
11 Distributor Agreement. If an individual refuses to agree to Youngevity’s
12 Distributor Agreement, he or she may not become a Youngevity distributor. A true
13 and correct copy of Youngevity’s Distributor Policies and Procedures is attached
14 hereto as Attachment 2. A true and correct copy of Youngevity’s Terms and
15 Conditions Agreement is attached hereto as Attachment 3.

16 6. Todd Smith, Blake Graham, and Total Nutrition, Inc. (collectively
17 referred to herein as “TNT”) were all Youngevity distributors who agreed to
18 Youngevity’s Distributor Agreement. With prior consent or authorization,
19 Youngevity allows authorized Youngevity distributors to make commercial use of
20 Dr. Wallach’s name or likeness, or to make commercial use of Youngevity’s
21 registered trademark. Youngevity always reserves the right to revoke that consent
22 or authorization at any time and for any reason

23 7. I understand that TNT controls, owns, and operates
24 wallachonline.com, yteamtools.com, and 1-800-Wallach. I have reviewed the
25 websites wallachonline.com and yteamtools.com. Those websites make
26 commercial use of Youngevity’s registered trademark and Dr. Wallach’s name and
27 likeness without Youngevity’s consent. Those websites promote and sell
28

1 Youngevity products by trading off of Dr. Wallach's name and likeness. For
2 example, wallachonline.com contains articles written by Dr. Wallach and a health
3 survey that consumers can complete to determine what Dr. Wallach purportedly
4 would recommend. TNT also sells Youngevity products through
5 wallachonline.com. Through Yteamtools.com, TNT sells commercial goods, such
6 as books by Dr. Wallach and CDs containing interviews with Dr. Wallach. TNT
7 also sells flyers, clothing, and other promotional material containing Youngevity's
8 registered trademark through yteamtools.com. Youngevity has never authorized
9 TNT to make commercial use of Dr. Wallach's name or likeness, or to make
10 commercial use of Youngevity's registered trademark.

11 8. Youngevity sent two notices to TNT, Todd Smith, and Blake Graham
12 (on March 21, 2016 and April 4, 2016), demanding that TNT stop further
13 commercial use of Youngevity's registered trademark and Dr. Wallach's name and
14 likeness through wallachonline.com (March 21, 2016 and April 4, 2016 notices),
15 yteamtools.com (April 4, 2016 notice), and 1-800-Wallach (April 4, 2016 notice).
16 *See* Notices, attached hereto as Attachment 4. Nevertheless, as of the date of this
17 affidavit, TNT, Todd Smith, and Blake Graham continue to make commercial use
18 of Youngevity's registered trademark and Dr. Wallach's name and likeness
19 without authorization and against the demands to cease and desist given them.

20 9. Based on my research and knowledge, I am aware that Todd Smith is
21 a founder of Wakaya Perfection, LLC ("Wakaya") and that Blake Graham is a
22 Wakaya Ambassador. Wakaya is a multi-level marketing company that competes
23 directly with Youngevity.

24 10. The unapproved and unauthorized promotions and sales of
25 Youngevity products and commercial goods by TNT, Smith, and Graham—all
26 Wakaya agents—are particularly dangerous for and injurious to Youngevity
27 because those promotions and sales are used by a direct competitor that then has
28

1 access to the very same base of new distributors and customers that would
2 otherwise be the exclusive and confidential property of Youngevity.

3 11. I have reviewed the document entitled “Wakaya Perfection
4 Recognition totals through April 22, 2016,” attached hereto as Attachment 5. That
5 document purports to list all Wakaya Ambassadors and the number of “Paradise
6 Qualified Ambassadors” each Wakaya Ambassador has enrolled into Wakaya.
7 That list identifies a total of approximately 268 Wakaya Ambassadors.
8 Approximately 125 of those Wakaya ambassadors are or were Youngevity
9 distributors. That list also identifies a total of approximately 77 “Founder
10 Qualified” Wakaya Ambassadors. Approximately 44 of those “Founder Qualified”
11 Wakaya Ambassadors are or were Youngevity distributors.

12 12. I have read the declaration of Mia Magistro, attached hereto as
13 Attachment 6. I was completely unaware of Great American Clay until late
14 February, 2016, when Mia Magistro told me about that company. Neither Todd
15 Smith nor Blake Graham ever contacted me or anyone else on Youngevity’s board
16 of directors concerning Great American Clay, never informed me or anyone else
17 on Youngevity’s board of directors that David Smith was interested in exploring
18 either the sale of Great American Clay products by Youngevity or in Youngevity
19 acquiring Great American Clay. If Youngevity had been so informed, it would
20 have been interested in exploring the Great American Clay product line. I have
21 since reviewed the Great American Clay website, greatamericanclay.com. After
22 reviewing that website and based on my knowledge of Great American Clay,
23 Youngevity would have wanted to enter a contract with Great American Clay for
24 the sale of the Great American Clay products, or in negotiations to purchase the
25 Great American Clay Company.

1 Executed on this 5th day of May, 2016.

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5 Steve Wallach

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DECLARATION OF STEVE WALLACH

Attachment 1 to Exh. C



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

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Typed Drawing

Word Mark YOUNGEVITY
Goods and Services IC 005. US 018. G & S: vitamin and mineral supplement. FIRST USE: 19930701. FIRST USE IN COMMERCE: 19930701
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74436133
Filing Date September 14, 1993
Current Basis 1A
Original Filing Basis 1B
Published for Opposition April 5, 1994
Registration Number 1881150
Registration Date February 28, 1995
Owner (REGISTRANT) Keeland, Craig DBA trustee of Craig Keeland Children's Trust, a trust of Texas INDIVIDUAL UNITED STATES P.O. Box 8300-109 Dallas TEXAS 75205

(LAST LISTED OWNER) AL GLOBAL INC. DBA YOUNGEVITY CORPORATION CALIFORNIA 2400 BOSWELL ROAD CHULA VISTA CALIFORNIA 91914

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record John A. Barrett

Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20150821.

Renewal 2ND RENEWAL 20150821

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Attachment 1 to Exh. C



Policies and Procedures

AMENDED SEPTEMBER 2014

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A | INTRODUCTION

The success of your independent network marketing business is directly related to relationships—relationships with customers, other Distributors, and the Company.

Tied closely to your success is the method by which the Company will compensate you for your participation in the Company's program as you conduct your business.

Experience has shown that a clear set of policies and procedures promotes harmony in vital relationships. By understanding well-defined compensation provisions, you can plan your efforts for maximum return and effectiveness. In addition, establishing proper policies ensures that equality of opportunity and fairness are available to all Distributor participants.

As you understand the Company's Policies and Procedures, you will want to follow "the spirit as well as the letter" of those policies. Your success is directly related to the service provided to others. You will find that following these policies will lead to greater success and rewards.

It is with great anticipation of your success that we present to you these policies and urge you to follow them closely and completely.

B | DISTRIBUTOR COMPENSATION AND DEFINITIONS

All Distributors will better understand the policies of the Company by understanding the Distributor Compensation Plan and Definitions of a number of basic terms. These terms are commonly used to explain policies and programs in Company literature and in discussions between Distributors.

- B 1** Company: The term "Company" as it is used throughout these policies and procedures, along with other literature, is to be considered synonymous, and can be used interchangeably with, Youngevity, or any of its subordinate and or contemporaneous companies or product lines; These companies and product lines include, but are not limited to any and all product brands, divisions, and or strategic alliances affiliated with or a part of Youngevity and or its parent company, AL International. This list is dynamic and will change from time to time. The current and complete list can be found by visiting www.youngevity.com.
- B 2** Product: Any commissionable item, program, or service that the Company makes available for Distributors to market.
- B 3** Distributor: A person or legal entity currently authorized to purchase products from the Company and to participate in the Distributor Compensation Plan. Distributor is a general term referring to all authorized Distributors as individuals and as a group regardless of the level or position attained in the program, including, but not limited to analogous terms such as associates, representatives, consultants, marketing directors, and entrepreneurs, among others.
- B 4** Enroller or Enrolling Distributor: A distributor who officially enrolls another Distributor in the Company's income opportunity. The Enrolling Distributor has the option to place the new Distributor into any position within his/her downline organization, or to retain the new Distributor on his/her front line and maintain the role of Placement Distributor. The Enrolling Distributor retains a vested interest in bonus commissions, as bonus commissions primarily follow the lines of enrollment, irrespective of placement within a given organization.
- B 5** Placement Distributor: A Distributor under which a new Distributor is placed, either by him/herself or by another Distributor in the Placement Distributor's direct Upline organization. The Placement Distributor is generally responsible for supervision and training of the placed Distributor. The Placement Distributor retains a vested

interest in residual commissions, GBV, and GQV, as these primarily follow the lines of placement, irrespective of enrollment within a given organization.

- B 6** Upline: All Placement Distributor's above a particular Distributor in lines of placement up to the Company. The entire Upline consists of all Placement Distributor's and Enrolling Distributor's that link or are between any particular Distributor and the Company.
- B 7** Downline: All Distributors via lines of enrollment or placement by any other Distributor below or emanating from a particular Distributor.
- B 8** Suggested Retail Price (SRP): The Company's recommended price for selling a particular product to retail customers. It is the intent that the Suggested Retail Price is the price that is charged for any and all product(s) that are sold to anyone that is not either an active Distributor or Preferred Customer of the Company. Prices are subject to change without notice. Please see current Price List for details.
- B 9** Wholesale Price (W/S): The maximum discounted price paid to the Company by Distributors for product. Also, the minimum price to be charged for selling product(s) to anyone that is not either an active Distributor or Preferred Customer of the Company. Prices are subject to change without notice. Please see current Price List for details.
- B 10** Bonus Volume (BV): A value amount assigned to individual products. This is the amount, singly and cumulatively, from which a distributor's Bonus and Residual Commissions are calculated. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 11** Personal Bonus Volume (PBV): Is the BV value of a Distributor's personal purchases/retail sales (all sales running through the Distributors personal I.D. Number) during a calendar month. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 12** Group Bonus Volume (GBV): The Bonus Volume (BV) purchased/sold by a Distributor's downline organization. The number of levels that are added cumulatively are dependent upon the specific parameters of the bonus in question. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 13** Qualifying Volume (QV): A value amount assigned to individual products. This is the amount, singly and or cumulatively, from which rank qualifications are calculated. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 14** Personal Qualifying Volume (PQV): The QV value of a Distributor's personal purchases/retail sales (all sales running through the Distributors personal I.D. Number) during a calendar month. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 15** Group Qualifying Volume (GQV): The total QV purchased/sold by a Distributor's downline organization. Different qualifying criteria may recognize different calculations – such as a certain number of downline levels, or cut-off's or percentages based upon downline rank complexion. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 16** Consumer: Any purchaser of a Company Product or Service that in turn consumes or utilizes said product or service. Consumers may be Retail Customers, Preferred Customers, Distributors, or unaffiliated with the Company in any way.
- B 17** Preferred Customer (PC): A product purchaser that enrolls with the Company as a Preferred Customer through a

Distributor and purchases product at the wholesale price through their own I.D. Number. Preferred Customers do not participate in, or benefit from the Company's Compensation System.

- B 18** Retail Customer: A product purchaser that is not enrolled as an active Distributor or Preferred Customer with the Company, and that purchases product, either directly from a Distributor, or through the Distributor's online shopping cart. Retail Customers do not participate in the Company's Compensation System.
- B 19** Retail Sale: A retail sale is a sale to an ultimate consumer of Company product. Included are:
- 1 Sales to Retail customers by the Distributor.
 - 2 Purchases by a Distributor who is purchasing for personal or family use in reasonable quantities and is not purchasing for the mere purpose of qualifying for bonuses, overrides, or advancement in the marketing program.
- B 20** Retail Profit: The amount a Distributor makes (gross) by purchasing an item at wholesale price and selling it at retail to a customer, or the difference between the wholesale price and retail price for items purchased directly through the Distributor's retail shopping cart. Retail sales for items purchased directly through the Distributor's retail shopping cart are subject to a surcharge of 5% of the retail profit amount, which is automatically levied in the net retail commission. Please see the Youngevity Distributor Training Manual for details on the Youngevity Compensation Plan.
- B 21** Compensation: Compensation refers to commissions paid to Distributors for product sales to consumers. See the Youngevity Distributor Training Manual for details and definitions relating to Distributor Compensation System.
- B 22** Titles or Ranks: Represents certain milestones of growth and production for a Distributor and his/her downline organization. Details of ranks, titles, and qualifications are detailed in the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide. Ranks and the corresponding titles are shown two ways: Lifetime Rank – which is the highest rank achieved within the Compensation system, and Paid as Rank – represents the current qualification within a given calendar month. Some aspects of the Compensation Plan pay in concert with either a Representative's Lifetime Rank or Paid as Rank. See the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details and definitions relating to Distributor Compensation System.
- B 23** Commissions: Commissions are a percentage (%) of the Bonus Volume of the products purchased/sold from the Company by Distributors. Commissions on downline activity are calculated and paid on both weekly and monthly cycles. Please see the Youngevity Distributor Training Manual and the Youngevity Compensation Plan Guide for details on the Youngevity Compensation Plan.
- B 24** 70% Rule: A rule which provides that Distributors may only purchase Company products for resale to consumers, for personal consumption, or to provide prompt product delivery to downline Distributors in their own personal group. Distributors may not stockpile or acquire excessive inventories. Prior to reordering any product, Distributors must certify that they have sold a minimum of 70% of all previous orders.

C | DISTRIBUTOR AUTHORIZATION

The following are rules related to initiating and maintaining Distributor authorization in the Company's program. In addition to the warehouse policies, all aspects of these Policies and Procedures apply to Youngevity warehouses.

- C 1** New Distributors enroll in the program by purchasing the Company's current Business Kit and submitting an Application/Agreement Form to become a Distributor, which, upon acceptance by the Company, is part of the contract between the

Distributor and the Company. This can be done using the paper application or electronically on-line through a replicated Distributor website. The Distributor Agreement is to be completed and endorsed by the person or entity applying to become a Distributor. This document contains important information which a prospective Distributor should read and understand before endorsing or otherwise applying for a Distributor Position. The Company reserves the right to reject, at its sole discretion, any application deemed unacceptable. Purchase of a Business Kit may be optional in some geographic areas. No purchase of Company products is required to become a Distributor.

- C 2** When an application for Distributor authorization is other than an individual or a husband and wife, the application must be signed by one or more legal representatives who have the power to bind the applying entity. A list of all principals, directors, officers, shareholders, or others with any beneficial interest must be submitted to the Company, complete with current names, addresses, phone numbers, and a detailed accounting of percentages and conditions of interest. While partnerships, corporations, and trusts may be accepted as Company Distributors, an individual may not have a beneficial interest or be listed in more than one Distributor Position without the prior written authorization of the Company. Every Distributor must have a numerical identification number (“ID number”). If the Distributor Position includes more than one person, the Social Security Number of the first applicant on the Distributor Agreement becomes the official Federal Tax ID Number. Any bonus check paid to a Distributor will be issued in the name of the first two applicants listed on the Distributor Agreement, if applicable.

Applicants and Distributors shall not submit any inaccurate or false information on a Distributor Agreement. Furthermore, a Distributor is responsible for informing the Company of any changes affecting the accuracy of the Distributor Agreement/Application. The Company reserves the right to immediately terminate a Distributor if the Company determines that false or inaccurate information has been provided. All proposed changes to a Distributor Position must be submitted to the Company in writing, along with a new Distributor Application/Agreement form with the word “Amendment” written across the top, or electronically with proper login and password by editing information through the Representative’s replicated website and back office system.

- C 3** Authorization as a Distributor includes the right to sell products of the Company and to participate in the Company’s Distributor Compensation Plan. No geographic territory in which the Company is operational shall be exclusive to any one or group of Distributors.
- C 4** Distributor applicants must be of the age of majority in the state or province in which they reside.
- C 5** Upon the death of the Distributor, his/her rights to bonuses and marketing position, together with Distributor responsibilities, shall pass to his/her successors in interest upon written application and approval by the Company. Written application must be received by the Company within ninety (90) days of the date of death. If the Company does not receive appropriate instruction within ninety (90) days of the death of a Distributor, the Distributor Position will be terminated or reassigned. The successor Distributor must fulfill all responsibilities of the Distributor.
- C 6** When a decision is made to terminate a Distributor, the Company will inform the Distributor in writing. The termination notice will be sent by certified mail, or other verifiable means requiring a recipient signature, to the Distributor’s address on file with the Company. If deemed necessary by the Company, Distributors may be terminated by the Company for cause. The Company has the right to take quick and decisive action in limiting or terminating a Distributor who is found in violation of these Policies and Procedures, the Distributor Agreement, rules governing the Compensation Plan, or any state, provincial, or federal laws, statutes, and/or regulations deemed as pertinent by and at the sole discretion of the Company. Such disciplinary action may include oral and written warnings, suspension, forfeiture of bonus checks, or termination. In extreme cases of violations by a Distributor, the Company also reserves the right to pursue reasonable legal recourse, as well as reimbursement by a Distributor for any expenses, including attorney’s fees and legal fees, generated from a violation. The issuance

of bad checks, attempts to persuade Distributors to change Placement Distributors, cross recruiting, fraudulent misrepresentation of the Company, and the commission of illegal or deceptive acts all constitute reasonable cause for termination, together with any other material breach or violation as noted above.

- C 7** An individual may terminate their Distributor Position at any time by providing written notice to the Company. Notice must be sent via certified mail, or other verifiable means, which may include FedEx, UPS, and or Electronic Mail with return receipt and delivery verification.
- C 8** Whether a Distributor is terminated through voluntary resignation or through termination by the Company, that Distributor is no longer entitled to sell Company products or to enroll other Distributors. In addition, said Distributor shall lose all rights to their existing downline and shall no longer be entitled to receive sales commissions, overrides, bonuses, awards, or any compensation whatsoever from the Company, nor shall they be entitled to any rights to their former downline genealogies or Distributor lists.
- C 9** Buy-back: Any Distributor who wishes to terminate through the Buy-Back policy must notify the Company of their intention in writing to the Company. The termination letter must list all the items to be returned, the quantities of each item, and the sales order number(s) under which each of the items was most recently purchased. The letter must be signed by all parties listed on the Distributor Agreement and must acknowledge the fact that the individual(s) listed on the Agreement may never again become a Distributor.

If the Distributor has purchased products for inventory purposes or unopened sales aids while the Distributor Agreement was in effect, all unopened products in a resalable condition then in possession of the Distributor, which have been purchased within one year of cancellation, shall be repurchased by the Company at a price ninety percent (90%) of the original net cost to the Distributor returning such goods, taking into account any sales made by or through Distributor prior to notification to the Company of the election to terminate. For Montana Distributors only: A Montana Distributor who cancels within 15 days, is entitled to a 100% refund of any consideration given to participate.

The Company will not issue any refunds on products previously certified as sold under the 70% rule.

- 1** For purpose of this policy, products shall not be considered “resalable condition” if returned for repurchase after the products’ commercially reasonable, usable, or shelf-life period has passed; nor shall products be considered if the Company clearly discloses to Distributors, prior to purchase, that the products are seasonal, discontinued, or special promotional products.
- 2** If bonuses were paid to a terminating Distributor’s Upline on volume represented by returned products, commissions related to such volume will be debited from all Upline Distributor accounts. A “clawback” transaction will appear in the personal purchases section of the Upline’s next “adjustment summary” with the name of the terminated Distributor in the description. Once the Buy-Back letter has been received by the Company, the Distributor will be contacted and provided with a Return Authorization Number, as well as the address to which the merchandise should be shipped. This Return Authorization Number must be clearly marked on the outside of each and every box which is being returned. Distributors are encouraged to use a traceable means of transport as the Company is not responsible for items lost in transit. Merchandise that is returned without this Return Authorization Number will be refused by the Company. Any merchandise being returned to the Company must be sent prepaid. Once the shipment has been verified, a credit will be issued and a check sent by the 15th of the following month, or a credit will be issued on the credit card originally used for the purchase. The Distributor will then be permanently terminated.

D | DISTRIBUTOR PRACTICES

- D 1** Distributors are independent contractors and are not: franchisees, partners, joint venturers, employees or agents of the Company or their Placement Distributors or Enrollers. Distributors must not imply or represent employment or agency relationships in any manner, including oral representations, printed material, or deceptive actions.
- D 2** Distributors are responsible for all taxes on income received from the Company on sales made by them, and for all and any other taxes, licenses, and fees, unless the Company has established specific written procedures which specify otherwise. The Company will collect and remit sales taxes when applicable on products at the federal, state, and provincial level. Distributors are responsible for any other taxes at any lower jurisdictional levels. The Company is not responsible for any expenses relating to a Distributor's business.
- D 3** Because Distributors are independent contractors, the Company does not dictate selling methods, specific hours, or effort levels, other than those required in Distributor/Company interactions and except as stated herein. Distributors must at all times adhere to Youngevity compliance guidelines and acceptable marketing and business practices.
- D 4** Personal product purchasers (retail or preferred customers) are not required to enroll as a Distributor.
- D 5** No Distributor will be compensated solely or merely for enrolling Distributors or Customers. Ultimately all compensation is based upon the selling of product to Consumers, which is the core of the Company's business. This fact must be emphasized in all recruiting presentations.
- D 6** Written sales receipts, which include information regarding the products sold, price, and Distributor's name, address, and telephone number must be given to every retail customer.
- D 7** Income paid to Distributors on sales for which the Company has given a refund, may, at the Company's option, be charged back to those Distributors.
- D 8** In the conduct of his/her business, the Distributor shall safeguard and promote the reputation of the Company and its products. The Distributor shall hold harmless, defend and indemnify the Company, its shareholders, officers, directors, employees, attorneys, accountants, agents, assigns, and successors in interest against any and all claims, lawsuits (civil or otherwise), losses and expenses of any kind, arising out of or relating to any claims or alleged connections with that Distributor's activities of any kind that violate any local, state, provincial, or federal laws or regulations.
- D 9** All Youngevity Distributor Applications, AutoShip Order Forms, and or any other official forms submitted to Youngevity must be endorsed by the party named on the respective form – Paper forms must contain an original signature and be mailed directly to Youngevity, and electronic forms must be viewed by, agreed to, and electronically endorsed by the appropriate party as stated within the particular form online. In the case of business entity, the endorser must be that of the legal registrant of the business name. At no time is a Distributor allowed to submit a Youngevity Distributor Application, AutoShip Order, or any other documentation that does not contain the endorsement of the named party in the manner stated above. At no time is a Youngevity Distributor allowed to submit a Youngevity Distributor Application, AutoShip Order Form, or any other documentation on which he/she has entered a signature of the named party regardless of permissions implied or received, as Youngevity does not and will not accept a "Power of Attorney" signature on any of its forms.
- D 10** From time to time, at Company events or other functions or occurrences, solely for the purposes of promoting the Products, the Company, or combination thereof, the Company may take photos, record audio and or video of events, testimonials, sessions, or interviews and the like. Said photos, video, and or audio may include the image, likeness, and or voice of any and or all attendees of the event, function, or occurrence. Attendees may include,

but are not limited to Distributors, Customers, and or prospective Distributors or Customers and or Guests of same (Hereinafter for the purposes of this section, will be inclusively referred to as “Subject”). Distributor agrees and understands that it is his/her responsibility to disclose this policy to any guest that he/she invites to any Company event, function, or other occurrence. Any such photography, videography, and or voice recording will be obvious and or clearly disclosed to the Subject. Company will use its best and reasonable efforts to ensure that no photos, videos, and or audio recordings will be gathered against the expressed wishes of the Subject. However, continued attendance by Subject at any event, function, or occurrence where photos, video, and or audio is being captured will, in all cases, be construed as agreement and acceptance of the following: Subject grants permission to the rights of his/her image, likeness and sound of his/her voice as recorded on audio or video without payment or any other consideration. Subject understands that his/her image may be edited, copied, exhibited, published or distributed and summarily waives the right to inspect or approve the finished product wherein his/her likeness appears. Additionally, Subject waives any right to royalties or other compensation arising from or related to the use of his/her image or recording. Subject also understands that these images and or recordings may be used in diverse educational, commercial or promotional settings within an unrestricted geographic area. As well, there is no time limit on the validity of this understanding and subsequent release, nor is there any geographic limitation on where these materials may be distributed.

E | PROHIBITED PRACTICES

- E 1** Distributors shall not produce, promote, or use any copyrighted or otherwise proprietary materials containing the Company’s names, programs, products, or logos, except those that are pre-approved and obtained directly from the Company. Any materials used that are not provided by Company, must be approved in advance by submitting said material in concert with the Youngevity Advertising Approval Application. Details of who may submit, and what can and cannot, and what will and will not be approved is detailed in the application, which can be obtained by contacting customer service.
- E 2** Distributors shall not misrepresent product attributes and qualities to customers. Unauthorized, unwarranted, and unjustified product claims shall not be made.
- E 3** Distributors shall not repackage or re-label any Company product. Nor shall the product be removed from its original packaging and resold in any way.
- E 4** Distributors shall not misrepresent the Company’s Compensation Plan for Distributors. No misleading or deceptive statements about the Plan shall be made. No opportunity or income exaggerations are to be given. If actual income examples, extrapolations, or geometric progressions are used, actual typical incomes of Company’s Distributors at all levels must also be disclosed. Examples used to illustrate how the Plan works are allowed if they are specified as “examples only” and any relevance to anticipated success is disclaimed.
- E 5** There are no franchises or exclusive territories as a part of the Company’s Distributor Compensation Plan. No Distributor may represent that any such territory or franchise exists or can be sold as part of the Distributor program.
- E 6** All Distributors are Independent Contractors; the Company imposes no restrictions on any Distributor’s participation or sales activities in other businesses or programs other than Youngevity except as said activities or programs would cause or create a violation of any provision of Distributor’s agreement with the Company or any of these policies and procedures.
- E 7** Distributor lists, including downline sales organization information, is proprietary and confidential to the Company,

with the exception of first level, personally enrolled Distributors. The Company may forward genealogical information at a nominal cost to Distributors, in strict and complete confidence, to help them manage their downline sales organization and for no other purpose.

Every Distributor who is provided with such information shall treat it as confidential and take care to maintain its secrecy as well as refrain from making any use thereof for any purpose other than the management of his/her downline sales organization. Without limiting the generality of the foregoing, no such information may be used in cross-recruiting or with the intent to entice Company Distributors into other network marketing organizations.

Any violation of this policy by a Distributor will result in the immediate suspension and/or termination of the offending Distributor. Furthermore, the offending Distributor could be subject to legal action for injunctive relief and/or damages.

- E 8** Distributors shall not cause any Company product or name to be sold or displayed in any retail establishment of any kind, including, but not limited to, civilian, military, internet based or otherwise, except those establishments and or virtual locations specifically authorized and licensed in writing by the Company. As a general rule, the Company discourages distributors from using any website for promotion other than those replicating websites provided by the Company to its distributors. Distributors using weblogs ('blogs'), online forums, video-streaming websites, chat rooms, social networking sites or systems, auction sites, or any other internet based systems are subject to the guidelines of the Company Policies and Procedures. Any violation of the terms of service of any of the aforementioned systems may subsequently be considered a violation of Youngevity Policies and Procedures. The Company reserves the right to investigate reported infractions and to enforce its Policies and Procedures.
- E 9** Distributors shall not engage in any unlawful practices.
- E 10** All purchases of Youngevity products, literature, and promotional material must be purchased from Youngevity in accordance with the stated Policies & Procedures. Youngevity Distributors and/or Preferred Customers are not allowed to purchase Youngevity products, literature, and promotional material from a Youngevity supplier. At the request of the Youngevity suppliers, Youngevity Distributors and Preferred Customers are not allowed to contact any Youngevity suppliers for any reason. Contact is described as, but not limited to, telephone calls, recorded voice messages (voicemail), facsimile transmission (fax), written communication, or electronic correspondence (e-mail). Any violation of this policy can, depending on severity, result in the termination of Distributors or Preferred Customer status.
- E 11** Distributors, whether active or otherwise, shall not re-sell any product(s) in any form or combination with any other product unless it is complete, factory sealed, and in its original packaging with all required labels intact. Pricing for said product(s) is strongly recommended to be equal to the Suggested Retail Price, but under no circumstances shall be less than the current wholesale price for same item as published by the Company. Distributors are prohibited from using any advertisement or commercial enticement that is not provided directly by the Company. Prohibited enticements include, but are not limited to, less than "wholesale plus sales tax" pricing, free shipping, quantity discounts, or any and all other perks and or incentives offered in conjunction with the purchase of any Company product or service.
- E 12** Distributors are strictly forbidden from Cross-Recruiting, and shall not sell, recruit, propose, or in any other way induce or attempt to induce any other Distributor to purchase any product or service, or to participate in any other income opportunity, investment, venture, or commit any other activity deemed, at the full discretion of the Company, as cross-recruiting. This includes any such activities across any divisions of the Company, should any separate divisions with different compensation plans and or hierarchy structures exist, unless, and as specifically stated otherwise. The integrity of the hierarchy and the relationships therein is of paramount importance to

every Distributor as well as to the Company. Any Distributor violating this provision may be subject to immediate termination for cause, forfeiting any and all commissions due him or her.

F | PLACEMENT

- F 1** All Distributors in good standing may enroll and place other Distributors in their Downline organization within the Company's Distributor program. Said placement must be finalized on or prior to the 60th day of enrollment. Placement cannot be changed after 60 days of enrollment.
- F 2** Enrollers and Placement Distributors must offer general support, information, and assistance as well as bona fide supervisory, marketing, selling, and training support to Distributors they enroll and or override, or otherwise benefit from through the compensation system.
- F 3** Enrollers and Placement Distributors shall exercise their best efforts to ensure that all Downline Distributors understand and comply with the most current terms and conditions of the Distributor Agreement, the Policies & Procedures and Compensation Plan, as well as all applicable federal, state, provincial, and local laws, ordinances and regulations that pertain to the business of the Company.
- F 4** Enrolling and Placement Distributors should always use their best efforts to settle disputes between a Retail Customer, a Preferred Customer, and or any Downline Distributor in an attempt to resolve such disputes promptly and amicably.

G | TRANSFER OF PLACEMENT DISTRIBUTORSHIP

- G 1** A Distributor may change enrollers and Placement Distributors by one of two methods.

Method one is through resignation of current Distributorship, followed by re-enrollment of a new Distributorship in the desired position of enrollment and or placement. Such action will result in the termination of current Distributorship, along with all rights and benefits of said Distributorship, including commissions, as well as the subsequent loss of any downline Distributors and or Customers. This must be followed by a mandatory Six (6) month period of inactivity as a Distributor prior to the submission of a new Distributor Application.

Method two is through the approved movement of current Distributorship from one line of Enrollment and or Placement to another. This method not only requires the approval of the Company, but it additionally requires the approval of 6 levels of Upline Enrollers, using the Enroller/Placement change application. All Upline Enrollers must actively approve any move in writing, as verbal approvals or 3rd party approvals are invalid. Further, any lack of response by an Enroller within 10 days of notification will be construed as non-approval, and the Distributorship move will be summarily denied. This method of Distributorship movement within the hierarchy is valid for a single Distributorship only, and does not provide for the movement of any downline Enrollees or placed distributors. It does, however, provide for the movement of Preferred and Retail Customers that are personally enrolled by the Distributor requesting the move.

The only exception to this rule is, at the discretion of a Customer Service Manager, executive, or officer of the Company, if it is determined that a Distributor has been enrolled inappropriately or incorrectly, and only with the expressed permission of the Enroller and Distributor, said Distributor may be moved to a different Enroller/ Placement Distributor within 7 days of initial enrollment. No Enroller/Placement Distributor changes made under this "7 day rule" will be unreasonably made or withheld.

- G 2** A Distributor may not sell, assign or otherwise transfer his or her Distributor Position, marketing position, or other Distributor rights without written application and approval by the Company which may not be unreasonably withheld. Use the Distributorship Transfer Application to apply for such a sale or transfer. Sale or transfer of a Distributorship will be automatically denied if said transfer would cause a violation of any other portion of these Policies and Procedures. Any Distributor who sells his or her Distributor Position shall not be eligible to reenroll as a Distributor for a period of at least six (6) months after the sale. The Company, after a review of the terms of the sale, reserves the right to approve or disapprove, in its sole discretion, of a proposed purchaser's qualifications and intention to manage and develop the Distributor Position.
- G 3** No two adults in the same household shall hold Distributorships in more than one line of Enrollment or Placement.

H | ORDERING AND SHIPPING PROCEDURES

- H 1** Who May Order: The Company will accept orders for products only after a valid Distributor Agreement certified by their Placement Distributor is on file with the Company. Distributors are then authorized to submit orders.
- H 2** All orders for product and other items will be processed for shipment upon clearance of payment. Shipment is made by common carrier and delivery should be expected within 7-14 days, unless special shipping arrangements are made at the time of order. If an ordered item is on backorder, consignee will be notified via telephone or electronic communication as to the status. As a standard, Youngevity does not ship partial orders or hold backorders in the system for extended periods of time. If backorder delay is relatively short, entire order will be held back and shipped in its entirety upon availability of backordered item. If backorder delay is extended, then backordered item will be cancelled from order, the price of that item returned to Customer/Distributor, and the balance of the order, if any, will be processed and shipped. All ordered item(s) will be shipped as soon as items are available and usually within fourteen (14) days of the date the original order and payment was received.
- H 3** Upon receipt, Distributors should immediately inspect shipments to determine whether orders are complete and in good condition. Any damaged or missing contents should be noted on the delivery receipt. If items have been damaged in shipping, Distributor should request, from the shipper, the process for filing a claim for damaged or missing materials. Items that are missing from shipment should be brought to the attention of the Company within 1 business day of receipt to ensure proper handling of refund and or product reshipment.
- H 4** If a shipment does not arrive within the expected timeframe, before assuming any shipment has been lost or stolen; a Distributor should wait at least fifteen (15) working days from the placement of mail orders, and ten (10) working days from the placement of telephone or internet orders. Lost shipments, if later found and/or delivered, must be reported to the Company's Distributor Services within seven (7) days of delivery. Any extra product received in any shipment must also be reported. Duplicate orders or replaced shipments that do arrive can be either returned to the Company, or purchased by Distributor, at the Distributors discretion.
- A Distributor who signs a delivery release with a common carrier, authorizing the carrier to leave an order at an unsecured location, without a signature, releases the Company from responsibility for such delivery. Distributors who are absent at the time of delivery may be required to retrieve their packages from the shipping office or have them delivered to a more suitable alternate location.
- H 5** **Sales Aids:** Sales aids (Business Kits, Business Tools, Marketing Materials, etc.) are not items that carry a discount or a bonus volume credit. Placement Distributors developing their networks should have a supply of these materials on hand to serve their downline growth needs.

H 6 Order Forms: When submitting written orders to the Company, Distributors must use unaltered official Company order forms, or have all orders placed through the appropriate online shopping cart / back office interface.

H 7 Submitting Orders: Products are ordered at Wholesale prices. The overall success of the Company and its Distributors depends upon retail sales of the products to consumers. A “retail sale” is defined as the sale to an ultimate consumer who is purchasing the product for his/her own use.

- 1 Distributors may not themselves order, or ask their Downline Distributors to order inventory for the sole purpose of participating in the Compensation Plan or “qualifying” themselves or others to earn commissions or bonuses (This practice is frequently referred to as “inventory loading”).
- 2 Distributors may only purchase Company products for resale to consumers, for personal consumption, or to provide prompt product delivery to downline Distributors in their own personal group. Distributors may not stockpile or acquire excessive inventories. Prior to reordering any product, Distributors must certify that they have sold a minimum of 70% of all previous orders (The “70% Rule”).
- 3 Distributors are required to carefully document all retail sales. The Company may, at any time, require a Distributor to produce all completed retail sales receipts for the previous thirty (30) days and a list of five (5) or more persons to whom the Distributor has made retail sales of the products during the previous thirty (30) days.
- 4 Distributors may not advertise or promote product for more than the current established retail price or for less than the current established wholesale price as published by the Company. See current product price list for details on Wholesale and Retail prices.

H 8 The Product Order Form is required for all mail orders of products and must be fully completed and submitted to the Company. Two or more Distributors may not combine orders on the same order form.

- 1 Incomplete orders will not be processed by the Company. Such orders will be returned to the Distributor by mail and any consequences arising out of an incomplete order shall be the responsibility of the Distributor who attempted to place the order.
- 2 In placing an order by mail, the Distributor certifies, acknowledges, and warrants that the order was made by the Distributor and that a minimum of 70% of all previous orders of Company products have been sold.

H 9 Qualifying Order Policy: The Company may not accept any qualifying order from Distributor Warehouses after the twenty-fifth (25th) of any calendar month for the current volume month.

A qualifying order is defined as an order for the Company products in which the Distributor placing the order is using the bonus volume from that order to qualify for commissions and/or rank advancement.

All qualifying orders submitted by any warehouse must be clearly marked “Qualifying Order” with the volume month and year marked underneath. These markings must be placed on the Product Order Form in the box in the upper right hand corner labeled “Do Not Ship.” The date of the order must also be placed on the qualifying order and a copy of the qualifying order given to the Distributor placing the qualifying order.

Any qualifying order submitted after the twenty-fifth (25th) of any calendar month for the current volume month must be submitted to the Company directly via telephone or facsimile transmission. To insure priority handling of a qualifying order, the Distributor should inform the Company’s Customer Service Distributor the order being placed is a qualifying order. If the qualifying order is transmitted to the Company via facsimile then the order should be clearly marked as a qualifying order and indicate the volume month for which the order is to be applied.

Any qualifying order received from a warehouse after the twenty-fifth (25th) of the calendar month for the current volume month will be applied towards the following volume month. In the event that an order is received from a warehouse and also submitted to the Company directly via telephone or facsimile transmission will be treated as two orders: One qualifying order for the current volume month and one qualifying order for the following volume month. If an order is canceled or refused, commissions for either of the volume months may be affected.

It is not the responsibility of the Company to inform a Distributor of an improper submission of a qualifying order. The Distributor must place qualifying orders properly in order to participate in rank advancement and/or the earning of commissions.

Any Distributor who, in good faith, placed a qualifying order in accordance with these policies and is denied commissions and/or rank advancement because a Warehouse is found to be in violation of these policies will receive commissions in accordance with the "Recalculation of Commissions Policy."

A Warehouse may institute its own individual policy regarding the acceptance of qualifying orders from a Distributor in order to ensure submission to the Company on or before the twenty-fifth (25th) of the calendar month. Any Warehouse found to be in violation of these policies resulting in the Company being required to recalculate commissions in accordance with the "Recalculation of Commissions Policy" may, at the Company's sole discretion, be required to forfeit commissions in the amount equal to the commissions of the Distributor(s) who were negatively affected. Serious and/or repeated abuses of this policy will result in the revocation of a Distributor's Warehouse status.

In the event that a Distributor willfully disregards this policy, neither the Company nor the Warehouse will be held responsible.

H 10 Policies and Procedures for AutoShip:

- 1 Youngevity will use its best efforts to ship all AutoShip orders on the specific day of the month specified by the Customer or Distributor at the time the AutoShip order was setup. In cases where that day lands on a weekend, holiday, or any other day that the Youngevity warehouse is closed for shipping, said AutoShip order will be fulfilled on a day chosen by Youngevity, as close as possible to the chosen day. Should there be a need to permanently change an AutoShip date, Customer or Distributor will be notified of same and provided with revised schedule and or other Autoship day options.
- 2 All new AutoShip requests must be received electronically or physically by the Company by the last business day on or before the 28th of the month to be processed for the following month.
- 3 Youngevity is not responsible for delays in the delivery of an AutoShip request caused by the U.S. Postal Service, or any other courier service, public or private.
- 4 All AutoShip requests must be received electronically or on an official Company AutoShip Order form. The order form must be filled out completely. Any omissions of information will render the AutoShip request invalid and must be resubmitted.
- 5 Youngevity can receive faxed, photocopied, internet, and original AutoShip forms. AutoShip requests will be accepted with appropriate endorsement. Youngevity cannot receive a request for AutoShip via the telephone.
- 6 All AutoShip requests must be paid with a credit card, ProPay or credit on account, which will be billed monthly.

- 7 All AutoShip requests must be sent to the billing address of the credit card (this information will be verified with the credit card company).
- 8 An AutoShip order may be of any size. Qualifying Volume for AutoShip orders will be applied automatically, however, having an active AutoShip order on file, in itself, does not automatically constitute Commissions or Rank Qualification for any Representative. It is the responsibility of the individual Distributor to qualify for commissions with the required Personal Qualifying and or Group Qualifying Volume.
- 9 Any and all changes to an existing AutoShip are treated as a new AutoShip Request and are subject to the same requirements. Any and all changes to an existing AutoShip must be clearly identified as a change to avoid a duplicate AutoShip order being created.
- 10 The Company is not responsible for any incorrect information supplied by any financial institution.
- 11 The Company is not responsible for credit cards not authorized for payment of an AutoShip order. Any order not authorized for payment via a credit card will be cancelled for that month. Any order not authorized for payment via a credit card for two (2) months in any twelve (12) month period will be rendered void and will be required to be resubmitted with another credit card number as payment. If the new credit card is not authorized for payment during the twelve (12) month period, the Distributor will not be allowed to participate in the AutoShip program and will instead need to place orders using another payment method.
- 12 The Company will cancel any AutoShip that is subject to a consumer credit card chargeback.
- 13 Unauthorized duplication of an AutoShip Order Form is prohibited. Written permission from the Company is required before the duplication of any form is permitted.
- 14 Any AutoShip that is refused delivery will be immediately canceled. Additional charges will be levied if a second shipment is requested. An AutoShip canceled for refused delivery will not be eligible for renewal.
- 15 The Company processing fees will be deducted from refunds issued for AutoShip orders.
- 16 As outlined in section D9, all Youngevity Distributor Applications and AutoShip Order Forms must be properly and legally endorsed. Violation of this policy is considered fraud and is a violation of these Policies & Procedures.

H 11 Policies and Procedures for Duplication of Distributor Application, Order Form & AutoShip Form:

- 1 The word “form” refers to the Youngevity Distributor Application, Product Order Form, and AutoShip Order Form, whether in print on paper or electronic via any Youngevity website.
- 2 The word “original” refers to the source material provided by the Company for reproduction.
- 3 These forms must be “duplicated” from the original supplied from the Company and not “recreated”, ie: all forms must be exact reproductions of the original without changes or deletions. Any and all duplication of forms must also adhere to all other applicable provisions to these Policies & Procedures.
- 4 An original Company form will be made available in the following formats for reproduction:
 - a) A laser print
 - b) A computer image available in PDF format.
- 5 All paper forms must be reproduced in the following Pantone colors:
 - a) Distributor Application - PMS 527 (Purple)

- b) Order Form - PMS 355 (Green)
 - c) AutoShip Order Form - PMS 485 (Red)
- 6 Any paper forms reproduced in other colors and submitted to the Company for processing will be returned for correction and resubmission.
 - 7 All forms reproducible will contain a box labeled “Presented By” or “Presented by the Company’s following Distributor.” A Distributor wishing to do so, may place his/her name, company name, telephone number, special offer, or advertisement within the borders of this box and not covering the above mentioned label inside the box. The nature of the contents inside the box is governed by the Policies & Procedures and must be submitted to the Company for approval prior to reproduction.
 - 8 Any and all forms reproduced without prior written consent from the Company may be found to be in violation of the Policies & Procedures and may not be accepted for processing.
 - 9 These forms and policies are designed to give the Company’s Distributor the opportunity to personalize the service he/she offers their downline and to ensure that uniformity is maintained to aid the speedy and accurate processing of all the Company orders and applications.

H 12 Drop Ship Policy

For the purposes of these Policies & Procedures, a Drop Ship is defined as an order placed by a Distributor using their credit card and having that order delivered to a place or party other than the Distributor or Distributor’s address.

Youngevity will Drop Ship your order so long as it is paid for with your credit card. Youngevity will not Drop Ship any C.O.D. or payment due orders.

- 1 Distributors placing a Drop Ship order will assume all responsibility for packages lost or stolen after delivery to the address specified.
- 2 Distributors placing Drop Ship orders must be named on the credit card used for the order.
- 3 A Distributor may not pay for an order using another person’s credit card, regardless of the delivery destination.
- 4 The billing address of the credit card to be used for a Drop Ship must be provided at the time of the order. Youngevity will, without notice, verify the billing address, telephone number, and name or card holder. If this information is found to be different than that submitted to Youngevity, further Drop Ships will not be permitted.
- 5 Any Drop Ship refused delivery will not be eligible for a full refund. Shipping and handling charges will be deducted from any refund issued. These charges may exceed seven (7%) percent of the sales price.
- 6 Youngevity may, at its sole option, suspend any Distributor who instigates a consumer chargeback related to a Drop Ship paid for via credit card. Payment plus additional administrative fees must be made prior to the removal of a Distributor’s suspended status.
- 7 Failure to abide by the Drop Ship Policy will result in the termination of the Drop Ship Agreement.

I | ADVERTISING, USE OF COMPANY NAMES, AND PROTECTED MATERIALS

- 11 No Distributor shall produce, promote, or use copyrighted, trademarked, service marked, or proprietary materials

of any kind describing the Company's names, products, or logos, if said materials are not obtained from, or approved by, the Company in advance in writing, prior to their production or use. Distributors shall not use or appear on television, radio, including Internet blogs, internet radio, podcasts, or any other media to promote or discuss the Company or its programs without prior written permission from the Company. All media inquiries shall be referred directly to the Company. Distributors may use the Youngevity Advertising Approval form to submit for approval any such media promotions.

In addition, Distributor shall not misuse or misrepresent him/herself or any of the Company's products through the use of any other person's name, company name, trademark, or any other personal or copyrighted information, symbols, logos, or trade names without the express written permission of both the other party and the Company.

- 12** In addition to these Company Policies and Procedures, Federal law prohibits deceptive advertising, which includes any and all false and or unsubstantiated advertising. Distributors must not use false or misleading statements or material omissions of information that may be construed to deceive the public in any advertising, whether in print, written, electronic, verbal, or any other form or media considered advertising. The Company is including these regulations to comply with those of the Federal Trade Commission, Federal Drug Administration, as well as other various Federal, State, and Local agencies. The Company takes these regulations seriously, and always abides by them when creating any and all Company generated advertising.
- 13** Whereas the Company may also consider approval of distributor generated advertising (as outlined in our Advertising Approval Application), it is mandatory that all distributors use only Company generated and pre-approved advertising in the promotion of the Youngevity® income opportunity or any Youngevity® products. The Company is not required to, nor will it defend or hold harmless any Distributor using non-approved advertising, in any form, that is found to be in violation of any Local, State, or Federal statutes. Please read these regulations carefully. Complete compliance with them is not only expected, it is necessary to avoid violation of federal law. Under federal law, the Company is obliged to take all reasonable action possible to prevent and or halt deceptive advertising by its distributors. Once aware of deceptive promotions by a Distributor, The Company must and will act accordingly.

The following are examples of prohibited content applicable to all advertising and promotion of The Company products (whether on the web, in person, or via media of mass communication):

- a)** No distributor may use any recording, book, pamphlet, or transcript to promote the sale of a Company product if that recording, book, pamphlet, or transcript associates any nutrient found in a Company product with any effect on a disease or any health benefit unless the precise claim in question has been pre-approved for such use by the Company.
- b)** No distributor may place upon his or her website used to promote or sell Company products any link to another website containing information that associates a nutrient contained in any Company product or any Company product with an effect on a disease or any health benefit unless that specific link has been pre-approved by the Company.
- c)** You may not inform a potential purchaser of a Company product that the product or any of its ingredients can treat, cure, or prevent a disease or cause a health benefit unless the specific claim has been pre-approved by the Company.
- d)** You may not advertise in any medium of mass communication (including via the internet, direct mail, print media, broadcast media, or cable media) that the product or any of its ingredients can treat, cure, or prevent a disease or cause a health benefit unless the specific claim has been pre-approved by the Company.
- e)** You may not represent that a The Company product has any effect upon a body structure or function unless the

specific claim has been pre-approved by the Company.

By contrast with the preceding examples, you may use any claim approved by The Company so long as it is used consistently with the approval given and within the same context approved for use. Company literature, websites, and other electronic media do contain approved health claims, in context. These have been approved or allowed by the Food and Drug Administration and are consequently approved for use by Company distributors, provided that FDA's conditions on use of the individual claims are satisfied. These claims must be used in their entirety and within the limits prescribed by FDA.

I 4 Default Rule of Advertising Use

By default, any advertising, including, but not limited to, brochures, pamphlets, recordings, videos, E-Mail content, Websites, Blogs, Newsletters, Scripts, Articles, Banners, Presentations, and displays that are not produced and made available directly by the Company are deemed a non-approved, non-compliant advertising, and must not be used to promote any aspect of the Youngevity® income opportunity or products.

I 5 Esoteric, Non-Intuitive Content

The laws regulating the use of advertising, claims, and information made available regarding nutritional products, network marketing, income opportunities, and health and or income claims are vast, containing many esoteric indications and rationale that are not always intuitive or obvious, especially to the layperson. The Company goes to a great deal of time, energy, and expense to make sure that Distributors have professional advertising materials available to them, that said advertising is up to date, compliant, and will not place the Distributor in a situation where he/she violates company policies or Federal, State, and or Local statutes. For obvious reasons, Youngevity is reticent to approve any Distributor generated advertising. Even in such cases where Distributor generated advertising is approved, the Company reserves the right to deny or rescind approval on any advertising for any reason at any time, with no liability or recourse for expenses incurred by Distributor to create, distribute, or repeal said advertising. Once notified of same, Distributor must discontinue use of said unapproved advertising immediately.

I 6 Distributors may place classified ads in newspapers if they do not use Company names or trademarks.

I 7 Distributor's use of the Company is restricted as to protect the Company's proprietary rights, ensuring that Company protected names will not be lost or compromised by unauthorized use.

I 8 Other rules relating to the use of the Company name are as follows:

- a)** All stationery (letterhead, envelopes, and business cards) bearing the Company name or logo must be printed using the correct wording as indicated by the Company.
- b)** All promotional items such as clothing, personal use items, and any items of any other nature which bear the Company's name or logo must be purchased/sold only from the Company or its authorized Distributors. The only exceptions are imprinted gift items such as: pens, key chains, letter openers, buttons, and calendars. These kinds of items must not include the Company's logo, but must be inscribed as follows:

Compliments of "Youngevity"

(Name)

Independent Distributor

(optional address and phone number)

- c) All Distributors may list themselves in the telephone directory under their own name, followed by the words “Independent Distributor of Youngevity.”
- d) No Distributor is allowed to place phone directory display ads using the Company’s name or logo. No Distributor shall list their business name, caller ID, or directory listing as Youngevity or any other Company trademark, salesmark, or product name.
- e) Use of the Company’s name or logo on buildings, vehicles, etc., must be approved in writing in advance by the Company. Such usage must always carry the phrase “Youngevity Independent Distributor” immediately following the Distributor’s name. Such usage must be according to Company instructions and using Company formats and/or materials. Items bearing the Company name(s) must be kept in visually attractive condition.
- f) A Distributor may not refer to themselves as “Youngevity” alone when answering the telephone. The Distributor’s name must be given. Always refer to yourself or your business as an “Independent Youngevity Distributor.”
- g) It is not permitted for anyone to possess a business name or bank account using the name Youngevity.

I 9 Distributor Website and Social Media Policy

This amendment to the Youngevity Policy & Procedures refers to the creation and use of Internet websites created by Youngevity Distributors for the purpose of promoting themselves as a Youngevity Distributor and the Youngevity products or Dr. Joel Wallach. A website is defined as any use of a computer, the Internet, and the World Wide Web to display, comment on, or otherwise transmit information in graphic, text, or audio form. As with any advertisement or promotion, the Policies & Procedures of Youngevity prevail and should be followed in addition to the following amendment.

- a) The name Youngevity is a registered trademark, as are the other Company and Product names owned by the Company. The name Youngevity or any trademark or salesmark of the Company, in its entirety, in part, or hyphenated may not be used in any domain name, URL, or email address.
- b) The name Dr. Joel Wallach is part of the intellectual property of Dr. Joel Wallach and may not be used in its entirety, in part or hyphenated, in any domain name, URL, or email address.
- c) All logos, slogans, and trademarks of the Company are the sole property of Youngevity and may be used with written permission only. Permission to use Youngevity logos, slogans, and trademarks may be revoked without notice or reason and solely at the discretion of Youngevity.
- d) All use of Youngevity logos, slogans, and trademarks must state permissions given on the front, index, home, or main page of any website.
- e) All Youngevity logos, slogans, and trademarks must be used in their respective entirety. All colors in any Youngevity logo or trademark must be reproduced accurately. No partial logos or “artistic license” may be used.
- f) Youngevity logos, slogans, and trademarks in graphic form may not be sold or traded by anyone.
- g) The name and Distributor Identification Number of any and all Youngevity Distributors responsible for content of a website must be displayed on the front, index, home, or main page of the website.
- h) No Distributor of Youngevity may state or imply that their website is official, sanctioned, authorized, or licensed by Youngevity, Dr. Joel Wallach, or any board member, advisor, consultant, or affiliate of same. Any and all Representative owned websites must be identified as owned and controlled by the individual entity

or person to whom the site belongs, followed by “independent distributor for Youngevity.” Only websites owned, controlled, and designated by the Company as such can be considered as an “official website” or any iteration thereof. These websites include, but are not limited to www.youngevity.com, www.90forlife.com, and many other micro sites, and subordinate sites. Only representatives in good standing may have access to the Company replicated sites, including, but not limited to www.my90forlife.com, www.youngevityonline.com, as well as access to the tools, programs, back office access, and other areas contained therein.

- i) Any and all sources of content and permissions for use of a Youngevity Distributor’s website must be documented and stated on the website. This includes but is not limited to the use of graphics, quotes, and excerpts.
- j) Written approval for all quotes or excerpts from Dr. Wallach’s lectures, books, radio shows, audio, or visual productions must be stated and documented. Note: Copyrights from various radio shows, audio, and visual productions may be held by persons or entities other than Youngevity. People or entities holding copyrights of this type are not obligated to grant permission for use of these materials.
- k) The signature of, or likeness of Dr. Joel Wallach, board member, advisor, or any current employee or affiliate of the Company is not allowed to be used on any website.
- l) No Distributor of Youngevity may make any claims of income or income potential by becoming a Youngevity Distributor.
- m) No Distributor of Youngevity may make any claims of health benefits or betterment by consuming or applying Youngevity products.
- n) Only the Distributor’s personal testimonial about the benefits or results stemming from the use of Youngevity products may be used on a Distributor’s website. A Distributor’s website must not contain the testimonials of others in the content of their website.
- o) No banners or other methods of advertisement may be used or included in the content of any Youngevity Distributor’s website.
- p) No hyperlinks to other websites promoting competing products may be used on any Youngevity Distributor’s website.
- q) No products other than Youngevity products may be mentioned or sold on any Youngevity Distributor’s website. This includes but is not limited to product comparisons.
- r) Any use of the internet to promote the Youngevity Compensation Plan internationally is prohibited until such time as Youngevity authorizes promotion of the Compensation Plan, after being designed and approved for a particular country.
- s) Distributors using a website for order fulfillment must transact business using a secure server to protect the personal information of the customer. Email orders are not to be encouraged or accepted for transacting Youngevity business.
- t) Each individual Youngevity Distributor is responsible for abiding by all local, state, and federal laws concerning all aspects of using the Internet to promote or sell Youngevity products and business opportunities.
- u) Youngevity reserves the right to edit content of and require immediate modifications to any Distributor’s website at the sole discretion of Youngevity.
- v) Electronic mail (email) advertising is subject to Youngevity Policies & Procedures and as such must be

submitted and approved prior to transmission. All email advertising is subject to editing by Youngevity prior to approval to transmit.

- w) All email advertising must be in compliance with all prevailing local, state, and federal laws concerning unwanted, unsolicited email also known as spam. Spamming is illegal and will not be tolerated by Youngevity.
- x) It is strictly forbidden for any Distributor to represent him/herself or any products, product packages, or affiliations through direct or indirect inference through any website, advertisement, email, or any other means as other than is actually true and as outlined herein. Any represented affiliation with any person, persons, groups, or organization(s) that is against the wishes of, or unknown to said affiliate, will be viewed upon as fraudulent and in violation of Distributor's agreement.

*Existing websites (sites that were constructed prior to, and that have been in continuous operation since October of 2002) using a form of Youngevity or Dr. Joel Wallach in their URL or domain name only (RE: provisions a and b of this section) are granted permission to continue to operate as long as all other policies are followed (sections c through x inclusively). The email addresses are still subject to the policy. Websites granted these permissions must contain a hyperlink to the www.Youngevity.com corporate website on the front, index, or main "page" and should be labeled as "The Youngevity Corporate Website may be found here." The Company's network of Independent Distributors can therefore protect each Distributor's individual business image, as well as the Company's overall image.

y) Social Media Community Guidelines

In addition to the Distributor website specific guidelines, there are additional stipulations regarding Social Media and similar online communities. The Company's Social Media Community Guidelines are maintained separately as a part of these Policies and Procedures. As Social Media is a dynamic and rapidly changing environment, it may be necessary to update said guidelines more frequently than that of this document. As a result, the most current guidelines may or may not coincide with what is listed herein. The most current guidelines are appropriately posted in/on the official Company Social Media sites by the administrator(s) of said sites. Any violation of the Social Media Community Guidelines will be considered a violation of these Policies and Procedures, and will be subject to the remedies as stated herein.

The Company welcomes the use of the Internet and on-line communities to promote the Company, its products, services, and income opportunity. However, just as with any written or spoken advertising, any and all Social Media postings including, but not limited to chats, blogs, fan pages, broadcasts, videos, tweets, text messages, and etc. must be compliant with the entirety of these Policies and Procedures. This also includes a Distributor's personal Social Media pages, if said pages are used to promote the Company, its products, or income opportunity. If it is unclear whether any information to be posted may be compliant, submit said information to the Company via mail, facsimile, or electronic mail to compliance@youngevity.com for review prior to posting.

The Company audits and monitors web activity for unapproved and/or unauthorized advertising on a continuing basis. Should any non-compliant activity be discovered, notification will be sent to the offender requesting the immediate removal of the non-compliant information, links, or other media. All notices and requests will be made as stated herein. In addition to the Company's monitoring, it is expected that all Distributors actively police their Social Media site(s) for compliance violations, take steps to correct these, and report any violations as outlined herein. The Company greatly appreciates the cooperation of all Distributors and other members of the various Social Media groups for assisting in upholding the spirit of our on line community by providing an open, safe, and compliant environment.

Fan Pages

Distributors and other members of Company sponsored social media communities (for the purposes of this section, referred to solely as “Member”) may not attempt to, or appear to, represent the Company in any way on Facebook, Twitter, LinkedIn or other social media platforms. Further, no attempt to represent or appear to represent any individual person, either affiliated or not affiliated with the Company is strictly prohibited. All accounts, fan pages, and personally created websites and blogs must be personal and obviously appear as such.

For example, you may not create a fan page entitled “Youngevity” or “FDI Business Opportunity” or “Youngevity Nutrition” because this would appear to represent the Company. You may create a personal fan page, such as “Youngevity Personal Health Coach” with a picture of yourself, so long as you follow the other guidelines as stated herein.

Blogs

You may create a personal blog in which you discuss the Company products and business opportunity, but you may not use the Company name(s) in your domain or claim to represent the Company in anyway, and you must follow the health and income claim guidelines as stated herein with all your marketing efforts.

Personal Facebook Profiles

You may not include the Company name anywhere in your personal Facebook profile name. Facebook profiles must be your real name; to do otherwise is a violation of both these Policies and Procedures as well as Facebook terms of service and will likely result in the deletion or suspension of your Facebook account. It is strongly discouraged that you use any Company logo or product images as your personal profile picture. To do so, will likely result as your account being designated as spam, which will hinder your relationship building efforts. An exception to this may be if the company posts or sets up “pic badges” or other uniform branding that can be added to your personal profile picture.

Marketing to Facebook Members

The Company Facebook pages and groups provide a forum for discussion, but they should not be used for marketing products or services, recommending affiliate products, or self-promotion. Anyone found to be misusing, abusing, or defaming the Company or any Distributor or Customer thereof on any and all company Facebook pages, will have all posts removed, be “unfriended” and flagged as “inappropriate” and, or “spammer” within Facebook.

Links to Competing Companies

Posting information from, or links to, competing companies is not allowed. Such activity will be viewed as cross-recruiting and is a direct violation of your representative / distributor agreement.

Spam

The Company maintains a zero tolerance policy with regard to SPAM within Social Media Communities. Common examples of SPAM include, but are not limited to:

- Unsolicited links and information sent to inboxes of those who do not wish to receive it, or without some sort of request for information.
- Posts of unsolicited links in Facebook groups or other Facebook pages not related to the Company without some request for information.
- Tags of people in any Company-related Facebook photos if they are not involved/have expressed interest in the Company, its products, or business opportunity or who have specifically requested not to be tagged.

- Invitations or additions of individuals to the Company Corporate Group who are not involved/have expressed interest in the Company, its products or business opportunity.
- Frequent status updates promoting specific URL hyperlinks or other links.

I 10 Violators of any of these Policies & Procedures relating to advertising, Company name(s), and logo(s) may be required by the Company, at the Company's option, to correct the violations in whatever manner the Company deems necessary. Correction measures are not limited to, but may include disconnecting phone numbers without a referral, removing signs, canceling advertising, and destroying noncompliant literature. Distributor authorization may also be terminated, and offending Distributors will be liable for any damages sustained by the Company, as well as any other penalties imposed through legal action.

I 11 Compliance

The Company actively seeks out to discover the use of non-approved, non-compliant advertising. Said discovery may be made by active web searches, anonymous monitoring of public conference calls and or meetings, or by reports of potential violations by other Distributors or Customers, or by various other non-intrusive methods. At no time will the Company's compliance audit process violate the Company's privacy policy or that of any Local, State, or Federal Statute. Any distributor found in violation of these regulations will receive a warning letter via electronic mail at their last known E-Mail address. The letter will demand full compliance within 7 days of its date of issuance. Follow-up will then be conducted by The Company on the 7 day anniversary of the date of warning letter issuance to determine whether all changes necessary to achieve full compliance have been made. Where compliance is not achieved or not achieved completely, The Company will suspend the Distributorship in question, whereby all benefits of the Distributorship, including commissions, will also be suspended. Full compliance will have to be achieved within an additional 7 days of Distributorship suspension or The Company will terminate the Distributorship in question, and all Distributor benefits, including commissions, will be forfeit. In addition, the Company reserves the right to refer deceptive advertising cases to the FTC, if deemed necessary to protect the interests of the Company or consumers at large.

All Distributors are obligated to report any and all violations of these regulations regarding deceptive advertising. Any such complaint will be promptly investigated, and appropriate action taken. The identity of anyone reporting such violations will be protected and the best interests of the Company as well as the reporting Distributor will be considered at all times during and after said investigation.

J | JUDICIAL PROCEDURES

- J 1** Most violations of the Policies & Procedures occur through lack of awareness or understanding on the part of the violating Distributor. Distributors observing a Policy violation should immediately point out the violation directly to the violating Distributor.
- J 2** Distributors who observe continued violations by another Distributor following the personal contact outlined in J1, should report the violation in writing to the Company. Details such as dates, number of occurrences, and evidence, along with any supporting testimony, should be included in the report.
- J 3** Any violation, large or small, of the Advertising, Use of Company Name(s), and other Section I Policies must be referred directly to the Company for resolution.
- J 4** The Company will address all violations according to set procedures including using Distributor network input and

giving the accused Distributor adequate opportunity to respond to any violation charged.

- J 5** It is the obligation of every Distributor to maintain the integrity of the Policies & Procedures to ensure fairness and equal Compensation Plan opportunities to all Distributors.
- J 6** Failure of the Company to enforce any of these Policies & Procedures with one Distributor does not waive the right of the Company to enforce any such provision(s) against that same Distributor or any other Distributor.
- J 7** The original of a document faxed to the Company must be received by the Company before the document is considered “received” by the Company.
- J 8** To the fullest extent permitted by law, Youngevity shall not be liable for, and Distributor releases the Company from, and waives all claims for, any loss of profits, indirect, direct, special, or consequential damages or any other loss incurred or suffered by Distributor as a result of:
- a)** the breach by the Distributor of the Agreement and/or the terms and conditions of the Policies & Procedures,
 - b)** the operation of Distributor’s business,
 - c)** any incorrect or wrong data or information provided by the Distributor, or
 - d)** the failure to provide any information or data necessary for the Company to operate its business, including without limitation, the enrollment and acceptance of a Distributor into the Compensation Plan or the payment of commissions and bonuses.
- J 9** In the event of a dispute with the Company, Distributor and the Company agree to participate in mediation in an earnest attempt to resolve the dispute prior to submitting it to binding arbitration pursuant to the Commercial Arbitration Rules then in effect of the American Arbitration Association, provided, however, that injunctive relief sought by the Company against any party shall be excluded from this clause. Such Arbitration shall occur in San Diego, California. Louisiana Distributors, however, may arbitrate in New Orleans, Louisiana.

J 10 Distributor Website Policy

This amendment to the Youngevity Policy & Procedures refers to the creation and use of Internet websites created by Youngevity Distributors for the purpose of promoting themselves as a Youngevity Distributor and the Youngevity products or Dr. Joel Wallach. A website is defined as any use of a computer, the Internet, and the World Wide Web to display, comment on, or otherwise transmit information in graphic, text, or audio form. As with any advertisement or promotion, the Policies & Procedures of Youngevity prevail and should be followed in addition to the following amendment.

- a)** The name Youngevity is a registered trademark, as are the other Company and Product names owned by the Company. The name Youngevity or any trademark or salesmark of the Company, in its entirety, in part, or hyphenated may not be used in any domain name, URL, or email address.*
- b)** The name Dr. Joel Wallach is part of the intellectual property of Dr. Joel Wallach and may not be used in its entirety, in part or hyphenated, in any domain name, URL, or email address.*
- c)** All logos, slogans, and trademarks of the Company are the sole property of Youngevity and may be used with written permission only. Permission to use Youngevity logos, slogans, and trademarks may be revoked without notice or reason and solely at the discretion of Youngevity.
- d)** All use of Youngevity logos, slogans, and trademarks must state permissions given on the front, index, home, or

main page of any website.

- e) All Youngevity logos, slogans, and trademarks must be used in their respective entirety. All colors in any Youngevity logo or trademark must be reproduced accurately. No partial logos or “artistic license” may be used.
- f) Youngevity logos, slogans, and trademarks in graphic form may not be sold or traded by anyone.
- g) The name and Distributor Identification Number of any and all Youngevity Distributors responsible for content of a website must be displayed on the front, index, home, or main page of the website.
- h) No Distributor of Youngevity may state or imply that their website is official, sanctioned, authorized, or licensed by Youngevity, Dr. Joel Wallach, or any board member, advisor, consultant, or affiliate of same. Any and all Representative owned websites must be identified as owned and controlled by the individual entity or person to whom the site belongs, followed by “independent distributor for Youngevity.” Only websites owned, controlled, and designated by the Company as such can be considered as an “official website” or any iteration thereof. These websites include, but are not limited to www.youngevity.com, www.90forlife.com, and many other micro sites, and subordinate sites. Only representatives in good standing may have access to the Company replicated sites, including, but not limited to www.my90forlife.com, www.youngevityonline.com, as well as access to the tools, programs, back office access, and other areas contained therein.
- i) Any and all sources of content and permissions for use of a Youngevity Distributor’s website must be documented and stated on the website. This includes but is not limited to the use of graphics, quotes, and excerpts.
- j) Written approval for all quotes or excerpts from Dr. Wallach’s lectures, books, radio shows, audio, or visual productions must be stated and documented. Note: Copyrights from various radio shows, audio, and visual productions may be held by persons or entities other than Youngevity. People or entities holding copyrights of this type are not obligated to grant permission for use of these materials.
- k) The signature of, or likeness of Dr. Joel Wallach, board member, advisor, or any current employee or affiliate of the Company is not allowed to be used on any website.
- l) No Distributor of Youngevity may make any claims of income or income potential by becoming a Youngevity Distributor.
- m) No Distributor of Youngevity may make any claims of health benefits or betterment by consuming or applying Youngevity products.
- n) Only the Distributor’s personal testimonial about the benefits or results stemming from the use of Youngevity products may be used on a Distributor’s website. A Distributor’s website must not contain the testimonials of others in the content of their website.
- o) No banners or other methods of advertisement may be used or included in the content of any Youngevity Distributor’s website.
- p) No hyperlinks to other websites promoting competing products may be used on any Youngevity Distributor’s website.
- q) No products other than Youngevity products may be mentioned or sold on any Youngevity Distributor’s website. This includes but is not limited to product comparisons.
- r) Any use of the internet to promote the Youngevity Compensation Plan internationally is prohibited until such time as Youngevity authorizes promotion of the Compensation Plan, after being designed and approved for a particular country.

- s) Distributors using a website for order fulfillment must transact business using a secure server to protect the personal information of the customer. Email orders are not to be encouraged or accepted for transacting Youngevity business.
- t) Each individual Youngevity Distributor is responsible for abiding by all local, state, and federal laws concerning all aspects of using the Internet to promote or sell Youngevity products and business opportunities.
- u) Youngevity reserves the right to edit content of and require immediate modifications to any Distributor's website at the sole discretion of Youngevity.
- v) Electronic mail (email) advertising is subject to Youngevity Policies & Procedures and as such must be submitted and approved prior to transmission. All email advertising is subject to editing by Youngevity prior to approval to transmit.
- w) All email advertising must be in compliance with all prevailing local, state, and federal laws concerning unwanted, unsolicited email also known as spam. Spamming is illegal and will not be tolerated by Youngevity.
- x) It is strictly forbidden for any Distributor to represent him/herself or any products, product packages, or affiliations through direct or indirect inference through any website, advertisement, email, or any other means as other than is actually true and as outlined herein. Any represented affiliation with any person, persons, groups, or organization(s) that is against the wishes of, or unknown to said affiliate, will be viewed upon as fraudulent and in violation of Distributor's agreement.

*Existing websites (sites that were constructed prior to, and that have been in continuous operation since October of 2002) using a form of Youngevity or Dr. Joel Wallach in their URL or domain name only (RE: provisions a and b of this section) are granted permission to continue to operate as long as all other policies are followed (sections c through x inclusively). The email addresses are still subject to the policy. Websites granted these permissions must contain a hyperlink to the www.Youngevity.com corporate website on the front, index, or main "page" and should be labeled as "The Youngevity Corporate Website may be found here." The Company's network of Independent Distributors can therefore protect each Distributor's individual business image, as well as the Company's overall image.

- J 11** Any distributor found in violation of these regulations will receive a warning letter via electronic mail at their last known E-Mail address. The letter will demand full compliance within 7 days of its date of issuance. Follow-up will then be conducted by The Company on the 7 day anniversary of the date of warning letter issuance to determine whether all changes necessary to achieve full compliance have been made. Where compliance is not achieved or not achieved completely, The Company will suspend the Distributorship in question, whereby all benefits of the Distributorship, including commissions, will also be suspended. Full compliance will have to be achieved within an additional 7 days of Distributorship suspension or The Company will terminate the Distributorship in question, and all Distributor benefits, including commissions, will be forfeit. In addition, the Company reserves the right to take further actions, including, but not limited to, seeking injunctive relief and or punitive damages and reformations, or referral to local, State, or Federal agencies if deemed necessary to protect the interests of the Company or consumers at large.

K | AMENDMENTS

- K 1** The Company shall have the right to amend rules, the Policies & Procedures, and the Compensation Plan and bonus structure under the following conditions:

- 1 Changes in the business environment: Changes which are detrimental to the Company's or Distributor's financial health or changes which require new policies due to new markets or strategies. For example, the evolution and popularity of eBay as an online storefront used by Distributors may require new policies and procedures for this new marketing strategy. In the absence of specific language, the Company will use its sole discretion to determine whether or not any "new" or "unique" marketing method is in violation of the spirit of these Policies and Procedures. Should any Distributor be seen as violating the spirit of these Policies and Procedures, said Distributor will be deemed as in violation of same, whether or not specific language yet exists to address the circumstances. If deemed necessary to amend these Policies and Procedures, the Company will do so in a timely basis once the need is recognized, however, the lack of such language will not preclude the Company from acting upon violation of same.
 - 2 Operational: Unanticipated operational expenses or to streamline procedures at the request of Distributors.
 - 3 Unsustainable Compensation Plan.
 - a) May be altered only if management discovers that the percentage of payout is detrimental to the long-term sustainability, profitability, or longevity of the Company than initially anticipated.
 - b) If the Company transitions to direct/retail sales, the Company will continue to pay Distributors on their current group volume up to that point under the same guidelines and terms of compensation.
 - c) To enhance the compensation payout to the benefit of the majority of Distributors.
 - 4 Legal Reasons: The Policies & Procedures may be modified due to new or modified federal, state, or local laws or legal action. All such modifications need to be commensurate with the specific need that has arisen, and no disguised, extraneous alterations may be inserted at this time to the detriment of the Distributors, creating additional breakage for the Company. In such instances, the Company is obligated to give notice and state such modifications to the Policies & Procedures in a companywide communication. When essential modifications are made, there will be no retroactive effect of said changes.
- K 2** Changes and amendments to these rules will go into effect immediately upon publication in an official Company bulletin, newsletter, magazine, or Company website. Amendments so announced will be binding on all Distributors.
- K 3** The Company shall have the right to change pricing for products and sales materials at any time without consultation and for any reason the Company deems necessary.

L | GENERAL BUSINESS ETHICS

By application to the Company, each Distributor agrees to conduct his/her business according to the following General Business Ethics. This code ensures high standards of integrity and professionalism throughout the Company's network of independent Distributors and protects each Distributor's individual business image, as well as the Company's overall image.

I promise and agree to conduct my business according to the following principles:

- L 1** I will use the Golden Rule "treating others as I wish to be treated..." as the primary measuring stick in conducting all business.
- L 2** I will be honest in all business dealings.

- L 3** I will give the highest quality of service by treating customers fairly and showing courtesy and helpfulness in explaining the Company products.
- L 4** I will represent the Company's Compensation Plan completely and without exaggeration to all potential Distributors.
- L 5** I will fulfill all obligations stated herein with regards to Enrollment and Placement of other Distributors including training, motivation, and support.
- L 6** I will work in harmony with all of the Company's Distributors to help further the success of the overall Company programs and the success of all Distributors recognizing that this supports my own business.
- L 7** I will conduct my business professionally, keeping commitments I have made to others and portraying a positive image to all contacts.
- L 8** I will always remember that success is the result of honest effort. I will work for personal success as well as encourage others to reap the rewards of diligent effort.
- L 9** I will endeavor to observe the spirit as well as the letter in all of the Company's rules and policies, knowing they are for my benefit and the benefit of all Distributors.
- L 10** I will make no claim for any Company product that is not contained in official Company literature, nor will I misrepresent the income potential of the Compensation Plan.

M | PRODUCT RETURN POLICY

Distributors, Preferred, and Retail Customers of Youngevity that need to return product for any reason, will be required to follow the procedures as outlined in this policy. Anyone failing to follow the procedures as described will not be entitled to a refund from Youngevity. Please read the following policy carefully.

- M 1** In accordance with previously stated policy, no refunds are given or offered after thirty (30) days from the date product is received by the customer.
- M 2** All requests for an RMA (Returned Merchandise Authorization) must be received by telephone to Youngevity. Request for an RMA via facsimile or letter will not receive a response from Youngevity.
- M 3** Food is not returnable. All items returned for credit or refund must be disclosed at the time an RMA is issued. Any items returned to Youngevity that were not disclosed at the time the RMA was issued are not eligible for a credit or refund.
- M 4** Only one RMA will be issued per invoice.
- M 5** At the time a RMA is requested, a RMA number will be issued. The customer will be required to write the RMA number in black on the outside of the packaging material used to return product. It is advised that the customer retain the RMA number issued for their records.
- M 6** At the time a RMA is requested a "Product Due Date" will be issued. The Product Due Date will be approximately ten business days from the date an RMA is initiated. Youngevity must receive the product on or before the issued Product Due Date to be eligible for any credit or refund issued. It is the responsibility of the customer to ensure that products are returned on or before the Product Due Date. Youngevity is not responsible for delays in the delivery of product returned caused by the United States Postal Service, or any other courier service, public or private. If after receipt of an RMA it is determined that product was received after the Product Due Date, a credit

will not be issued.

- M 7** It is advised that when product is returned to Youngevity, the customer use a carrier that will provide proof of delivery to the customer. Youngevity is not liable for packages lost in transit or not received.
- M 8** Perishable (chocolate) shipments must abide by the following requirements in addition to all other policies as stated in Section M.
- a)** Must be returned in original packaging
 - b)** Must be shipped overnight by UPS or Fed Ex
 - c)** Return must be accompanied with RMA (Returned Merchandise Authorization.)
- M 9** Packages sent to Youngevity without an RMA clearly visible on the outside of the package will be refused by Youngevity. It is advised that the customer use a thick black marker when writing the RMA number on the outside of the package. Ball point pen can be removed during the shipping process. Youngevity is not responsible for any RMA numbers removed during the delivery of product caused by the United States Postal Service, or any other courier service public or private. Any package refused by Youngevity will not be eligible for return or refund.
- M 10** Instances of packages received without an RMA number that have been received by Youngevity from the United States Postal Service without a return receipt required will be held by Youngevity unopened for ten days after which they will be destroyed and disposed of. Any customer wanting their merchandise back must arrange to have said merchandise picked up by the carrier of their choice. Youngevity is not responsible for incorrect pickups in these instances.
- M 11** All returned merchandise is subject to an 8% restocking fee.
- M 12** Youngevity will not accept packages sent to Youngevity “Postage Due” or “Freight Collect.”
- M 13** After Youngevity receives returned merchandise, a credit will be issued within 7-14 business days.
- M 14** Credits will be issued for product amount only (minus 8% restocking fee). Credits will not be issued for shipping and handling.

N | HERITAGE MAKERS TERMS AND CONDITIONS AND PURCHASE

Youngevity dba Heritage Makers Terms and conditions and terms of service and purchase.

By entering and using the Heritage Makers website (“Site”) or service you indicate that you accept these Terms and that you agree to be bound by them. Your use of the Site and its services (together, the “Service”) is entirely conditioned on and subject to your compliance with these Terms. If you do not agree with these Terms, do not access or use the Service.

Acceptance of these Terms creates a binding contract between you and Heritage Makers that you will use the Service only in a manner consistent with these Terms. If you have questions about these Terms, please contact support@heritagemakers.com.

I. General Terms of Membership

- a)** Heritage Makers membership (“Membership”) is available to you if you are at least 18 years of age and reside in the United States or Canada. Membership is available to you if you submit certain requested information to Heritage Makers, including your name and correct email address. When you register as a Member, you must provide Heritage Makers with true, accurate, current, and complete information about yourself.
- b)** A condition of Membership is your “Active Participation” in the Service. Active Participation is defined as placing an

order through the Heritage Makers website at least once during every 18-month period, or as having publishing points in your account. If your Membership is inactive for more than 18 months, Heritage Makers may terminate your Membership (or any part thereof) and your use of the Service, and may remove and discard all information, albums, image files, creative material, and other content (collectively “Content”) uploaded by you or otherwise made available by you within the Service.

II. Your Use of the Service

Subject to and conditioned upon your compliance with these Terms, and solely for so long as you are permitted by Heritage Makers to access the Service, we grant to you a non-exclusive, non-transferable, non-sub-licensable, limited right and license to access the Service, including any images, text, graphics, data, files, links and other materials incorporated into the Service (other than your Submissions), solely as made available by us, solely as necessary to access the Service and solely for your own personal, non-commercial, home purposes, provided that you keep intact all copyright and other proprietary notices. The Service, including all such materials and all intellectual property rights therein, remain the property of Heritage Makers or its licensors or suppliers. Except as expressly authorized by these Terms, you may not use, reproduce, distribute, modify, transmit, perform, display or create derivative works of any portion of the Service without the written consent of Heritage Makers. Nothing herein grants any rights to commercially exploit any portion of the Service or any content therein. All rights not expressly granted hereunder are expressly reserved.

III. Digital Image Storage

- a) A benefit of Membership is the ability to store photos (“Content”) in your online account. A condition of your storage of photos is your “Active Participation” in the Service. Your data storage allowance depends on the Membership plan you subscribe to and Heritage Makers’ current photo storage policy.
- b) You should always preserve your original Content, or make back-up copies of such Content, on your personal system. You should not use the Service as the only repository for your Content.

IV. Photo Storage Policy

- a) Depending on your membership type, your account will be allotted a certain amount of free photo storage. Please check the pricing page for more information.
- b) If your account meets or exceeds its photo storage limits, additional photos will not be able to be uploaded until you obtain more storage space by taking action such as purchasing additional storage space, upgrading your membership subscription, or clearing storage space in your account through photo deletion.
- c) Heritage Makers reserves the right to purge your account of sufficient image files to bring your account into compliance with the photo storage policy. This will only be done after attempts have been made by Heritage Makers to notify you of your account’s overages and requesting your attention to the matter.
- d) You can check your photo storage allowances and usage in the “my photos” or “my account” areas of the Heritage Makers website.

V. Member Conduct

- a) Heritage Makers is committed to ensuring that the Service remains a fun and safe place to process photographs. To that end, the Service allows Members to be creative with their Content. Users of the Service may not use the Service to process Prohibited Content. Generally, Prohibited Content includes Content or other material that Heritage Makers believes:

- 1 Is abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, or otherwise inappropriate;

- 2 Comprises copyrighted material used without the express permission of the owner;
 - 3 Comprises photos, images or materials traced or derived from images you do not own the copyright to (such as images found on the Internet, images scanned from books or magazines, other artist's work, etc);
 - 4 Comprises photos, images or materials containing embedded copyright notices, personal signatures or watermarks.
 - 5 Violates or otherwise encroaches on the rights of others;
 - 6 Contains viruses, worms, corrupt files, Trojan horses or other forms of corruptive code, or any other content which may compromise the Service (collectively "Corruptive Code");
 - 7 Advocates illegal activity;
 - 8 Hacks, destabilizes or adapts the Service, or alters another website to falsely imply it is affiliated with the Service;
 - 9 Uses any high volume automated means (including robots, spiders or scripts) to access the Service;
 - 10 Broadcasts or sends any form of advertising, mass communication or solicitation to Heritage Makers users;
 - 11 Harms anyone, including minors; or,
 - 12 Provides a link to any of the above.
- b) Heritage Makers has the sole discretion to determine whether Content is Prohibited Content, and any Content submitted to the Service may be subject to examination from time to time. Although Heritage Makers does not and will not examine or otherwise review all Content submitted or transmitted to the Service, Heritage Makers may delete, move, and edit Content for any reason, at any time, without notice.
- c) All Content (whether private or shared) that is processed on the Site is the sole responsibility of the person who submitted it. Thus, you are responsible for your Content.
- d) By viewing the Site, you may be exposed to Content that you consider offensive. You take sole responsibility for such exposure.
- e) Heritage Makers in no way guarantees the accuracy, quality, or appropriateness of Content available through the Service. In no event shall Heritage Makers (including its officers, directors, employees, affiliates, suppliers and agents) be liable for claims of any nature, whether direct or indirect, arising from or related to any Content made available on or through the Services, including (without limitation) errors or omissions in such Content, and loss or damages incurred as a result of use of such content.
- f) You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this service or servers or networks connected to this website, or to disobey any requirements, procedures, policies or regulations of networks connected to this service; or, provide any information to Heritage Makers that is false or misleading, that attempts to hide your identity, or that you do not have the right to disclose. Heritage Makers does not endorse any content placed on the website by third parties, or any opinions or advice, contained in such content.

VI. Copyrights

Heritage Makers is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to this service are either the copyright owners of the component parts of that work, or are posting the work under license from a copyright owner or his or her agent, or otherwise as permitted by law. You may not reproduce, distribute, publicly display or perform, or prepare derivative works

based on any of the content, including any such works without the express, written consent of Heritage Makers, or the appropriate owner of copyright in such works. Heritage Makers does not claim ownership rights in your works or other materials posted by you to this service (“Content”).

While Heritage Makers has an inspection process that helps flag potential copyright issues, this process may, or may not, be applied to your Content at Heritage Makers’ sole discretion. Ultimately, you are responsible for your Content. As such, it is very important that you take the time to research the images and materials that you submit, and ensure that you keep any reference material on hand in case of a dispute regarding the ownership of your images and materials. If you are not sure about the legality of reference material you did not create, please contact Heritage Makers.

VII. Reporting Copyright Violations

Heritage Makers respects the intellectual property rights of others and expects you to do the same. At Heritage Makers’ discretion, and in appropriate circumstances, Heritage Makers may remove Your Content submitted to this service, terminate your account and/or prevent access to this service, if Heritage Makers believes you may have infringed on the intellectual property rights of others. If you believe the copyright in your work, or in the work for which you act as an agent, has been infringed through this service, please contact Heritage Makers’ Customer Support. Please provide substantially the following information, which Heritage Makers may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

- a) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- b) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- c) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- d) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- e) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.
- f) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

VIII. Trademark

All brand, product and service names used in this service which identify Heritage Makers, or third parties, and their products and services are proprietary marks of Heritage Makers and/or the relevant third parties. Nothing in this service shall be deemed to confer on any person, any license or right on the part of Heritage Makers, or any third party with respect to any such image, logo or name.

IX. Privacy

Heritage Makers has a firm commitment to safeguarding your privacy. Please review Heritage Makers’ Privacy Policy. The terms of Heritage Makers’ Privacy Policy are incorporated into, and form a part of, this Agreement.

X. International Considerations

Recognizing the global nature of the Internet, you agree to comply with all local rules regarding online conduct and acceptable Content. Such includes, but is not limited to, complying with all applicable laws regarding the transmission of technical data exported from the United States, or the country in which you reside, and decency laws in the locality in which you reside.

XI. Termination

You agree that Heritage Makers, in its sole discretion, may terminate your account, and remove and discard any content, for any reason, including and without limitation, the lack of Active Participation; or, if Heritage Makers believes that you have violated, or acted inconsistently, with the Agreement. Heritage Makers may also, in its sole discretion and at any time, discontinue providing the service, or any part thereof, with or without notice. You agree that any termination of your access to the service under any provision of this Agreement may be effected without prior notice, and acknowledge and agree that Heritage Makers may immediately deactivate, or delete, your content and all related information and files. Heritage Makers reserves the right to bar any further access to such files or the service. You agree that Heritage Makers shall not be liable to you, or any third-party, for any termination of your access to the service. Paid accounts that are terminated will not be refunded.

XII. Indemnity

You agree to indemnify and hold Heritage Makers, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any alleged claim or demand. This includes reasonable attorney fees, made by any third party due to or arising out of your content, your use of the service, your connection to the service, your violation of this Agreement, or your violation of any rights of another. You are solely responsible for your actions when using this service, including, but not limited to, costs incurred for Internet access.

XIII. Availability

This service is provided by Heritage Makers on an "AS IS" and "AS AVAILABLE" basis, and Heritage Makers reserves the right to modify, suspend, or discontinue the service, in its sole discretion, at any time, and without notice. You agree that Heritage Makers is not, and will not be, liable to you for any modification, suspension or discontinuance of the service.

XIV. External Links

This service, or relevant third parties, may provide links to other websites or resources. Because Heritage Makers has no control over such sites and resources, you acknowledge and agree that Heritage Makers is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible, or liable, for any content, advertising, products, or other materials on, or available from, such sites or resources. You further acknowledge, and agree, that Heritage Makers shall not be responsible, or liable, directly or indirectly, for any damage or loss caused, or alleged to be caused by, or in connection with, use of or reliance on any such content, goods or services available on, or through, any such site or resource.

XV. Third Party Software

As a convenience, we may make third-party software available through the service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider. The agreement to use such software will be solely between you and the third-party provider. By downloading third-party software, you acknowledge, and agree, that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall Heritage Makers be liable for claims, or damages of any nature, whether direct, or indirect, arising from or related to any third-party software downloaded through the service.

XVI. Disclaimer of Warranty and Limitation of Liability

HERITAGE MAKERS MAKES NO REPRESENTATIONS, OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS PROVIDED THROUGH THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. HERITAGE MAKERS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. HERITAGE MAKERS MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT HERITAGE MAKERS IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, HERITAGE MAKERS SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF HERITAGE MAKERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF, OR LIMITATIONS ON, CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS, OR LIMITATIONS, MAY NOT APPLY TO YOU. IN NO EVENT SHALL HERITAGE MAKERS' S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO HERITAGE MAKERS PURSUANT TO THIS.

XVII. General Legal Terms

The Agreement constitutes the whole legal agreement between you and Heritage Makers and governs your use of this service, and completely replaces any prior agreements between you and Heritage Makers in relation to this service. You agree that if Heritage Makers does not exercise, or enforce, any legal right, or remedy, which is contained in the Agreement (or which Heritage Makers has the benefit of under any applicable law), this will not be taken to be a formal waiver of Heritage Makers' rights. Those rights, or remedies, will still be available to Heritage Makers. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of the Agreement is invalid, then that provision will be removed from the Agreement without affecting the rest of the Agreement. The remaining provisions of the Agreement will continue to be valid and enforceable. The Agreement and your relationship with Heritage Makers under the Agreement shall be governed by the laws of the State of Utah without regard to its conflict of laws provisions. You and Heritage Makers agree to submit to the exclusive jurisdiction of the courts located within the county of Utah County, Utah, to resolve any legal matter arising from the Agreement. Notwithstanding this, you agree that Heritage Makers shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction. Further, by using this service, you agree that Heritage Makers, at its sole discretion, may require you to submit any disputes arising from the use of the service, or this Agreement, concerning or, including disputes arising from, or concerning their interpretation, violation, nullity, invalidity, non-performance or termination, as well as disputes about filling gaps in this contract, or its adaptation to, newly arisen circumstances, to final and binding arbitration under the International Rules of Arbitration of the American Arbitration Association, by one or more arbitrators appointed in accordance with the said Rules. Notwithstanding these rules, however, such proceeding shall be governed by the laws of the state as set forth above.

Terms of Purchase

Heritage Studio is an Internet service (the "Service") owned and operated by Heritage Makers, Inc. ("we", "our" or "us"). "You" or "your" means an adult user of the Service for yourself and you as parent or guardian for any minor who you allow to access the Service, for whom you will be held strictly responsible. Your failure to cancel this purchase within 3 days (10 days in Canada), or by your activating or using the Service, you designate that you agree with the service terms and conditions. If you do not agree with any of these terms and conditions,

cancel your purchase and do not use the Service. We may alter or amend this Agreement at our discretion and your continued use after any change, or your failure to notify us of your unwillingness to accept such changes indicates your acceptance of that change. If you don't want to be bound by a change, notify Heritage Makers and discontinue use of the Service.

- 1 Activation and Security.** You have a right to cancel your purchase with Heritage Makers. Your failure to cancel this purchase within 3 days (10 days in Canada) is your acceptance of the terms of this contract. You must first activate your account to use the service. As part of the activation process, you will select a password. You must provide Heritage Makers Inc. with accurate, complete, and up-to-date registration information. Failure to do so will constitute a breach of this Agreement. During activation you must agree to the terms and conditions of using the Service. Registration as a user of or subscriber to any of the Sites or services provided on them results in your customer information being stored and processed in the United States, and you, in registering or subscribing, specifically consent to that storage and processing.
- 2 Terms and Conditions.** Your failure to cancel this purchase within 3 days (10 days in Canada), or by your activating or using the Service, you designate that you agree with the service terms and conditions. Terms and conditions are viewable online under the “terms and conditions link.” and are specifically adopted and incorporated into this agreement.
- 3 Publishing Points and the Heritage Studio Service.** You may purchase points for publishing service associated with the Heritage Studio Service through a consultant. The Service may be used for photo upload, photo storage, digital editing, use of artistic templates, and custom publishing. Publishing Points expire 12 months from the original date of purchase. Terms related to the Heritage Studio Account and ongoing storage of photos and projects following the expiration of Service are available online at www.heritagemakers.com.
- 4 Heritage Makers offers two membership programs:** 1) Premier Access, and 2) Club HM Membership (Bronze Level, Silver Level, or Gold Level). Your subscription to either of these programs will be automatically renewed through the payment option you selected based on the subscription program (annual, semi annual or monthly) you have chosen. Billing will be charged to the same credit card used on the original order; however, you may change the credit card on file by contacting customer service. Billing will be processed within 24 hours from the time your order is entered online (either by you or your consultant). Publishing points and access to Premier Art will be available to the account shortly thereafter. Premier memberships are paid in advance and end the last day of the 30-day period. Club HM memberships can be cancelled online at any time. Club HM memberships are charged on the 5th and the 20th of the month after the first purchase. If a billing problem occurs (for example a credit card transaction is denied) access to the account will be unavailable until the problem is resolved.
- 5 Cancellations.** An initial subscription comes with the option to cancel within the first 3 business days after purchase and receive a full refund (10 days in Canada). The business day period begins on the day your order form for the subscription service is received by your consultant. If you subscribe to the service following a free or other trial period, that trial period takes the place of the 3 business day cancellation period. Cancellations during the 3 business day period must be made by providing the same information that you provided when you subscribed. Subscription may be modified or cancelled online or by calling Heritage Makers customer support. Cancellation of subscription after 3 business days from the original date of purchase stops billing of future payments, however no refund will be made on the original payment after 3 business days (10 days in Canada).
- 6 Communications.** Heritage Makers will send electronic mail to you, for the purpose of informing you of changes or additions to the Service or of any Heritage Makers related products and services. It is your responsibility to provide Heritage Makers with your current email address. You may opt out of this notification service by replying to the electronic mail.

- 7 Termination.** Should you breach this Agreement we will revoke your license to use the Service and suspend your right of access. In such a case, no portion of your subscription payment will be refunded.
- 8 Modifications.** Heritage Makers, Inc. has the right, at its sole discretion, to modify this Agreement or the Service, including the Content of the Service, at any time. Changes in Service will be posted on Heritage Makers website under “Terms and Conditions.” You may cancel your subscription by calling Customer Services at Heritage Makers, Inc. (See section 5 regarding cancellation of subscription.) Your continued use of the Service following notice of any changes in this Agreement, or passage of one year without use of the Service following notice of any changes in this Agreement, (notice is given on your account) means that you have accepted and are bound by any changes in this Agreement.
- 9 Privacy.** Your purchase of a Heritage Studio account and your use of the Service are subject to Heritage Makers Privacy Policy. See www.heritagemakers.com for details.
- 10 Choice of Law.** This Agreement shall be construed, interpreted and performed exclusively according to the laws of the State of Delaware without giving effect to any principles of conflicts of law, and, as applicable, federal law.
- 11 Limitation of Liability.** IN THE EVENT THAT WE ARE FOUND LIABLE TO YOU, YOU SHALL ONLY BE ENTITLED TO RECOVER ACTUAL AND DIRECT DAMAGES. BOTH YOU AND WE SPECIFICALLY AGREE AND CONSENT THAT IN THE EVENT OF ANY SUIT, ACTION, OR PROCEEDING ARISING UNDER OR RELATED TO THE AGREEMENT OR THE SERVICE THAT EACH PARTY’S DAMAGES SHALL BE LIMITED TO THE CONTRACT AMOUNT AND THAT NEITHER PARTY WILL SEEK ANY DAMAGES IN EXCESS OF SAID CONTRACT AMOUNT. WE SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE AND USE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE SERVICE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, EVEN IF WE OR OUR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO THE SERVICE THROUGH ACCIDENT, MISUSE, OR FRAUDULENT MEANS OR DEVICES BY YOU OR ANY THIRD PARTY, OR AS A RESULT OF ANY DELAY OR MISTAKE RESULTING FROM ANY CIRCUMSTANCES BEYOND OUR CONTROL.
- 12 Arbitration Provision.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. YOU WILL NOT BE ABLE TO BRING A CLASS ACTION OR OTHER REPRESENTATIVE ACTION IN COURT, NOR WILL YOU BE ABLE TO BRING ANY CLAIM IN ARBITRATION AS A CLASS ACTION OR OTHER REPRESENTATIVE ACTION. YOU WILL NOT BE ABLE TO BE PART OF ANY CLASS ACTION OR OTHER REPRESENTATIVE ACTION BROUGHT BY ANYONE ELSE, OR BE REPRESENTED IN A CLASS ACTION OR OTHER REPRESENTATIVE ACTION. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

YOU HEREBY AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY ARISING NOW OR IN THE FUTURE UNDER OR RELATING IN ANY WAY TO THIS AGREEMENT, OR TO THE SERVICE, REGARDLESS OF THE NATURE OF THE CAUSE(S) OF ACTION ASSERTED (INCLUDING CLAIMS FOR INJUNCTIVE, DECLARATORY, OR EQUITABLE RELIEF), SHALL BE RESOLVED BY BINDING ARBITRATION. CLAIMS SUBJECT TO ARBITRATION INCLUDE CLAIMS THAT ARE MADE AS COUNTERCLAIMS, CROSS CLAIMS, THIRD PARTY CLAIMS, INTERPLEADERS, OR OTHERWISE.

ARBITRATION REPLACES THE RIGHT TO GO TO COURT, AND YOU THEREFORE AGREE TO WAIVE ANY RIGHT THAT YOU OR WE MIGHT OTHERWISE HAVE HAD TO A JURY TRIAL OR THE OPPORTUNITY TO LITIGATE ANY CLAIMS IN COURT BEFORE EITHER A JUDGE OR JURY. NEITHER YOU NOR WE WILL BE ABLE TO BRING A CLASS ACTION OR OTHER REPRESENTATIVE ACTION (SUCH AS AN ACTION IN THE FORM OF A PRIVATE ATTORNEY GENERAL) TO LITIGATE ANY CLAIMS IN COURT BEFORE EITHER A JUDGE OR JURY; NEITHER YOU NOR WE WILL WE BE ABLE TO PARTICIPATE

AS A CLASS MEMBER IN A CLASS ACTION OR OTHER REPRESENTATIVE ACTION TO LITIGATE ANY CLAIMS IN COURT BEFORE EITHER A JUDGE OR JURY; YOU AND WE FURTHER AGREE TO WAIVE ANY RIGHT TO ARBITRATION ON A CLASS OR REPRESENTATIVE BASIS, AND THE ARBITRATOR SHALL HAVE NO AUTHORITY TO PROCEED ON THAT BASIS. THIS MEANS THAT EVEN IF A CLASS ACTION LAWSUIT OR OTHER REPRESENTATIVE ACTION, SUCH AS THAT IN FORM OF A PRIVATE ATTORNEY GENERAL ACTION, IS FILED, ANY CLAIM BETWEEN US RELATED TO THE ISSUES RAISED IN SUCH LAWSUITS WILL BE SUBJECT TO AN INDIVIDUAL ARBITRATION CLAIM IF EITHER YOU OR WE SO ELECT.

You and we agree that this binding arbitration provision is made pursuant to a transaction involving interstate commerce, and shall be governed by and enforceable under the Federal Arbitration Act, 9 U.S.C. Â§1-16, as it may be amended.

This binding arbitration provision applies to any and all claims that you have against us, our parent, subsidiaries, affiliates, licensees, predecessors, successors, assigns, and against all of their respective employees, agents, or assigns, or that we have against you; it also includes any and all claims regarding the applicability of this arbitration clause or the validity of the Agreement, in whole or in part.

The party filing a claim(s) in arbitration must file its claim(s) before the American Arbitration Association under the rules of such arbitration administrator in effect at the time the claim(s) was filed. Rules and forms may be obtained and claims may be filed at the American Arbitration Association, 335 Madison Avenue, Floor 10, New York, NY 10017-4605, 800-778-7879, www.adr.org.

All administrative fees and expenses of an arbitration will be divided equally between you and us, except that for claims of less than \$1,000, you will be obligated to pay \$25 and we will pay all other administrative costs and fees. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

Any dispute you have arising from this Agreement or the Service shall be submitted to arbitration in Delaware, conducted in accordance with the commercial arbitration rules of the American Arbitration Association by a single arbitrator to be chosen in accordance with said rules. The arbitrator, applying Delaware law, without reference to its rules regarding choice of law, shall have the authority to grant any remedy that a court hearing the same case would have the authority to grant. The award or decision rendered by the arbitrator will be final and binding on you and any judgment may be entered thereon in any court having jurisdiction.

Any arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

*These terms of purchase are for your purchase of the Heritage Studio Service and associated Project Points only. Your use of the service is subject to additional terms of service located at www.heritagemakers.com. You will be required to separately agree to the Terms of Service in order to use the Service.

Right to Cancel

You may CANCEL this transaction, without any penalty or obligation, within THREE (3) BUSINESS DAYS (IN CANADA, TEN (10) BUSINESS DAYS) from the date listed on the front of this receipt. If you cancel, any property traded in, any payments made by you under the contract of sale and any negotiable instrument executed by you will be returned within TEN (10) BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract of sale; or you may, if you wish, comply with the

instructions of the seller regarding the return shipment of goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the seller's receipt date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations of this contract. To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice to the consultant listed on the front of this receipt.

HOW TO REACH US

FOR ORDERS & SIGN-UP:

(800) 982-3197 toll free

CUSTOMER SERVICE:

(800) 982-3189 toll free

24-HOUR FAX LINE FOR ORDERS & SIGN-UP:

(619) 934-3205

OUTSIDE USA:

(619) 934-3980

WEBSITES:

www.Youngevity.com or www.90forLIFE.com

EMAIL:

support@youngevity.com

ADDRESS:

2400 Boswell Road
Chula Vista, CA 91914


Attachment 3 to Exh. C



INDEPENDENT MARKETING DIRECTOR/ PREFERRED CUSTOMER APPLICATION AND AGREEMENT

MAIL OR FAX COMPLETED FORMS TO: YOUNGVEVITY® • 2400 BOSWELL ROAD • CHULA VISTA, CA 91914 • WWW.YOUNGVEVITY.COM
MAIN OFFICE: 619-934-3980 • FAX: 619-934-3205 • ORDERS: 800-982-3189 • CUSTOMER SERVICE: 800-982-3189

ENROLLMENT OPTIONS (SELECT 1)

	CEO MEGA PAK™ <input type="checkbox"/> Original or <input type="checkbox"/> 2.0 \$499.99 BV: 110 QV: 500 Includes the CEO Training Guide, a Welcome Kit, (2) Healthy Body Start Paks™, (1) Beyond Tangy Tangerine®-30 CT, (1) Rebound fx™ Citrus Punch 30 CT, (1) Body Trim 30 CT, (1) Projoba™ Pollen Burst™ 30 CT, (1) Ultimate™ CM Cream™ 2 oz and (1) SaXi™ Stick Pack - 30 ct. An autoship of Healthy Body Start Pak™ (\$115) will occur monthly. BV 95 QV 110 <small>*Contents subject to change without notice.</small>	Independent Marketing Director <input type="checkbox"/> \$25.00 BV: 0 QV: 0 Each IMD enrollee enjoys the benefits as listed above. (IMD enrollees are not eligible for participation in CEO bonus programs.)	Preferred Customer <input type="checkbox"/> BV: 0 QV: 0 Get wholesale prices and save 30% off purchases, participate in the exclusive Youngevity® social network, plus online order management through the Web Office. (Preferred Customer enrollees are not eligible to earn IMD or CEO commissions or bonuses.)
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CEO PRODUCT PAKS All IMD enrollees enjoy the following: <ul style="list-style-type: none"> • Unlimited Wholesale Product Pricing • my90forlife.com marketing website • Participate in the exclusive Youngevity® social network • Online order management through the Web Office • Earn commissions & bonuses on referrals & product purchases Each CEO Product Pak™ also includes: <ul style="list-style-type: none"> • CEO Training Guide with lifetime updates • CEO Gold Lapel Pin • CEO Webinars, Training Retreats, & Red Carpet Events • Participation in CEO Bonus Programs 	HEALTH AND BEAUTY CEO MEGA PAK™ <input type="checkbox"/> \$499.99 BV: 60 QV: 500 Includes the CEO Training Guide, a Welcome Kit and an assortment of best selling Mineral MakeUp shades in a professional makeup case. An autoship of a Health and Beauty Pak™ (\$112.50) occurs monthly. BV 101.50 QV 101.50	HEALTHY START NUTRITION CEO PAK™ 2.0 <input type="checkbox"/> \$399.99 BV: 95 QV: 250 Includes the CEO Training Guide, a Welcome Kit and a Healthy Body 2.0 Pak™ which contains: BTT 2.0 Citrus Peach Fusion® - 450g canister (1), EFA Plus™ - 90 capsules (1), and Beyond Osteo-fx™ Powder - 357g Canister (1). An autoship of Healthy Body Start Pak™ 2.0 (\$118) will occur monthly. BV 98 QV 116	HEALTHY BODY WEIGHT LOSS CEO PAK™ <input type="checkbox"/> \$399.99 BV: 109.50 QV: 250 Includes the CEO Training Guide, a Welcome Kit and a Healthy Body Weight Loss Pak™ which contains: BTT 2.0 Citrus Peach Fusion® - 450g canister (1), EFA Plus™ - 90 capsules (1), and NEW Beyond Osteo-fx™ Powder - 357g Canister (1) and ASAP (1). An autoship of Healthy Body Weight Loss Pak™ 2.0 (\$179) will occur monthly. (\$179) BV 150 QV 160
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ENROLLER INFORMATION (PLEASE PRINT)

Last Name	First Name	Youngevity® ID Number	Phone Number
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PLACEMENT INFORMATION (PLEASE PRINT) CHECK IF SAME AS ENROLLER

Last Name	First Name	Youngevity® ID Number	Phone Number
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NEW APPLICANT INFORMATION

Last Name	First Name	Middle Initial	Social Security Number or Tax ID	Date of Birth (MM/DD/YY)
Company Name (OPTIONAL - MUST MATCH TAX ID)			Phone Number	Email Address
Billing Address		City	State	Zip Code
Shipping Address		City	State	Zip Code

METHOD OF PAYMENT

Credit Card Type <input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> AMEX <input type="checkbox"/> DISCOVER	Name (as it appears on the card)		
Credit Card Number	Expiration Date (MM/YY)	CVV	
Billing Address (if different than above)	City	State	Zip Code
Signature	Date (MM/DD/YY)		

TAX INFORMATION & AUTHORIZATION

I certify that the Tax ID Number listed is a valid: (mark one only)

Social Security Number or Business Tax ID Number for a: Sole Proprietor Corporation Partnership Other

I certify that the Tax ID Number listed is a valid: (mark one only)

1. The name given for the first line of the Independent Marketing Director/Preferred Customer name is the name registered with the U.S. government for that Tax ID Number, or

2. The name registered with the government for that number is:

Payment Authorization and Approval

I, the undersigned, have read the reverse side of this application and agree to abide by these as well as all of the Youngevity® Policies and Procedures. I understand and will accept the consequences of violation of the Youngevity® Policies and Procedures. I, the undersigned, hereby authorize Youngevity® to charge my credit card specified in the amount checked above.

Signature	Date (MM/DD/YY)	For Office Use Only
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Second Amended Complaint



This AGREEMENT between the named Applicant (hereafter APPLICANT) and Youngevity®, a California Corporation (hereafter COMPANY), is hereby effective under the terms and conditions below:

1. APPLICANT hereby applies for authorization as an Independent Marketing Director in COMPANY's Independent Independent Marketing Director program. COMPANY reserves the right to accept or reject any application for any lawful reason.
2. Upon acceptance as an Independent Marketing Director by COMPANY, APPLICANT is authorized as an Independent Marketing Director as long as APPLICANT complies with all terms of this Agreement and COMPANY's Policies and Procedures. Independent Marketing Directors must apply to renew their Independent Marketing Director authorization annually.
3. APPLICANT has read and agrees to be bound by the terms of this Agreement which includes all rules, policies, and procedures of COMPANY as set forth in official COMPANY literature, which are hereby incorporated and made part of this Agreement in their current form and as they may be amended by the COMPANY from time to time.
4. APPLICANT is an independent contractor under the terms of this Agreement, and not an agent, employee or legal representative of his/her sponsor or the COMPANY in any way.
5. APPLICANT will explain COMPANY's programs and policies honestly and completely when presenting them to others. APPLICANT understands and will make clear in any presentation the following: That no earnings are guaranteed by COMPANY or its programs; no Independent Marketing Director will be paid commission solely for sponsoring other Independent Marketing Directors; retail selling is a requirement; and that there are no exclusive territories for Independent Marketing Directors.
6. APPLICANT is responsible for all of his/her own income, sales, social security, unemployment, and any other taxes, licenses, and fees of any kind.
7. APPLICANT may terminate Independent Marketing Director's authorization at any time by giving written notice to the COMPANY. Upon termination, the COMPANY will repurchase marketable sales aids and literature according to the current COMPANY's buy-back Policy then in force.
8. Any sale or assignment of this Agreement or Independent Marketing Director authorization must be approved of in writing in advance by COMPANY. Successors in interest or assigns must comply with Policies and Procedures.
9. The signator(s) to this agreement Agree(s) that he/she/they is/are authorized to bind APPLICANT and by signing, so do.
10. Any Independent Marketing Director who sponsors other Independent Marketing Directors must fulfill the obligation of performing a bona fide supervisory, distributing and selling function in the sale or delivery of product to the ultimate consumer and in the training of the Independent Marketing Directors they sponsor.
11. Youngevity® is built upon retail sales to the ultimate consumer. The COMPANY recognizes that Independent Marketing Directors may wish to also purchase product for their own personal or family use. It is COMPANY policy, however, to strictly prohibit the purchase of product or services in unreasonable amounts solely for the purpose of qualifying for bonuses or advancement in the marketing program. Failure to abide by this policy will result in termination.
12. Duplication of this form without permission is forbidden. Permission may be given in writing in accordance with the Policies and Procedures for Duplication of Independent Marketing Director Application, Product Order Forms and AutoShip Forms.

Attachment 4 to Exh. C



March 21, 2016

Blake Graham
Todd Smith
TNT
Total Nutrition, Inc
T.B Smith
TJHK Club
Health Investment, LLC
Min-A-Vit LLC
T.C.B. Properties, LLC
(All Accounts Utilizing Same Address)
872 N 2000th W
PLEASANT GROVE, UT 84062

RE: Distributor Suspensions and Subsequent Termination

Dear Messrs. Smith and Graham:

Youngevity's Policies and Procedures prohibit the company's distributors from cross-recruiting (Rules E12 and F3); making unauthorized use of company distributor lists (E7); maintaining undisclosed ownership interests in distributorships (C2); making unauthorized use of the company's name and intellectual properties (E1; I1; and I9); contacting Youngevity suppliers (E10); transferring, assigning, or selling distributor positions except upon written application and company pre-approval (G2); making unauthorized use of the company's name and the name of Dr. Joel D. Wallach in any domain name or URL (I9(b);(h);(j);(k)); and withholding information revealing a violation of the company's Policies and Procedures (J(1-3)).

Todd Smith has formed a competing multi-level marketing company, Wakaya Perfection. Wakaya Perfection, its owners and officers, have recruited Youngevity distributors to be Wakaya members. Todd Smith and his fellow Wakaya agents have made unauthorized use of the company's distributor lists to facilitate that cross-recruitment. Todd Smith has maintained undisclosed ownership interests in certain Youngevity distributorships. He has made unauthorized use of the company's name and intellectual properties. He has contacted Youngevity suppliers without company authorization. He has purported to have transferred, assigned, or sold his Youngevity distributor positions to Blake Graham without written application to the company and without company pre-approval. He has made unauthorized use of the company's name and the name of Dr. Joel Wallach through the website and URL wallachonline.com, and he has withheld information from Youngevity revealing his violation of Youngevity Policies and Procedures as well as the violations of other Youngevity distributors

who have conspired with him or have otherwise participated in cross-recruitment of Youngevity distributors in furtherance of Wakaya Perfection. In so doing, Todd Smith has violated Youngevity Policies and Procedures Rules C2, E1, E7, E10, E12, F3, G2, I1, I9, and J(1-3).

Aware of Todd Smith's actions to form a competing company, Wakaya Perfection, that would cross-recruit Youngevity distributors, Blake Graham withheld that information from Youngevity until after Smith recently made public announcement of his formation of that company. Youngevity commissions were paid to distributorships owned by Todd, Blake, both of them, and from which they drew income, and some of those funds were diverted to help establish and further the business interests of Wakaya Perfection. In addition, Blake Graham purported to receive at or before the start of 2016 a transfer, assignment, or purchase of all Youngevity distributorships in which Todd Smith held an interest or received income, without complying with company rules that require application so to do to Youngevity and Youngevity pre-approval. Within the last two weeks, Blake Graham attempted to mislead Youngevity into believing Todd Smith is no longer involved in or receiving income from any Youngevity distributorship when in fact Smith remained involved in and received income from Youngevity distributorships. Within that same time period, Blake Graham informed Youngevity that TNT, a Youngevity distributor, had been assigned to him exclusively and that it had nothing to do with Smith or Smith's company Wakaya Perfection, but our investigation has confirmed the contrary, and Graham has recently admitted, that certain individuals employed by TNT are in fact also employed by Wakaya Perfection and are also distributors for Wakaya Perfection, thereby condoning, aiding and supporting Wakaya Perfection's recruitment efforts, including Wakaya Perfection's efforts at cross-recruitment of Youngevity distributors. Moreover, we have discovered that resources of TNT have been used to develop promotional materials for Wakaya Perfection at times when Graham purported to be the exclusive owner of TNT and that those promotional materials have been used by Wakaya agents and distributors to cross-recruit Youngevity distributors. Together with Smith, Graham and TNT have made unauthorized use of Youngevity's name and the name of Dr. Joel Wallach through correspondence sent by Graham to all Youngevity distributors and through the website and URL wallachonline.com. By the foregoing actions, Blake Graham has violated Youngevity Policies and Procedures Rules C2, E1, E7, E12, F3, G2, I1, I9, and J(1-3).

In light of the foregoing violations and consistent with Youngevity Policies and Procedures Rules C6 and C8, we hereby terminate, effective immediately, each of the distributorships held by Todd Smith and Blake Graham and from which Todd Smith and Blake Graham have derived income, including accounts held under the following distributor ID numbers:

165901, 101119571, 140101, 100850733, 100850728, 100858374, 100858981, 100859801, 100859802, 100859803, 100859806, 100859812, 100859816, 140601, 11314601, 140401.

Effective immediately, all commissions associated with those distributorships previously withheld by Youngevity during its investigation into these matters and all other commissions associated with the aforementioned distributorships, inclusive of bonuses and payments of every kind, are hereby permanently forfeited. Having had your distributorships terminated, you are immediately and henceforth barred from selling Youngevity products or making any representations, promotions, or statements as representing Youngevity or its distributors, including those in the recruitment of Youngevity distributors and promotion and sale of Youngevity products. Consequently, no further Youngevity products, materials, or services of any kind may be sold by you or entities which you own, operate, or control, and none will be

supplied to you or them. To the extent that you or entities you own, operate, or control have product on hand from Youngevity and materials depicting Youngevity copyrighted or trademarked product labels, images of Dr. Joel D. Wallach, the name Dr. Joel D. Wallach, or logos or names of Youngevity, those products and materials may not continue to be sold and distributed.

You are also prohibited from making any further use of web sites or web addresses that purport to be those of, or make commercial use of the names of, Dr. Joel D. Wallach, Youngevity, or any Youngevity product, material, or service. You must immediately remove from the web that site entitled Wallachonline.com and you must transfer all URLs and other authorizations for use of that name and any other site including the name of Dr. Joel D. Wallach and Youngevity to Youngevity. Your continued use of the names Dr. Joel D. Wallach and Youngevity or images of same or of Youngevity products by you or entities you own, operate, or control will violate federal and state intellectual property laws.

Sincerely,



Dave Baska



A Professional Corporation

WASHINGTON, D.C. | VIRGINIA | PHOENIX

11808 WOLF RUN LANE
CLIFTON, VA 20124

3210 S. GILBERT ROAD
SUITE 4
CHANDLER, AZ 85286
(602) 388-8899 | FAX (602) 393-4361

1050 SEVENTEENTH STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20036
(202) 466-6937 | FAX (202) 466-6938

Peter A. Arhangelsky, Esq.
(602) 388-8899
parhangelsky@emord.com

April 4, 2016

VIA UPS 2ND DAY AIR AND E-MAIL:

Todd Smith (Todd@SCSDevelopers.com)
Blake Graham (JapanBlake@Hotmail.com)
Total Nutrition Team, Inc.
872 N. 2000 West
Pleasant Grove, UT 84062

Re: Wallachonline.com, 1-800-WALLACH, and Chi-Ku, LLC

Dear Messrs. Smith and Graham:

We represent Youngevity International, Inc. and Dr. Joel Wallach (collectively “Youngevity”). In February and March 2016, Youngevity terminated your distributorships. It has come to our attention that you continue to misappropriate and trade upon Dr. Wallach’s and Youngevity’s names despite having no authority so to do. Indeed, among the counts against you in Youngevity’s recently filed suit are those for misappropriation related to your impermissible use of Dr. Joel Wallach’s name, likeness, and identity without permission (Count Six).

Your continued trade upon Dr. Wallach’s name, likeness, and identity via Wallachonline.com and 1-800-WALLACH are unlawful violations of his unique mark. We demand that you immediately take down Wallachonline.com and that you likewise immediately cease use of 1-800-WALLACH. Moreover, you continue to trade upon Dr. Wallach’s name, likeness, and identity and Youngevity’s marks via documents, DVDs, audio recordings, and books that you sell as tools through TNT and Yteamtools.com. Continued sale of those items is also impermissible and infringes upon Dr. Wallach’s and Youngevity’s unique marks. We demand that you immediately cease selling all such items.

We further demand that you immediately discontinue using the terms “Youngevity” and “Dr. Wallach” in connection with your chain of restaurants, Chi-Ku Pan-Asian Kitchen. For example, you may no longer promote Chi-Ku Kitchen by advertising that your food items contain “Youngevity Minerals” or “Dr. Wallach’s minerals,” or that your menu items are “Dr. Wallach Approved.” Those and similar promotional statements infringe upon Dr. Wallach’s and Youngevity’s unique marks and convey to consumers the false impression that Youngevity and Dr. Wallach endorse and/or support Chi-Ku Pan Asian Kitchen.

Youngevity will allow you to continue to sell those Youngevity dietary supplement and cosmetic products you presently have on hand for a wind down period of six months. You may no longer sell those items after Monday, October 3, 2016. During that wind down period, you must still turn in to Youngevity all sales you make to Youngevity distributors so that those distributors will receive the proper commission credit for themselves and their uplines.

To the extent you refuse by April 11, 2016, to honor the immediate cease and desist demands in this letter, Youngevity shall seek relief, including injunctive, against you in the pending matter (*Youngevity v. Smith, et al.*, No. 16-cv-0704-W-JLB (S.D.Cal. 2016)).

Sincerely,

/s/ Peter A. Arhangelsky

Peter A. Arhangelsky

Eric J. Awerbuch

Counsel to Youngevity International, Inc.

Attachment 5 to Exh. C



Recognition totals through April 22, 2016

Ambassador	Paradise Qualified Ambassadors	Founder Qualified	Founder Cruise Qualified
Dave & Barb Pitcock	44	Founder	Balcony for Two
Andre Vaughn	42	Founder	Balcony for Two
Bernadette Trafton	19	Founder	Cruise for Two
Lone Star LLC	17	Founder	Cruise for One +
Rachael Beet	15	Founder	Cruise for One +
Maxandra Desrosiers	14	Founder	Cruise for One +
FPC	13	Founder	Cruise for One +
Michael Settles	13	Founder	Cruise for One +
Valerie Love	13	Founder	Cruise for One +
Janis Esanason	12	Founder	Cruise for One +
Michelle Wimberley	12	Founder	Cruise for One +
Stacey Folco	12	Founder	Cruise for One +
Cynthia Sligh	11	Founder	Cruise for One +
Desmond & Gina Lawson	11	Founder	Cruise for One +
Jatashia Manson	11	Founder	Cruise for One +
Rise Network	11	Founder	Cruise for One +
Debbie Woods	10	Founder	Cruise for One
Bryan Johnson	9	Founder	Invitation
Craig and Deb Mog	9	Founder	Invitation
Earthing Solutions	9	Founder	Invitation
A&M Financial Service	8	Founder	Invitation
Blake Graham	8	Founder	Invitation
Clay Carley	8	Founder	Invitation
Lailah Harrigan	8	Founder	Invitation
Michelle Simmons Brown	8	Founder	Invitation
Bertie Lang	7	Founder	Invitation
G Scott Andersen	7	Founder	Invitation
Neema Ali	7	Founder	Invitation
Niki Worthington	7	Founder	Invitation
Randy Baptiste	7	Founder	Invitation
Vincent Vaughan	7	Founder	Invitation
Alton Stevenson Jr	6	Founder	Invitation
Andrew Cox	6	Founder	Invitation
Annie Trajlinek	6	Founder	Invitation

Candi Muldonian	6	Founder	Invitation
Chance Pitcock	6	Founder	Invitation
David Tutt	6	Founder	Invitation
Donte Dudley	6	Founder	Invitation
K KD	6	Founder	Invitation
Leland LaBarge Jr	6	Founder	Invitation
Lori Martin	6	Founder	Invitation
Shar Dukart	6	Founder	Invitation
Thelma Felix	6	Founder	Invitation
Trent Allsup	6	Founder	Invitation
Wilfred Pharaoh	6	Founder	Invitation
Anestine Etienne	5	Founder	Invitation
Becky Cunneen	5	Founder	Invitation
Claudette Noble	5	Founder	Invitation
Dana Lyman	5	Founder	Invitation
Darrell Carson	5	Founder	Invitation
Dick Boldt	5	Founder	Invitation
Ella Jones	5	Founder	Invitation
Jason Stowe	5	Founder	Invitation
Katherine Sweeney	5	Founder	Invitation
Tyrel Beesley	5	Founder	Invitation
Wendy Law	5	Founder	Invitation
Brent Hansen	4	Founder	Invitation
Chris Mashburn	4	Founder	Invitation
Christine Warren	4	Founder	Invitation
Darrell Nuss	4	Founder	Invitation
Emily Andam	4	Founder	Invitation
Erin Garrison	4	Founder	Invitation
Jaclyn Davis Suechting	4	Founder	Invitation
Jeff Petit-Bois	4	Founder	Invitation
Jennifer Kresin	4	Founder	Invitation
Jon Pea	4	Founder	Invitation
Karen Carre	4	Founder	Invitation
Karen Finney	4	Founder	Invitation
Lori-Ann Stephensen	4	Founder	Invitation
Lucy Brown	4	Founder	Invitation
Malinda Winn	4	Founder	Invitation
Marneeka Riley	4	Founder	Invitation
Michael Bazemore	4	Founder	Invitation
Omar Muhammad	4	Founder	Invitation
R Walter Ribeck	4	Founder	Invitation
Raymond Myers-Kieran	4	Founder	Invitation

Rebecca Ferris	4	Founder	Invitation
Sonny Makasini	4	Founder	Invitation
Tim Goodwin	4	Founder	Invitation
Aaron Martin	3		
Al Horner	3		
BFI LLC	3		
BP Unlimited	3		
Bridget Voorhees	3		
Bruce Akerblom	3		
Cheryl Mason	3		
Cindy Pitcock	3		
Curtis Chamberlain	3		
Dalen Isom	3		
Darren Jacobs	3		
David Finney	3		
David Smith	3		
Denise C. Ruffin	3		
Denise Neale	3		
Dr Delagraentiss	3		
Eleanor Anderson	3		
Freedom Marketing Group	3		
Helen Jonas	3		
Ivy Mitchell	3		
Jeffrey & Jennie Gillins	3		
Jeffrey Martin	3		
Jenna Muir	3		
Jeremy Zorn	3		
Jimmy Bailey	3		
Joanne Kuehn	3		
John Walker	3		
Kara Curtis	3		
Keenan Ellerbe	3		
Kenneth Murray	3		
Kevin English	3		
Kristy Southwick	3		
Lana Zorn	3		
Lexa Venekamp	3		
Rachel Fullmer	3		
Raynaldo Mondragon Jr	3		
Renee Ironside Woodward	3		
Ruthline Peters	3		
Sharon Weigel	3		

Sheri Farley	3
Sherrie Hellickson	3
Simon Lee Jr	3
Stacy Sussman	3
Steve Mueller	3
Tangela D Moore	3
Terri Long	3
Theresa Dix	3
Thomas Kreitmeier	3
Tina Humphrey	3
Tonja Thorpe	3
Total Nutrition	3
Tyler Olsen	3
Vicki Ratley	3
Victor Vaughan	3
Willie Martin	3
Yvonne Redwood	3
Zachary Trafton	3
Aisha M. Stout	2
Albertine Rouse	2
Aldell Howie	2
Amelia Fonohema	2
Angela Dye	2
Angie Ingram	2
annette wray	2
Arthur Lucardie	2
Barbara Anson	2
Beaugeste Joshua	2
Benjamin Keenan	2
Bert Kelley	2
Beth Ann Lapierre	2
BEVERLY CAINES	2
bonita shepherd	2
Brayden Tomicic	2
Brooklyn Pitcock	2
Channing Smith	2
Christina Andreoli	2
Christopher Pakalani	2
Clancy Etienne	2
Cory and Laurie Kikel	2
Craig Hawkins	2
Creta LaBarge	2

Dalen Koehn	2
David Ponsford	2
Derek Holt	2
Dorothy Tammen	2
Earl Manning	2
Garry James	2
Gary Reinbold	2
Georgia Abbate	2
Isaiah Encarnacion	2
Jan Carley	2
Janet Hansen	2
Jason Merrill	2
Jean Thomas	2
Jeaneace N. Cook	2
Jeanette Roush	2
Jeanne Stahl	2
Jeffery Stowe	2
Jeffrey Pea	2
Jeremy Gardner	2
Jeremy Pease	2
Jerri Marini	2
Jim Zook	2
Joan Serio	2
Joan Tuckett Philip	2
Joaquin Chandler	2
Joey Bennett Jr	2
John Brown	2
John Kinglocke	2
John Wimberley	2
Jon Mostrom	2
Joshua Holt	2
Joshua Jones	2
Julia Jones	2
Justin Gardner	2
justin labarge	2
Kali Pitcock	2
Kamari Koonce	2
karen gallman	2
Kasey Ludlow	2
Kaylie McGee	2
Keenan Kanahele	2
Kelly Gardner	2

Kelly Humphry	2
Kenneth Thomas	2
KEVIN BARBER	2
Kim Meador	2
Kimberly Hansen	2
Lana Flack	2
Lee Anson	2
Leonders Spencer Jr	2
Lisa Stowe	2
Lonnie Koehn	2
Lou Koehn	2
Lynsey Christensen	2
Maria L Pacheco	2
Maria Manire	2
Marisol Smith	2
Marshyl Cloward	2
Mason Isom	2
Max Carre	2
Michele Ota	2
Michelle Wolfley	2
Mindful Mediation	2
mona howie	2
Myrinda Miller	2
Nathan Alexander	2
Nicole Gray	2
Pam Perkins	2
Pat Onorata	2
Paula McKenna	2
Pearl Gibson	2
Pure Awesome LLC	2
Quynn Allsup	2
Raymond Gibbs	2
Raymond Hendrickson	2
Reggie/Wendy White	2
RelaiShonShips LLP	2
Rene Haley	2
Richard Duffy	2
Richard Johnson	2
Rita Hoagland	2
Robert Benjamin	2
Robert Kakalia	2
Robert Lapierre	2

Roseline Bell	2
Ryan Remer & Shawna LaBarge	2
Sandra Racz	2
Sara Shay	2
Sarah Pease	2
Shaunda Sostand	2
Sheri Brown	2
Shinda Etienne	2
Sondra Huffman	2
Stan Haley	2
Stephanie Ashton	2
Steven Evans	2
Susan Gubler	2
Susan Luelf	2
Terri Kurgan	2
Teshor Oates	2
Tony Calhoun	2
Tracy Olsen	2
Vawn Miller	2
Vivian Wayman	2
Wakaya Corp 1	2
Wakaya Corporate	2
William Andreoli Sr	2
Zack Ecton	2

Attachment 6 to Exh. C

(see Decl. of Mia Magistro Attached Hereto at Exh. B)

EXHIBIT D

1 Peter A. Arhangelsky, Esq. (SBN 291325)
parhangelsky@emord.com
2 Emord & Associates, P.C.
3 3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
4 Phone: (602) 388-8899
5 Fax: (602) 393-4361
6 Attorney for Plaintiff

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 YOUNGEVITY INTERNATIONAL
11 CORP. et al.,

12 Plaintiff,

13 v.

14 TODD SMITH, et al.

15 Defendants.
16
17

Case No.: 16-CV-704 W (JLB)

18 **DECLARATION OF JOEL D. WALLACH**

19 **DECLARATION OF JOEL D. WALLACH**

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
21 following is true and correct:

22 1. I, Joel D. Wallach, BS, DVM, ND, am over the age of 18 and
23 competent to testify concerning the matters presented in this declaration. All
24 matters contained herein are of my own personal knowledge unless stated as based
25 upon information and belief.

26 2. I am one of the plaintiffs in the above-captioned action.
27

28 DECLARATION OF JOEL D. WALLACH

1 3. I have been actively involved with biomedical research, comparative
2 pathology, veterinary medicine, and clinical medicine for more than 50 years. My
3 research has resulted in the publication of the book entitled Diseases of Exotic
4 Animals (recommended by the Smithsonian Institute), more than seventy (70)
5 peer-reviewed and refereed journal articles in diverse fields including veterinary
6 medicine, veterinary pathology, comparative pathology, nutrition, and
7 pharmaceutical research.

8 4. In 1997 I founded American Longevity Corporation, which, in 2006,
9 became Youngevity International Corp. (“Youngevity”), the other plaintiff in the
10 above-captioned matter.

11 5. I make daily in-person appearances for Youngevity across the United
12 States and around the world. On most days, I make two radio appearances that are
13 broadcast on over 100 affiliated radio stations and over the web. I often appear as
14 a guest on TV and additional radio programs. I also give speeches and teach
15 classes to Youngevity distributors and customers.

16 6. I own the rights to my name and likeness, and license those rights
17 exclusively to Youngevity. I have never licensed the rights in my name and
18 likeness to any person or entity other than Youngevity.

19 7. From communications with Youngevity’s board of directors , I
20 understand that wallachonline.com is owned and operated by Todd Smith, Blake
21 Graham, or Total Nutrition, Inc. (hereinafter collectively referred to as “TNT”). I
22 have reviewed the website wallachonline.com. That website is without my
23 authorization or permission. I never authorized TNT, Todd Smith, or Blake
24 Graham to make commercial use of my name or likeness on that web site. I did
25 not grant TNT permission to make commercial use of my picture, articles or any
26 other information concerning me on wallachonline.com. I did not grant TNT
27 permission to use my name and likeness in registering and operating
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1 wallachonline.com. I did not authorize or grant permission to TNT to use a health
2 survey which purportedly determines what I “would typically recommend.”

3 8. From my communications with Youngevity’s board of directors, I
4 also understand that TNT owns and operates 1-800-Wallach. I did not grant TNT,
5 Blake Graham, or Todd Smith permission or authorization to trade upon my name
6 through use of the phone number 1-800-Wallach.

7 9. From my communications with Youngevity’s board of directors, I
8 also understand that TNT owns and operates yteamtools.com. I have reviewed the
9 website yteamtools.com. That website is selling, among other things, books I
10 authored and CDs featuring me. TNT promotes those commercial goods on that
11 website using my name, picture, and likeness. I do not authorize TNT to make
12 commercial use of my name, picture, or likeness to sell any commercial goods on
13 yteamtools.com

14 10. I have read the declaration of Mia Magistro, attached hereto as
15 Attachment 1. Until I read Mia Magistro’s declaration, I was unaware that David
16 Smith, one of the owners of Great American Clay, invited me to co-author a book
17 with him concerning the Great American Clay products. I was similarly unaware
18 that David Smith had invited me to make media appearances with him to discuss
19 Great American Clay. I was also unaware that David Smith wanted to be put in
20 contact with me. I was further unaware that I was supposed to meet with David
21 Smith in North Carolina in November 2015, to discuss Great American Clay and
22 opportunities to bring Great American Clay into Youngevity.

23 11. Had I known about the potential opportunities with David Smith and
24 Great American I would have been interested in pursuing those opportunities. I
25 would have been interested in pursuing the opportunity to learn more about the
26 Great American Clay products. I would have been interested in pursuing the
27 opportunity to co-author a book concerning the Great American Clay products. I
28

1 would have been interested in pursuing the opportunity to pursue an arrangement
2 to promote Great American Clay through media appearances. I would have been
3 interested in pursuing the opportunity to create a commercial relationship between
4 Youngevity and Great American Clay for the sale of its clay products.

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7 Executed on this 5th day of May, 2016.

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DECLARATION OF JOEL D. WALLACH

Attachment 1 to Exh. D

(see Decl. of Mia Magistro Attached Hereto at Exh. B)

EXHIBIT E

CONFIDENTIAL FINANCIAL INFORMATION REDACTED

CONFIDENTIAL FINANCIAL INFORMATION REDACTED

From: Blake Graham [REDACTED]
Date: February 22, 2016 at 6:13:18 PM PST
To: Blake Graham [REDACTED]
Subject: Youngevity saying goodbye to Todd Smith

Dear Youngevity Family,

I had wanted to reach out to you individually before you heard about it from someone or somewhere else, but unfortunately each day I find that I can only talk to so many people before time runs out and so I am resorting to a group email so that I don't get any further behind. After you read this email, you are welcome to reach back out to me on the phone, text or email and I will answer as many as I can.

I am sad to inform you that we are saying goodbye in Youngevity to Todd Smith, my sponsor and partner of 19 years. As many of you know, for more than a year, Todd has stepped back from Youngevity to devote more time to the new restaurant franchise. And a couple of months ago he was presented with an opportunity to take an established company and turn it MLM. While it is not my place to tell you the details of this, suffice it to say that Todd has re-hired some of the former Youngevity corporate staff, and is working in the new business with a couple of leaders who were dis-engaged with Youngevity.

As his partner, I have known about his decision for a couple of months -- though I have not looked forward to the time when I had to tell anyone else.

I know that Todd's decision to move on has a lot to do with his desire to work on the new company. Although he isn't working with us, he has told me that he still believes in the need for the 90 Essential Nutrients and doesn't regret the 2 decades that he spent in building Dr. Wallach's Crusade. I deeply appreciate him for introducing me to Dr. Wallach and Youngevity many years ago and for all he has contributed to the Crusade during the last 2 decades, and I wish him well in his new adventure.

As Rich Stocks says...

The best company may not be the RIGHT company for you, but the RIGHT company will always be the BEST company for you.

This past weekend before the training in Portland Oregon, I sat down and spoke in person with Steve and Michelle Wallach about Todd's decision.

There Michelle Wallach asked me, "Why aren't YOU going with your friend?"

The answer is because I'm all in with the Crusade. I not only believe in Dr. Wallach's message, this is where I feel that I belong. Some people -- even good people -- come and go. And I appreciate all that they contribute while they are here. We have seen that many of them come back and I hope that someday all of them will come back. Todd has made the decision to leave and I wish him the best in doing something that he is putting his whole heart into. But even if others leave, as long as Youngevity will have me, I would like to stay and continue to promote and advance the Crusade.

There are times when the Crusade and life can be hard. Right now is one of those times for me.

It's hard to see good people you care about move on, especially when they have been your partner for 19 years. It can be hard to see some people no longer carry on the torch of Dr. Wallach's Crusade, and still wish them the best. And it's hard for me to feel like I'm "in the dog house" with Dr.

Wallach, Steve & Michelle Wallach, and even many of the other Youngevity leaders, because I've known about

Todd's decision but haven't said anything to anyone out of my respect and my relationship with him.

It's hard... but it doesn't make it a Crusade because it's easy.

Scott Fardulis, in a talk in New Zealand, spoke of our slogan in America, one repeated in the US National Anthem, "The Land of the Free and the Home of the Brave."

Sometimes being BRAVE is the PRICE for FREEDOM.

Bravery isn't the absence of fear. Bravery is doing what needs to be done even in the face of fear, in the face of opposition, in the face of being misunderstood or even being criticized when you're doing your best. I hope that each and everyone of you know that I'm trying to do my best to contribute to and to advance the Crusade. I am here because I feel that this is where I am supposed to be.

The need for Dr. Wallach's message hasn't decreased even though sometimes good people leave. And though we are sad that we will not be working together, we do wish them the best. I would hope that everyone who has come across our Crusade, though they do something else for work, that they will continue to use the 90 for Life and be healthy. And as they come across people who also are in dire need of Youngevity's products, that they will at least refer them to someone who can help them.

For those of you who feel the same, who want to continue to contribute to our Crusade, I invite you to not only stay, but to increase your activity.

In critical times like this, we show our support for Dr. Wallach, Steve & Michelle, Dave Briskie, Dr. Ma Lan, and all of Youngevity corporate and our teams by INCREASING what we do -- by sharing the message with more people, by bringing more people with us to events and meetings, by being positive and cheerful and making more of a difference in the lives of others, by being good people and building a bigger and better business. More and more people need this message and as much as ever it is up to US to share it.

There is no message greater than Dead Doctors Don't Lie. As all of you that are personally seeing results and have loved ones and team members seeing results, our opportunity is more than a comp plan, more than a product, even more than a company -- it is a Crusade and to me a calling. I am here because I feel that I need to be here, and I am excited and honored to work with all those that feel that way too!

We have many events coming up. Let's show our support by attending these events and bringing people with us.

- * March 1 thru 5 -- Meetings in Utah with Dr. Wallach
- * March 11 & 12 -- SLC Corporate Tour and Training with Steve & Michelle
Wallach, Alex Theis, Richard Renton, and Scott Fardulis
- * April 14-16 -- Leadership Summit in Anaheim
- * May 5-7 -- Week of Youngevity in SLC (VP & above meeting, Product Showcases, Opportunity Meeting, and Bootcamp with Barb Pitcock)
- * Sept 8-10 -- Youngevity Convention in SLC (Mine Tour on Sept 7)

And more to come.

In addition, please feel free to reach out to me for all of you that would like to talk. You can reach me by email, by text or call (text can come through even when I cannot talk) on my cell at 801-376-2110. I also invite you to reach out to Steve & Michelle, to Dr. Wallach, and without saying anything bad about any good people who may have left, to reaffirm your commitment and excitement for Youngevity, for our opportunity, for international expansion, for our Crusade.

For all that have contributed to this Crusade over the years -- THANK YOU!

And for all that will CONTINUE to contribute to this Crusade -- THANK YOU and I LOOK FORWARD TO ACHIEVING EVEN GREATER HEIGHTS TOGETHER IN 2016!

May God bless and watch over you and your families always!

Sincerely,

Blake Graham
Diamond Chairman
90 for Life Crusader

EXHIBIT F

EMPLOYMENT AGREEMENT

This Employment Agreement ("**Agreement**") is made and entered into on 10/25, 2011 by and between AL International, Inc., a Delaware corporation, doing business as Youngevity ("**Company**") and William J. Andreoli ("**Employee**"). Capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning set forth in the Purchase Agreement.

RECITALS:

WHEREAS, entering into this Agreement is a condition of closing under that certain Equity Purchase Agreement of the date hereof (the "**Purchase Agreement**"), pursuant to which the Company is purchasing one hundred percent (100%) of the issued and outstanding shares of capital stock and membership interests of each of Financial Destination, Inc. ("**FDI**"), FDI Management Co., Inc. ("**FDIM**"), FDI Realty, LLC ("**FDIR**") and MoneyTRAX, LLC ("**MoneyTRAX**" and, together with FDI, FDIM and FDIR, the "**FDI Entities**");

WHEREAS, Company wishes to procure Employee's employment with Company and Employee wishes to accept such employment, upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:1. Duties and Term.

(a) Company hereby employs Employee to serve as President of the Company, to perform such duties as may be determined by the Board of Directors of Company and which are consistent with the duties that Employee performed for the FDI Entities prior to the date hereof. Employee shall perform his duties in accordance with and subject to such policies, guidelines and directions as are consistent herewith and established by the Board of Directors of Company from time to time.

(b) Employee acknowledges that as an executive performing services for a subsidiary of a publicly held company, he will need to conform with certain policies and procedures that will be established by Company and that may not previously have been incorporated in the policies and procedures of the FDI Entities.

(c) Employee shall devote his full working time, effort, skill, and attention to the affairs of Company and shall faithfully perform his duties hereunder to promote Company's interests and observe and perform his agreements contained herein.

(d) The term of this Agreement shall commence as of the Closing Date (which is excepted to occur on or about August 31, 2011 and shall continue for a term of ten (10) years ("**Initial Term**"). At the end of the Initial Term, this Agreement may be extended by mutual written agreement of the parties (said term, as the same may be extended by written agreement, referred to as the "**Term**"). Unless so extended, Employee's employment thereafter shall be considered to be "at will" and not part of the Term. Prior

to any such extension, Employee's employment with the Company shall *not* be considered to be "at will".

2. Compensation.

(a) *Salary*: Subject to Section 2(b), during the Term of this Agreement, Company shall pay to Employee as compensation a salary of \$170,000 per annum ("**Salary**"), in accordance with the standard payroll practices of Company. In addition, Company may, in its discretion, elect to award Employee an annual bonus. Employee's salary level shall be reviewed by the Board of Directors on an annual basis and Employee shall be entitled to an increase in salary if specified objectives are satisfied.

(b) *Adjustment to Salary*: In the event that the amount of any payment of Contingent Consideration is reduced as a result of Annual DP Gross Revenue being less than Target DO Gross Revenue pursuant to Section 1.3(d) of the Purchase Agreement, Employee's Salary shall be reduced by the same percentage as the reduction in the payment of Contingent Consideration pursuant to the Purchase Agreement.

(c) *Initial Executive Team Goals Bonus*: Employee shall receive stock options in the amount of one hundred and twenty-five thousand (125,000) shares, at the strike price equal to the last closing price of the Company's common stock on the date of such grant, if Company reaches Fifty Million dollars (\$50,000,000) in Gross Revenue for any calendar year ("Threshold"). The stock options shall be granted to Employee at the first Board meeting held following achievement of the Threshold, or, if no such Board meeting is scheduled to be held within thirty (30) days following the achievement of the Threshold, by unanimous written consent of the Board on or prior to such date. The stock options shall provide that Employee can exercise them by means of a cashless exercise.

(d) *Future Bonuses*: Future annual bonus and/or spot bonuses can be made available to Employee based upon the achievement of mutually-agreeable objectives set forth by Employee and Company. The bonus shall be payable in either cash or stock, or some combination of the two, depending upon the Company's cash flow position and at the sole discretion of Company.

3. Expenses. Company will reimburse Employee for all reasonably necessary expenses incurred by him in carrying out his duties under this Agreement, including reimbursement of all reasonable travel and entertainment expenses incurred by Employee. With respect to any particular expense exceeding \$100.00 or any series of expenses exceeding \$250.00 in any thirty (30) day period, Employee shall present to Company an itemized account of such expenses in such form as may be reasonably required by Company. Company may impose reasonable limitations on the amount of expenses Employee may incur on behalf of Company.

4. Employee Benefit Plans. Employee shall be entitled to participate in any employee benefit plans that Company from time to time offers to its employees generally or are offered generally by Company to employees of its subsidiaries to the extent Employee is eligible to participate in such plans, and under the same terms as provided to other key executive employees of Company.

5. Paid Time Off. Employee shall be entitled to paid time off (“**PTO**”) during each calendar year of the Term in accordance with Company’s policies. Such PTO shall be taken at times consistent with the proper performance by Employee of his duties and responsibilities. PTO is to be taken in the calendar year in which it accrues, any unused PTO days will be administered in accordance with Company’s standard policies with respect to rollovers and accruals.

6. No Hindrances. Employee represents and warrants to Company that he is free to accept employment with Company hereunder, and that he has no prior other obligations or commitments of any kind to anyone that would in any way materially hinder or interfere with his acceptance of and performance of such employment with Company.

7. Other Business. Employee shall devote his full working time, attention, and energy to the business of Company and corporations affiliated with Company, including the FDI Entities, and shall not during the term of this Agreement be engaged in any other business activity if pursued for gain, profit, or other pecuniary advantage without Company’s prior written consent, which consent shall not be unreasonably withheld. The Company’s acknowledges and agrees that Employee is, and the Company expressly permits Employee to remain, the owner and operator of restaurants in the New Hampshire area.

8. Termination. Subject to the provisions of this Paragraph 8, either Company or Employee may terminate this Agreement prior to the expiration of the Term, as provided for herein:

(a) Company shall have the right to terminate this Agreement for Cause (as hereinafter defined).

(b) Company may terminate this Agreement for other than Cause, provided that in such circumstances, Company shall be obligated to:

(i) pay to Employee all accrued but unpaid Salary amounts payable hereunder with respect to the period prior to the date of termination (including, without limitation, unused PTO pay to the extent accrued prior to termination); and

(ii) continue to pay to Employee his Salary until six months after the date of termination (the “**Severance Period**”). The payments required to be paid under this Paragraph 8(b)(ii) are referred to herein as the “**Severance Payments**.” The Severance Payments will be made in equal installments during the Severance Period pursuant to the Company’s regular payroll schedule and practices, and subject to the provisions of this Section 8. The making or acceptance of any Severance Payment shall not negate, reduce or modify any other other payment(s) that Purchaser may owe to Seller under the Equity Purchase Agreement.

Employee agrees to provide Company with prior written notice of his resignation from Company at least thirty (30) days prior to such resignation.

(c) If Company terminates this Agreement for Cause; or if Employee

terminates this Agreement, then Company's sole liability shall be to pay to Employee all accrued but unpaid Salary amounts payable hereunder with respect to the period ending on the date of termination, together with reimbursement of any approved expenses previously incurred and unused PTO pay to the extent accrued prior to termination) any other amounts or rights of Employee hereunder shall be automatically forfeited.

(d) For purposes of this Agreement, "**Cause**" shall mean:

- (i) Employee (A) is convicted of or pleads guilty or nolo contendere to criminal conduct involving a felony or embezzlement of corporate funds or property, or (B) fails to comply in all material respects with the general written policies of Company, including without limitation, trading in securities on non-public information or otherwise in violation of Company's insider trading policies; or
- (ii) refusal to obey lawful instructions given in writing by the Board of Directors of Company as to the performance of Employee's duties under this Agreement; provided, however, that such instructions are consistent with the duties that Employee performed for Company prior to the date hereof, which refusal is (A) not remedied within ten (10) days after receipt by Employee of written notice from the Board of Directors of Company identifying such refusal, or (B) subsequently repeated; or
- (iii) repeatedly and materially performs below expectations of the Board of Directors of Company as communicated in writing to Employee and such performance is not remedied during the six (6) month period in which Company communicates in writing such performance deficiencies with Employee; or
- (iv) Employee acts in a grossly negligent or intentional manner which results in substantial harm to Company, its affiliates, or their respective business, prospects or operations; or
- (v) an intentional and material breach by Employee of his duties and responsibilities hereunder which is (A) not remedied within ten (10) days after receipt by Employee of written notice from the Board of Directors with respect to such breach, or (B) is subsequently repeated within six (6) months.

(e) Employee acknowledges and agrees that the Severance Pay is the full amount of severance payable to Employee pursuant to the terms of this Agreement if Employee is terminated by Company without Cause. Employee further acknowledges that the Severance Pay is not payable if Employee is terminated for Cause, or if Employee voluntarily resigns or if employment is terminated as a result of death or disability. For purposes of this Agreement, "disability" shall mean the cessation of the Employee's ability to perform his duties as described in Section 1, with or without reasonable accommodation, due to a mental or physical illness, incapacity or disability for an aggregate period of more than thirteen (13) weeks during any twelve (12) month

period.

Employee acknowledges and agrees that a change of control of Company in which Employee is offered continued employment is not an event requiring payment of Severance Pay provided that continued employment is on substantially the same terms and conditions as prior to a change of control (i.e., substantially the same responsibilities, salary and benefits). Employee further acknowledges that during the Severance Period, Employee shall not be entitled to participate in any employee benefit plans, except to the extent that Employee elects COBRA coverage which shall be at Employee's expense.

(f) The Severance Payments do not constitute non-qualified deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") pursuant to Treas. Reg. §1.409A-1(b)(9)(iii) in that the Severance Payments are payable only upon an involuntary separation of service. If the Severance Payments are deemed to constitute non-qualified deferred compensation subject to Section 409A of the Code, the following interpretations apply to the Severance Payments: (i) any termination of Employee's employment triggering payment of the Severance Payments must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Employee's employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by him to Company at the time his employment terminates), the Severance Payments shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h). For purposes of clarification, this Section 8(g) shall not cause any forfeiture of benefits on the Employee's part, but shall only act as a delay until such time as a separation from service occurs; (ii) if Employee is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder), any installment of the Severance Payments that constitute non-qualified deferred compensation subject to Section 409A shall be delayed until the earlier of (A) one business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Employee's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) one business day following the six-month anniversary of the date his separation from service becomes effective, and (B) his death, Company shall pay Employee in a lump sum the aggregate value of the non-qualified deferred compensation that Company otherwise would have paid him prior to that date under Section 8(b)(ii) of this Agreement and thereafter shall pay Employee the amounts payable to him in accordance with the schedule of fixed payments set forth in Section 8(b)(ii), as applicable; (iii) it is intended that each installment of the payments and benefits provided under Section 8(b)(ii) of this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code; and (iv) neither Company nor Employee shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

(g) Company's obligation under this Paragraph 8 to pay the Severance

Payments shall be subject to (i) the execution (without revocation) and delivery by Employee of a release of claims, in customary form reasonably satisfactory to Company, of claims against the Company and its affiliates (including the FDI Entities), arising out of this Agreement and Employee's employment relationship with Company (the "Release"), and (ii) the Release becoming effective and irrevocable prior to the sixtieth (60th) day following the effective date of the termination of the Employee's employment.

(h) In the event that Employee breaches his obligations under Paragraphs 9 through 11 below, then, without limiting the other rights and remedies available to Company under Paragraph 12, Company shall be entitled to immediately terminate making any further Severance Payments to Employee.

(i) Except as set forth in the Purchase Agreement, nothing in this Agreement shall relieve, waive, reduce or modify Company's obligation to make any and all payments set forth in the Purchase Agreement (whether obligatory or contingent), including but not limited to any and all payments set forth in Sections 1.2 and 1.3 of the Purchase Agreement.

9. Confidentiality and Covenant Not to Disclose.

(a) Employee agrees that, by virtue of the performance of the normal duties of his position with Company and by virtue of the relationship of trust and confidence between Employee and Company, he possesses certain data and knowledge of operations of Company which are proprietary in nature and confidential. Employee covenants and agrees that he will not, at any time, whether before or after the termination of this Agreement, reveal, divulge or make known to any person (other than Company or its affiliates) or use for his own account, or for the benefit of any other person or entity other than Company or its affiliates, any confidential or proprietary records, data, trade secrets, technology, customer information, pricing policy, bid strategy, rate structure, personnel policy, method or practice of obtaining or doing business by Company or its affiliates, or any other confidential or proprietary information of Company or its affiliates, or of its customers, suppliers or other third parties that Employee gained access to through his employment by Company (the "**Confidential Information**"), whether or not obtained with the knowledge and permission of Company or its affiliates and whether or not developed, devised or otherwise created in whole or in part by the efforts of Employee. Employee further covenants and agrees that he shall retain all such knowledge and information which he shall acquire or develop respecting such Confidential Information for the sole benefit of Company and its affiliates and their successors and assigns. Notwithstanding the foregoing, Confidential Information shall not include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Employee by Company or its affiliates; (ii) becomes publicly known and made generally available after disclosure to Employee by Company or its affiliates through no action or inaction of Employee; (iii) was already in the possession of Employee in writing before its receipt from the Company; (iv) was obtained from a third party who is free to divulge the same; and (v) which is required by law or other competent authorities to be disclosed.

(b) Employee acknowledges and agrees that he will not knowingly use any trade secrets of Company to contact or solicit any person, including without limitation,

Company's employees, suppliers and customers, or otherwise use such Company trade secrets to unfairly compete with Company.

(c) Employee acknowledges and agrees that all computer programs and disks, manuals, drawings, blueprints, letters, notes, notebooks, reports, books, procedures, forms, documents, records or papers, or copies thereof, pertaining to the operations or business of Company or its affiliates made or received by Employee or made known to him in any way in connection with his employment and any other Confidential Information are and will be the exclusive property of Company or its affiliates. Employee agrees not to copy or remove any of the above from the premises and custody of Company or its affiliates, or disclose the contents thereof to any other person or entity, or make use thereof for his own purposes or for the benefit of any other person or entity, except as specifically authorized in writing by the Board of Directors of Company or in connection with the performance of his duties under this Agreement. Employee acknowledges that all such computer programs and disks, papers and other materials will at all times be subject to the control of Company, and Employee agrees to surrender and return the same to Company upon request of Company, and in any event will surrender and return such no later than the termination of Employee's employment hereunder, whether voluntary or involuntary. Company may notify anyone employing Employee at any time of this provision of this Agreement.

(d) The obligations of this Paragraph 9 shall apply to any and all employment relationship between Company and Employee, whether under this Agreement, at will or otherwise, and shall survive the termination of this Agreement.

(e) Notwithstanding any other provision of this Paragraph 9, Employee may disclose Confidential Information in response to a subpoena or valid order of a court or other governmental agency, provided that Employee first provides notice to the Company and reasonably cooperates, at Company's sole expense, with the Company to obtain a protective order requiring such Confidential Information be disclosed only for the limited purposes for which the order was issued.

10. Inventions and Discoveries. Employee hereby assigns, transfers and conveys to Company all of Employee's right, title and interest to, and shall promptly disclose to the Board of Directors of Company, all ideas, inventions, discoveries, or improvements (whether or not patentable) conceived or developed solely, or jointly with others, by Employee during his Term of employment, (a) that relate directly or indirectly to the business of Company or its affiliates as conducted at any time during his Term of employment, (b) which relate to the actual or anticipated research or development activities of Company or its affiliates, (c) which result from any work performed by Employee for Company or its affiliates; or (d) for which Confidential Information of Company or its affiliates was used. Upon the request of Company and at the Company's sole cost, Employee shall execute and deliver to Company any and all instruments, documents and papers, give evidence and do any and all other acts which Company deems necessary or desirable to document such assignment, transfer and conveyance, or to enable Company or its affiliates to file and prosecute applications for, and to acquire, maintain and enforce, any and all patents, trademark registrations or copyrights under United States or foreign law with respect to any such discoveries, or to obtain any extension, validation, reissue, continuance or renewal of any such patent, trademark or copyright. Company will be responsible for the preparation and cost of any such instruments, document and papers and shall

reimburse Employee for all reasonable expenses incurred by him in complying with the provisions of this Paragraph 10; provided, Employee shall not be entitled to any further compensation or consideration for performance of his obligations under this Paragraph 10. The obligations of Employee under this Paragraph 10 shall apply to any and all employment relationship between Company and Employee, whether under this Agreement, at will or otherwise, and shall survive the termination of this Agreement.

11. Business Materials and Property of Company. All written materials, records and documents (whether hard copies or in electronic media) made by Employee or coming into his possession concerning the business or affairs of Company or its affiliates shall be the sole property of Company or its affiliates and, upon termination of his employment with Company, Employee shall deliver the same to Company and shall retain no copies. Employee shall also return to Company all other property in his possession owned by Company or its affiliates upon termination of his employment. The obligations of Employee under this Paragraph 11 shall apply to any and all employment relationship between Company and Employee, whether under this Agreement, at will or otherwise, and shall survive the termination of this Agreement.

12. Breach by Employee. It is expressly understood, acknowledged and agreed by Employee that (i) the restrictions contained in Paragraphs 9 through 11 of this Agreement are given in consideration of Company's agreements contained herein, and represent reasonable and necessary protections of the legitimate interest of Company and its affiliates and that Employee's failure to observe and comply with the covenants and agreements in those Paragraphs may cause irreparable harm to Company and/or its affiliates; (ii) it is and will continue to be difficult to ascertain the nature, scope and extent of the harm; and (iii) a remedy at law for such failure by Employee will be inadequate. Accordingly, it is the intention of the parties that, in addition to any other rights and remedies which Company and its affiliates may have in the event of any breach of those paragraphs, Company and its affiliates may each be entitled, and each is expressly and irrevocably authorized by Employee, to demand and obtain specific performance; including without limitation, temporary and permanent injunctive relief, and all other appropriate equitable relief against Employee, in order to enforce against Employee, or in order to prevent any breach or any threatened breach by Employee, of the covenants and agreements contained in those paragraphs.

13. Indemnification. To the fullest extent provided by law, the Company will indemnify Employee against and hold him harmless from liabilities of whatsoever kind and nature which may be imposed on, incurred by or asserted against him at any time related to actions taken or omitted on behalf of the Company in his capacity as an executive officer of the Company (irrespective of whether Employee is employed by the Company). The Company shall also cover Employee under any by-law indemnity as well as directors' and officers' liability insurance that will continue in effect both during the Agreement Term and, while potential liability exists, thereafter. The obligations of the Company under this Paragraph 13 shall apply to any and all employment relationship between Company and Employee, whether under this Agreement, at will or otherwise, and shall survive the termination or expiration of this Agreement.

14. Miscellaneous.

(a) Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties concerning the employment of Employee by Company. This

Agreement is intended to supplement the provisions of the Purchase Agreement. The provisions of Paragraphs 9 through 11 of this Agreement are in addition to, and not in substitution for, any agreements regarding confidentiality, non-solicitation, work made for hire or the like previously or in the future executed and delivered by Employee for the benefit of Company.

(b) Inconsistency in Agreements. In the event of a conflict or inconsistency between this Agreement and the Purchase Agreement, the terms and provisions of the Purchase Agreement shall control. In the event of a conflict or inconsistency between this Agreement and the Non-Competition, Non-Solicitation, No-Disclosure and Intellectual Property Agreement, the terms and provisions of this Agreement shall control.

(c) No Additional Promises. No representation, promise, inducement, or statement of intention has been made by or on behalf of either party hereto which is not set forth in this Agreement.

(d) Amendments. This Agreement may not be amended or modified except by written instrument executed by the parties hereto.

(e) Notices. Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be in writing and delivered in person, by overnight delivery by nationally recognized carrier, or sent by certified mail to Employee and to Company as specified hereafter, or to such other address as either party shall designate by written notice to the other:

If to Company:

AL International, Inc.
2400 Boswell Rd.
Chula Vista, CA 91914
Facsimile: 619-934-5009
Attention: Steve Wallach

If to Employee:

William J. Andreoli
81 Heritage Hill Rd.
Windham, N.H. 03087

(f) Assignment. The terms and provisions of this Agreement shall inure to the benefit of Employee, Company and its affiliates, and their respective subsidiaries, affiliates, heirs, legal representatives, successors and assigns.

(g) No Waivers. The failure of any party to this Agreement at any time or from time to time to require performance of any other party's obligations under this Agreement shall in no manner affect such party's right to enforce any provision of this Agreement at a subsequent time and shall not constitute a waiver by such party of any right arising out of any subsequent breach.

(h) Governing Law. This Agreement shall be subject to and governed by the laws of the State of California without giving effect to its conflicts-of-laws principles.

(i) Severability. In the event that any court of competent jurisdiction shall finally determine that any provision, or any portion thereof, contained in this Agreement shall be void or unenforceable in any respect, then such provision shall be deemed limited to the extent that such court determines it enforceable, and as so limited shall remain in full force and effect. In the event that such court shall determine any such provision, or portion thereof wholly unenforceable, the remaining provisions of this Agreement shall nevertheless remain in full force and effect, provided that the severing of such provision or portion thereof will not materially change the substance of this Agreement.

(j) Incorporation of Recitals. The parties agree that the preamble and recitals are true and correct and that the preamble and recitals, as well as the definitions set forth therein, are hereby incorporated into this Agreement by reference.

(k) Counterparts. This Agreement may be executed by the parties hereto in separate counterparts and by facsimile or Portable Document Format ("pdf"), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written to be effective for the period described therein.

COMPANY:

AL International, Inc.

By: [Signature]
Name: STEVE WATKINS
Title: CEO

EMPLOYEE:

[Signature]
William J. Andreolf

EXHIBIT G

CONSULTING AGREEMENT
AL INTERNATIONAL, INC. & LIVINITY, INC.

THIS CONSULTING AGREEMENT ("Agreement") is made and entered into as of the 10 day of July, 2012, by and among AL International, Inc., a publicly traded Delaware corporation, with offices located at 2400 Boswell Road, Chula Vista, California (hereinafter "Company") and Livinity, Inc., a Kansas corporation, with offices located at 802 North Maple, Russell, Kansas, (hereinafter "Consultant"). Collectively referred to as the "Parties"

WHEREAS, Consultant is recognized as an expert in multilevel marketing and specifically marketing of the Livinity line of services and goods; and

WHEREAS, the Company desires to retain Consultant to provide services related to and in support of efforts in which Consultant has expertise;

WHEREAS, Company and Consultant have executed a Bill of Sale and Consignment Agreement with respect to the Livinity business, inventory and intellectual property; now

THEREFORE, in consideration of the mutual conditions and promises herein contained, the Parties agree as follows:

1. **Consulting Services.** Consultant shall furnish the Company with its best effort, advice, information, judgment and knowledge with respect to the promotion of the Company and its direct sales and multi-level marketing plan and more specifically to the maintenance of the Livinity business distributor down-line.
2. **Term.** The term of this Agreement shall begin on July 1, 2012, and shall, subject to the provisions for termination set forth herein, continue for a period of 48 months. This Agreement is not renewable.
3. **Compensation.** CONFIDENTIAL INFORMATION REDACTED

CONFIDENTIAL INFORMATION REDACTED

CONFIDENTIAL INFORMATION REDACTED

4. Confidential Information, Non-Circumvention and Intellectual Property.

a) Consultant shall maintain in strict confidence, and not use or disclose except pursuant to written instructions from the Company, any Confidential Information (as defined below) of the Company, for so long as the pertinent data or information remains Confidential. The obligation to protect the confidentiality of any such information or data shall not be excused if such information or data ceases to qualify as Confidential Information as a result of the acts or omissions of Consultant.

b) The termination of this Agreement for any reason whatsoever does not terminate Consultant's duties and obligations to maintain the Confidential Information strictly confidential.

c) Consultant may disclose Confidential Information pursuant to any order or legal process requiring the disclosing party (in its legal counsel's reasonable opinion) to do so, provided that the request or order to so disclose the Confidential Information in sufficient time to

allow the Company to seek an appropriate protective order.

DEFINITION: "Confidential Information" shall mean any nonpublic information of a competitively sensitive or personal nature, other than Trade Secrets, acquired by Consultant in connection with performing services for the Company, including (without limitation) oral and written information concerning the Company's financial positions and results of operations (revenues, margins, assets, net income, etc.), annual and long-range business plans, marketing plans and methods, account invoices, oral or written customer information, and personnel information.

DEFINITION: "Company" shall include the Company and all of its direct and indirect subsidiaries and any predecessors of the Company.

d) Consultant may not use any of the Confidential Information and/or business contacts, information regarding distributors/vendors/suppliers and other business associates of Company, or other types of confidential and proprietary business information transmitted to Consultant by Company, for the purpose of circumventing Company's business operations.

e) In the event Consultant shall breach, violate or threaten to violate the provisions of this Section, damages at law will be an insufficient remedy and the Company shall be entitled to equitable relief including but not limited to injunction, monetary damages, punitive damages, and specific liquidated damages in the amount of the prior years earnings for disclosure of Confidential Information and/or use of such information to solicit company's customers. In addition, other remedies or rights available to the Company and no bond or security will be required in connection with such equitable relief.

f) The existence of any claim or cause of action that Consultant may have against the Company will not at any time constitute a defense to the enforcement by the Company of the restrictions or rights provided by this Section, but the failure to assert such claim or cause of action shall not be deemed to be a waiver of such claim or cause of action.

5. Original Works of Authorship that result from the performance by Consultant of his duties hereunder, are deemed to be "works made for hire" under the copyright laws of the United States, and will be and will remain the sole and exclusive property of the Company. Consultant, at the Company's request and expense, will assign to the Company in perpetuity all proprietary

rights that he may have in such works of authorship. Should the Company elect to register claims of copyright to any such works of authorship, Consultant will, at the expense of the Company, do such things, sign such documents and provide such reasonable cooperation as is necessary for the Company to register such claims, and obtain, protect, defend and enforce such proprietary rights. Consultant shall have no right to use any trademarks or proprietary marks of the Company without the express, prior written consent of the Company regarding each use.

6. **Acts Discreditable.** Consultant shall at all times refer to Company and its operating units in terms that further its business objectives. Consultant shall not refer to Company or its operating units in a manner that damages Company's position in the marketplace.

7. **Termination.** This Agreement may be terminated by either party upon written notice if the other party breaches any of its obligations hereunder and the breaching party fails to cure such breach within thirty (30) days after receipt of notice of such breach.

8. **Severable Provisions.** The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provision to the extent enforceable in any jurisdiction, shall nevertheless be binding and enforceable.

9. **Binding Agreement.** The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. The rights, obligations and duties of Consultant hereunder may not be assigned or delegated without the Company's prior written consent.

10. **Relationship of Parties.** The Consultant is an independent contractor. Both parties acknowledge and agree that Consultant's engagement hereunder is not exclusive and that either party may provide to, or retain from, others similar such services provided that it does so in a manner that does not otherwise breach this Agreement. Neither party is, nor shall claim to be, a legal agent, representative, partner or employee of the other, and neither shall have the right or authority to contract in the name of the other nor shall it assume or create any obligations, debts, accounts or liabilities for the other.

11. **Notices.** Any notices or other communications required or permitted under this

Agreement shall be in writing and shall be deemed to have been duly given and delivered when delivered in person, two (2) days after being mailed postage prepaid by certified or registered mail with return receipt requested, or when delivered by overnight delivery service or by facsimile to the recipient at the following address or facsimile number, or to such other address or facsimile number as to which the other party subsequently shall have been notified in writing by such recipient:

If to the Company: AL International, Inc.
2400 Boswell Road
Chula Vista, California 91914
Attention: Steve Wallach, CEO
Facsimile: 619-934-5009

If to the Consultant: Livinity, Inc.
802 North Maple
Russell KS 67665
Attention: Dave and Barb Pitcock
[company fax]

12. Waiver. Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions as to future violations thereof, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted the parties herein are cumulative and the waiver by a party of any single remedy shall not constitute a waiver of such party's right to assert all other legal remedies available to him or it under the circumstances.

13. Governing Law. This Agreement will be governed by and interpreted in accordance with the substantive laws of the State of California without reference to conflicts of law. Venue shall be in the Superior Court of California, County of San Diego, South County Branch Court.

14. Captions and Section Headings. The various captions and section headings contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any of the provisions of this Agreement.

15. Entire Agreement. With respect to its subject matter, this Agreement and its Exhibits

constitute the entire understanding of the parties superseding all prior agreements, understandings, negotiations and discussions between them whether written or oral, and there are no other understandings, representations, warranties or commitments with respect thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

AL International, Inc.

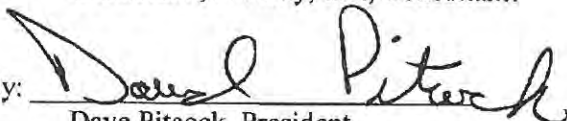
By:



Steve Wallach, CEO

Consultant, Livinity, Inc., Consultant:

By:



Dave Pitcock, President

EXHIBIT H

ASSET PURCHASE AGREEMENT
BY AND AMONG
YOUNGEVITY INTERNATIONAL, INC.
HERITAGE MAKERS, INC.
HM-3, LLC
CHRISTOPHER LEE
DOUG CLOWARD
SHARON MURDOCH
JUSTIN BIGGS
AND
BRYTT CLOWARD

Dated August 7, 2013

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated August 7, 2013 (this “**Agreement**”), is entered into by and among Youngevity International, Inc., a Delaware corporation (“**YGYI**”), with an address at 2400 Boswell Road, Chula Vista, California 91914, Heritage Makers, Inc., a Delaware corporation (“**HM**”) with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, HM-3, LLC, a Utah limited liability company (“**HM-3**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, Christopher Lee (“**Lee**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, Doug Cloward (“**D. Cloward**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, Sharon Murdoch (“**Murdoch**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, Justin Biggs (“**Biggs**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538, and Brytt Cloward (“**B. Cloward**”), with an address at 1837 South East Bay, Suite 201, Provo Utah 84606-5538. HM-3, Lee, D. Cloward, Murdoch, Biggs, and B. Cloward are collectively referred to herein as the “**Representing Parties**”.

WHEREAS, HM owns and desires to sell and assign to YGYI substantially all of its Assets (as more specifically defined herein) and YGYI desires to purchase and acquire such Assets from HM and, thereafter, to use, market, license, sublicense, develop, maintain, collect and otherwise deal with the Assets without restriction.

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

DEFINED TERMS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them herein, unless the context otherwise indicates, both for purposes of this Agreement and all Exhibits and Schedules referenced herein:

“**Action**” means any action, complaint, summons, citation, notice, directive, order, suit, proceeding, actual claim, arbitration, litigation, audit, judgment, letter, inquiry, investigation or other communication from any Person or Governmental Entity.

“**Affiliate**” means, as to a Person, any other Person controlling, controlled by or under common control with such first Person. As used in this definition, the term “control” shall mean the power, directly or indirectly, to vote more than 50% of the outstanding voting equity of an entity or the right, directly or indirectly, to designate a majority of the directors of a Person (in the case of a corporation) or the Persons exercising similar functions (in the case of an unincorporated Person).

“**Ancillary Document**” means any writing, certificate, exhibit, schedule, transfer document, statement, list, report, instrument, agreement or other document furnished or delivered in connection with this Agreement.

“**Assets**” means all of the properties, assets, rights, claims, leasehold interests, contracts and goodwill used in the Business or owned by HM, of every kind and character, wherever located, whether real or personal, tangible or intangible, including, but not limited to, the Contracts, Inventory, Intellectual Property, Proprietary Rights and Real Property and the name Heritage Makers, Inc. For the avoidance of doubt, the “Assets” shall not include the distributorship owned by HM-3, which is identified as “1003” in HM’s distributor genealogy.

“**Assumed Liabilities**” means the liabilities set forth on Schedule A hereto.

“**Balance Sheet**” is defined in the definition of “Financial Statements”.

“**Benefit Plan**” means any employee benefit plan including (i) any (a) nonqualified deferred compensation or retirement plan or arrangement or superannuation plan; (b) qualified defined contribution retirement plan or arrangement; or (c) qualified defined benefit retirement plan or arrangement, which is an “employee pension benefit plan”; (ii) any “employee welfare benefit plan” or material fringe benefit plan or program; or (iii) any stock purchase, stock option, profit sharing, deferred compensation, welfare, pension, retirement, severance pay, employment, change-in-control, vacation pay, company awards, salary continuation, sick leave, excess benefit, bonus or other incentive compensation, life insurance, or other employee benefit plan, contract, program, policy or other arrangement.

“**Business**” means the current business of HM relating to, among other things, on-demand photo publishing and the sale of “points” to exchange for products through a network of distributors and sales consultants.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which federally chartered commercial banks in Chula Vista, California are authorized by Law to close.

“**Capital Stock**” means (i) in the case of a corporation, its shares of capital stock; (ii) in the case of a partnership or limited liability company, its partnership or membership interests or units (whether general or limited); and (iii) any other interest that confers on a Person the right to receive a share of the profits and losses or distribution of assets of the issuing entity.

“**Charter Documents**” means, with respect to any entity, the certificate of incorporation, articles of incorporation, by-laws, constitution, articles of organization or other similar organizational documents of such entity (in each case, as amended).

“**Closing Date**” means the date which is three (3) days after all of the conditions set forth in Article VI have been satisfied or waived or such other date mutually agreed to by the parties.

“**Consents**” is defined in Section 5.4(a).

“**Consultant**” means each of HM’s independent representatives who market and sell any HM’s Products or services.

“**Contract**” means any agreement, contract, license, lease, commitment, arrangement or understanding, written or oral.

“**Disclosure Schedules**” means the YGYI Disclosure Schedule and the HM Disclosure Schedule.

“**Employees**” means those Persons employed by HM immediately prior to the Closing.

“**Environment**” means all indoor or outdoor air, water including surface water, groundwater, drinking water and wetlands, surface or subsurface land, and all natural resources including all forests and marine resources, minerals, oil, gas, fish, wildlife and biota.

“**Environmental Action**” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from or threatened from any Governmental Entity (whether United States or foreign) or any other Person involving a Release from or on the Real Property or any violation of any order, permit or Environmental Law.

“**Environmental Laws**” means any and all applicable Laws relating to the Environment, human health, worker health and safety, preservation or reclamation of natural resources, climate change or the management, handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, Release or threatened Release of or exposure to Hazardous Materials, whether now existing or subsequently amended or enacted, including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (“**CERCLA**”); the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Toxic

Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. Section 136 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq.; any similar or implementing federal, state or local Law or non-U.S. Law and regulation and all amendments or regulations promulgated thereunder; and any common law doctrine, including but not limited to, negligence, nuisance (including related to noise, dust or vibration), trespass, personal injury or property damage related to or arising out of the presence, Release or exposure to Hazardous Materials.

“Equity Securities” means (i) Capital Stock and (ii) options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other Contracts that, directly or indirectly, could require the issuer thereof to issue, sell or otherwise cause to become outstanding Capital Stock.

“Financial Statements” means the HM’s financial statements consisting of the balance sheet as of December 31, 2012 and the related statement of income for the period then ended and the balance sheet as of June 30, 2013 (the **“Balance Sheet”**) and the related statement of income for the period then ended.

“Governmental Entity” means any domestic or foreign governmental or regulatory authority, agency, commission, body, court or other legislative, executive or judicial governmental entity.

“Hazardous Materials” means any substance: (i) the presence of which requires investigation or remediation under any Environmental Law or Environmental Action; (ii) which is or becomes defined as a hazardous waste, hazardous substance, toxic substance, pollutant, or contaminant or noxious or dangerous or is regulated in any manner under any Environmental Law or Environmental Action; or (iii) which contains gasoline, diesel fuel, other petroleum hydrocarbons, PCBs, asbestos, lead-based paint, or radon gas.

“HM Benefit Plan” is defined in Section 5.19(a).

“HM Contracts” shall mean the Contracts listed on Schedule 5.17(a) hereto.

“Indebtedness” means any of the following: (i) any indebtedness, including accrued interest, for borrowed money; (ii) any inter-company debt; (iii) any obligations evidenced by bonds, debentures, notes or other similar instruments; (iv) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other current liabilities arising in the ordinary course of business (other than inter-company debt); (v) any obligations as lessee under capitalized leases; (vi) any indebtedness created or arising under any conditional sale or other title retention agreement with respect to acquired property; (vii) any obligations, contingent or otherwise, under acceptance credit, letters of credit or similar facilities; (viii) obligations relating to interest rate protection, swap agreements and collar agreements, and obligations arising from the extinguishment of indebtedness (e.g. prepayment penalties); and (ix) any guaranty of any of the foregoing.

“Intellectual Property” means: (i) trademarks and service marks (whether or not registered), trade names, logos, trade dress and other proprietary indicia and all goodwill associated therewith; (ii) documentation, advertising copy, marketing materials, web-sites, specifications, mask works, drawings, graphics, databases, recordings and other works of authorship, whether or not protected by copyright law; (iii) computer programs, including HM’s Internal Points Management Software, any and all software implementations of algorithms, models and methodologies, whether in source code or object code, design documents, flow-charts, user manuals and training materials relating thereto and any translations thereof; and (iv) all forms of legal rights and protections that may be obtained for, or may pertain to, the Intellectual Property set forth in clauses (i) through (iii) in any country of the world, including all letters patent, patent applications, provisional patents, design patents, PCT filings, invention disclosures and other rights to inventions or designs, all registered and unregistered copyrights in both published and unpublished works, all trademarks, service marks and other proprietary indicia (whether or not registered), trade secret rights, moral rights or other literary property or author’s rights, and all applications, registrations, issuances, divisions, continuations, renewals, reissuances and extensions of the foregoing.

“**Inventory**” means all personal property or goods held for sale or lease in the ordinary course of business or to be furnished under contracts of service and all materials, supplies, parts, work-in-process, finished goods, packaging and other inventories of materials and personal property used or consumed in the operation of the Business.

“**Law**” or “**Laws**” means any and all applicable statutes, laws, ordinances, proclamations, regulations, published requirements, orders, decrees, authorizations, licenses, permits and rules of any foreign, federal, state or local government, political subdivision or governmental or regulatory authority, agency, board, bureau, commission, instrumentality or court or quasi-governmental authority, including, without limitation, those covering environmental, tax, energy, safety, health, transportation, bribery, record keeping, zoning, discrimination, antitrust and wage and hour matters, and in each case as amended and in effect from time to time.

“**Lien**” means with respect to any property or asset, any lien, pledge, claim, charge, security interest, mortgage, adverse claim or other encumbrance of any nature whatsoever.

“**Losses**” means losses, damages, liabilities, deficiencies, debts, obligations, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder.

“**Material Adverse Effect**” means a material adverse effect on the assets, liabilities, business, operations, or condition (financial or otherwise) of HM.

“**Party**” means any a party to this Agreement as set forth in the first paragraph of this Agreement.

“**Permitted Liens**” means (i) Liens securing the payment of current real or personal property, taxes, assessments or other governmental charges or levies which are not yet delinquent, or which are being contested in good faith and as to which adequate reserves have been established; (ii) materialmen’s, mechanics’, carriers’, workmen’s, repairmen’s or other like Liens incurred in the ordinary course of business securing obligations or payments not yet due and that do not impact the conduct of HM or the present proposed use of affected property; (iii) zoning restrictions, easements, licenses, restrictions on the use of Real Property or minor irregularities in title thereto, which do not materially impair, alone or in the aggregate, the use of the property affected thereby in the operation of the Business or the value of such property for the purpose of the Business; and (iv) workers’ compensation and unemployment compensation liens for amounts not yet due.

“**Person**” means a corporation, an association, a partnership, a limited liability company, an organization, a business, any other entity, an individual, a government or political subdivision thereof or a government agency.

“**Products**” is defined in [Section 5.23\(a\)](#).

“**Proprietary Information**” means inventions (whether or not patentable), trade secrets, technical data, databases, customer lists, designs, tools, methods, processes, technology, ideas, formulas, know-how, source codes, product road maps and other proprietary information and materials.

“**Real Property**” means all real property, buildings and fixtures owned, leased or used by HM.

“**Release**” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Substances into the Environment.

“**Representatives**” means with respect to a Person, such Person’s directors, managers, officers, employees, investment bankers, attorneys, accountants, financial advisors, consultants and other advisors or representatives.

“**Sale Transaction**” means (i) any consolidation or merger of a Person with or into any other corporation or other entity or person, or any other corporate reorganization or acquisition of such Person, other than any such consolidation, merger, reorganization or acquisition in which the equity holders of such Person immediately prior to such consolidation, merger, reorganization or acquisition, continue to hold, as a result of the securities of such

Person held by such holders prior to such transaction, at least a majority of the voting power of the surviving entity immediately after such consolidation, merger or reorganization; (ii) any transaction or series of related transactions to which a Person or any of its equity holders is a party or is subject in which a majority of such Person's voting power is transferred; or (iii) a sale, lease, exchange or other transfer (in one transaction or a series of transactions) of all or substantially all of the assets of a Person, unless, in each case, such Person's equity holders as constituted immediately prior to such acquisition or sale will, immediately after such acquisition or sale (by virtue of securities issued as consideration for such Person's acquisition or sale or otherwise) hold at least a majority of the voting power of the surviving, continuing or purchasing entity.

“**Subsidiaries**” means, with respect to any specified Person, any other Person of which: (i) more than 50% of the outstanding Capital Stock is held, directly or indirectly, by such specified Person or (ii) over which the specified Person has the power, directly or indirectly, to designate a majority of the directors thereof (if such other Person is a corporation) or the individuals exercising similar functions (if such other Person is unincorporated).

“**Tax**” or “**Taxes**” means any and all federal, state, local or foreign net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, license, lease, service, service use, occupation, severance, energy, unemployment compensation, social security, workers' compensation, capital, premium and other taxes, assessments, customs, duties, fees, levies or other governmental charges of any nature whatever, whether disputed or not, together with any interest, penalties, fines, additions to tax or additional amounts with respect thereto.

“**Tax Authority**” means any Governmental Entity having jurisdiction with respect to any Tax.

“**Tax Returns**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“**Transactions**” means the transactions contemplated in this Agreement.

ARTICLE II

SALE AND PURCHASE OF ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

2.1 **Sale and Purchase**. Subject to the terms and conditions contained herein, HM agrees to sell, transfer, assign, convey and deliver to YGYI or its designee, and YGYI agrees to purchase from HM, all of HM's right, title and interest in and to, the Assets free and clear of any liens, pledges, security interests, claims or encumbrances of any kind, except as set forth on the HM Disclosure Schedule.

2.2 **Liabilities Assumed**. YGYI shall assume on the Closing Date HM's obligations under the Assumed Liabilities, as set forth on Schedule A. It is expressly agreed and understood that YGYI shall not assume, pay or discharge or in any respect be liable for any liability, obligation, commitment or expense of HM other than those expressly set forth on Schedule A. Without limitation of the foregoing and notwithstanding anything in this Agreement to the contrary (other than YGYI's assumption of the liabilities set forth on Schedule A) YGYI shall not assume, pay or discharge, and shall not be liable for, and HM and the Representing Party, jointly and severally, shall discharge, indemnify and hold YGYI and each of its Affiliates (and their respective officers and directors) harmless, in accordance with the provisions of Article IX hereof, from and against, any liability (actual or contingent), loss, commitment, obligation or expense of HM or the Representing Parties:

(a) incident to, or arising out of, the negotiation and preparation of, or the performance of HM or the Representing Parties under this Agreement;

(b) incident to, or arising out of, any claims, actions, suits, proceedings, liabilities, fines, penalties, deficiencies or judgments existing on the Closing Date that are not set forth on Schedule A or arising at any time thereafter as a result of or in connection with the conduct of the business of HM, including, without limitation, the ownership or use of the Assets by HM or the Representing Parties and HM's and the Representing Parties' conduct of HM's business up to and including the Closing Date;

(c) incident to, or arising out of, any tax liabilities (or penalties or interest thereon), of any nature whatsoever of HM's whether on account of this Agreement or otherwise, including, without limitation, (i) any which may arise as a result of the sale of the Assets as contemplated by this Agreement or (ii) relating to the operations of HM prior to the Closing Date;

(d) incident to, or arising out of, any liabilities (other than those assumed by YGYI, as set forth on Schedule A) with respect to the conduct of the business of HM up to and including the Closing Date, including any liability for "points" exchangeable for future points in excess of the amounts and expiration dates set forth in HM's Disclosure Schedules; and

(e) incident to, or arising out of, any liabilities of HM not reflected on Schedule A, in the Balance Sheet or HM's Disclosure Schedules.

2.3 The Purchase Price. **CONFIDENTIAL INFORMATION REDACTED**

CONFIDENTIAL INFORMATION REDACTED

CONFIDENTIAL INFORMATION REDACTED
CONFIDENTIAL INFORMATION REDACTED

ARTICLE III

THE CLOSING TRANSACTIONS AND OTHER RIGHTS

3.1 Transfer of HM Assets. At the Closing: (i) HM will transfer the Assets to YGYI or its designee and (ii) YGYI will pay to HM by certified check or wire transfer, the Cash Payment.

3.2 Disclosure Schedules. As of the date of this Agreement, YGYI has delivered to HM and HM has delivered to YGYI, contemporaneously with the execution of this Agreement, the YGYI Disclosure Schedule and the HM Disclosure Schedule, respectively.

3.3 The Closing.

(a) The Closing shall take place remotely via the exchange of documents and signatures at 10:00 A.M. on August 14, 2013, or at such other time and place as the Parties agree (the date of the Closing, the "Closing Date").

(b) No action actually taken at the Closing with respect to the consummation of the Transactions shall be deemed to have been taken until such time as the last of the actions actually taken at the Closing is completed.

(c) At the Closing, each Party shall execute, deliver and file each document, agreement and instrument required of such Party by this Agreement to be so executed, delivered and filed in connection with the Transactions as set forth in Sections 3.4 and 3.5 and which have not been theretofore accomplished.

(d) Each Party shall, from time to time after the Closing Date at the reasonable request of another Party and without further consideration, execute and deliver or cause to be executed and delivered to the other such further instruments of transfer, assignment, conveyance and assumption, and shall take or cause to be taken such other action as reasonably requested by the other Party, as may be necessary to effectively implement and carry into effect the Transactions.

3.4 YGYI's Deliveries. At the Closing, YGYI shall deliver to HM, as applicable:

(a) An executed Assignment, Bill of Sale and Assumption Agreement with respect to the Assets and the Assumed Liabilities in substantially the form of Exhibit A annexed hereto; and

(b) Such other documents, instruments or certificates that may be reasonably required to carry out the provisions of this Agreement and consummate the Transactions.

3.5 HM's Deliveries. At the Closing, HM shall deliver:

(a) An executed Assignment, Bill of Sale and Assumption Agreement with respect to the Assets and the Assumed Liabilities in substantially the form of Exhibit A annexed hereto;

(b) An officer's certificate as set forth in Section 6.2(c);

(c) Resolutions adopted by the board of directors and stockholders of HM dated at or about the Closing Date authorizing it to execute and deliver this Agreement and to perform its obligations hereunder and authorizing the Transactions certified by the Secretary of HM and approving the change of name of HM to a name not including the words "Heritage" or "Maker";

(d) An assignment of any property leases to be transferred to YGYI including the consent of all third parties;

(e) An assignment of all permits and licenses to be transferred to YGYI in respect of operating the Business;

(f) A release or discharge of any liens over the Assets;

(g) A copy of all books and records of HM including originals of all Contracts, Tax Returns and other information and documentation related to HM and the operations of the Business as currently conducted or intended to be conducted and all other documents, instruments or certificates as may reasonably be required to carry out the provisions of this Agreement and consummate the Transactions;

(h) All documents, instruments, certificates, consents, authorizations, orders or approvals required in order to execute and deliver this Agreement and to effectuate the Transactions contemplated hereby in form, scope and substance reasonably satisfactory to YGYI; and

(k) All approvals, consents, permits and waivers of Governmental Authorities and any Person necessary for the consummation of the Transactions contemplated by this Agreement and no such approval, consent, permit or waiver of any Governmental Authority or such other third party shall contain any term or condition that each of YGYI in its reasonable discretions determines to be unduly burdensome.

ARTICLE IV

REPRESENTATIONS OF YGYI

YGYI represents and warrants to HM that each statement contained in this Article IV is true and correct, and will be true and correct as of the Closing Date, except as set forth in the disclosure schedule dated and delivered as of the date hereof by YGYI to HM (the "**YGYI Disclosure Schedule**"), which is attached to this Agreement. The

YGYI Disclosure Schedule shall be arranged in sections corresponding to each section and subsection of this Article IV.

4.1 Organization and Good Standing. YGYI is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware has all requisite corporate power to own, lease and operate its properties and to carry on the Business as now being conducted.

4.2 Authority and Enforceability. YGYI has, and will have on the Closing Date, the requisite power and authority to enter into this Agreement and to consummate the Transactions. The execution and delivery by YGYI of this Agreement and/or the Ancillary Documents to which it is a party and the consummation by YGYI of the Transactions have been duly authorized by all necessary corporate action on the part of YGYI. This Agreement and/or the Ancillary Documents to which it is a party have each been duly executed and delivered by YGYI and, assuming due authorization, execution and delivery by HM and the Representing Parties, constitute the valid and binding obligation of YGYI, enforceable against it in accordance with their terms, except as such enforceability may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally and (ii) the availability of injunctive relief and other equitable remedies.

4.3 No Conflicts; Authorizations.

(a) The execution and delivery by YGYI of this Agreement and/or the Ancillary Documents do not, and the consummation by each of YGYI of the Transactions will not: (i) violate the provisions of any of the Charter Documents of YGYI; (ii) violate any Contract to which YGYI is a party; (iii) violate any Law of any Governmental Entity applicable to YGYI on the Closing Date; or (iv) result in the creation of any Liens upon any of the assets owned or used by YGYI except in each such case where such violation or Lien would not reasonably be expected to impair materially the ability of YGYI to perform its obligations under this Agreement or consummate the Transactions.

(b) No authorization or order of, registration, declaration or filing with, or notice to, any Governmental Entity or any other Person is required by or with respect to YGYI in connection with the execution and delivery of this Agreement and the consummation of the Transactions, except for such authorizations, orders, registrations, declarations, filings and notices the failure to obtain or make which would not reasonably be expected to impair materially the ability of YGYI to perform its obligations under this Agreement or consummate the Transactions.

4.4 Litigation; Compliance with Law. There is no Action pending or, to YGYI's knowledge, threatened, against YGYI that reasonably could be expected to materially adversely affect YGYI's ability to consummate the Transactions.

4.5 Ability to Perform Agreement. To YGYI's knowledge, there is no occurrence, event or condition with respect to it that would prevent it from performing this Agreement in all material respects. No solvency proceeding of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors (including any assignment for the benefit of creditors), voluntary or involuntary, affecting the business of YGYI (other than as a creditor) is pending or is currently being contemplated by YGYI or is being threatened against YGYI by any other Person. YGYI has not made any assignment for the benefit of creditors or taken any action in contemplation of, or which would constitute the basis for, the institution of any such insolvency proceedings.

4.6 Brokers or Finders. Except as disclosed on Schedule 4.6 of the YGYI Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions contemplated by this Agreement based upon arrangements made by or on behalf of YGYI or any of its Affiliates.

ARTICLE V

HM AND REPRESENTING PARTIES REPRESENTATIONS

HM represents and warrants to YGYI that the statements contained in this Article V are true and correct, except as may be set forth in the disclosure schedule dated and delivered as of the Closing Date by HM to YGYI (the "HM Disclosure Schedule"), which is attached to this Agreement. The HM Disclosure Schedule shall be arranged in sections corresponding to each section and subsection of this Article V.

5.1 Organization and Good Standing.

(a) HM is a corporation duly organized, validly existing and in good standing under the applicable Laws of Delaware. HM has all requisite power to own, lease and operate its properties and to carry on the Business as currently conducted. HM is duly authorized, qualified and licensed to do business and is in good standing as a foreign corporation in each jurisdiction in which it owns or leases property or conducts any business so as to require such qualification. Schedule 5.1 contains a true and complete list of each jurisdiction in which HM is qualified to do business and each jurisdiction in which it has Assets, employees, consultants or conducts the Business.

(b) HM previously has delivered to YGYI true and complete copies of the Charter Documents of HM as presently in effect. HM is not in default under, or in violation of, any provision of its Charter Documents.

5.2 Capitalization. Attached hereto as Schedule 5.2 is a complete and accurate list of (i) the HM stockholders and each holder of options and warrants to purchase any shares of Capital Stock of HM, and (ii) the number and class of issued and outstanding HM shares and HM options and warrants. All of the Capital Stock of HM is owned by HM-3, LLC, and there are no options or warrants outstanding.

5.3 Authority and Enforceability. HM and the Representing Parties have the requisite power and authority to enter into this Agreement and the Ancillary Documents and to consummate the Transactions. Each of the Representing Parties has the full capacity, power and authority to enter into this Agreement and the other agreements contemplated hereby to which each is a party and to consummate the Transactions contemplated hereby and thereby and to comply with the terms, conditions and provisions hereof and hereof. The execution and delivery by HM and the Representing Parties of this Agreement and the Ancillary Documents and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of HM and the Representing Parties and no further authorization or approval, whether of the stockholders or directors of HM or of governmental bodies or otherwise is necessary to fully authorize the execution, delivery and performance of this Agreement by HM and the Representing Parties. This Agreement and the Ancillary Documents have been duly executed and delivered by HM and the Representing Parties and constitute the valid and binding obligations of HM and the Representing Parties, respectively, enforceable against each of them in accordance with their respective terms, except as such enforceability may be limited by: (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally and (ii) the availability of injunctive relief and other equitable remedies.

5.4 No Conflicts; Authorizations.

(a) The execution and delivery of this Agreement and the Ancillary Documents by HM and the Representing Parties does not, and the performance by HM and the Representing Parties of their respective obligations hereunder and thereunder, and the consummation by HM and the Representing Parties of the Transaction (in each case, with or without the giving of notice or lapse of time, or both) will not, directly or indirectly: (i) violate the provisions of any of the Charter Documents of HM; (ii) violate or constitute a default, an event of default or an event creating rights of acceleration, termination, cancellation, imposition of additional obligations or loss of rights or require a consent to assignment or change of control, under any Contract (A) to which HM or any of the Representing Parties is a party; (B) of which HM or any of the Representing Parties is a beneficiary; or (C) by which HM or the Representing Parties, or any of their respective Assets is bound; (iii) violate or conflict with any Law applicable to HM or the Representing Parties, or any of their respective Assets, or give any Governmental Entity or other Person the lawful right to challenge any of the Transactions or to exercise any remedy or obtain any relief under, or revoke, cancel, terminate or otherwise modify any rights held under, any such Law; or (iv) result in the creation of any Liens upon any of the Assets owned or used by HM. Schedule 5.4 sets forth and enumerates all notices, authorizations, consents, licenses, permits, waivers, assignments and other approvals and actions that are necessary or advisable in connection with the execution and delivery by HM and the Representing Parties of this

Agreement and the consummation by HM and the Representing Parties of the Transactions, under any Law or Contract to which HM or either of the Representing Parties is a party or to which their Assets are subject (collectively, "Consents") and the consummation of the Business after the consummation of the Transactions.

(b) No authorization, consent, registration, declaration or filing with, or notice to, any Governmental Entity or other Person is required by or with respect to HM or either of the Representing Parties in connection with the execution and delivery by HM or either of the Representing Parties of this Agreement or the consummation by HM or either of the Representing Parties of the Transactions.

5.5 Financial Statements/Internal Accounting Controls.

(a) Schedule 5.5 includes true, correct and complete copies of the Financial Statements. The Financial Statements are true, correct and complete and have been prepared in accordance with U.S. GAAP applied on a consistent basis throughout the periods involved. The Financial Statements are based on the books and records of HM and fairly present the financial condition of HM as of the respective dates they were prepared and the results of the operations of HM for the periods indicated therein. The Financial Statements have not been rendered untrue, incomplete or unfair as representations of the financial condition or results of operations of HM by the subsequent discovery of events or occurrences which should have been reflected in such Financial Statements.

(b) HM maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations and (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with U.S. GAAP and to maintain asset accountability. HM has established disclosure controls and procedures for HM and designed such disclosure controls and procedures to ensure that material information relating to HM is made known to their officers by others. The officers of HM have evaluated the effectiveness of HM's controls and procedures. Since the date of the Balance Sheet, there have been no changes in HM's internal controls or other factors that could significantly affect HM's internal controls.

(c) Except as set forth in Schedule 5.5, the Financial Statements reflect all debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured of HM. All reserves shown or incorporated in the Financial Statements are reasonable to provide for losses thereby contemplated. Except as set forth in the Financial Statements, neither the Business nor the Assets are liable upon or with respect to, subject to or obligated in any other way to provide funds in respect of or to guarantee or assume in any manner, any debt, liability or obligation of any other Person and there is no basis for the assertion of any such claim or liability.

5.6 Title to Assets.

(a) HM has good and marketable title to all of the Assets.

(b) Except as set forth on Schedule 5.6, none of such Assets, or the use thereof: (i) is subject to any easements or restrictions or to any mortgages, liens, pledges, charges, encumbrances or encroachments, or to any rights of others of any kind of nature whatsoever, (ii) encroaches or infringes on the property or rights of another, or (iii) contravenes any applicable law or ordinance or any other administrative regulation or violates any restrictive covenant or any provision of law. There are no agreements or arrangements between HM or the Representing Parties, and any third person which have any adverse effect upon HM's title to or other rights respecting the Assets. Further, and not in limitation of any of the foregoing provisions of this Section 5.6, except as described in Schedule 5.6:

(i) HM has the sole and exclusive right to produce and market its products and conduct its business as heretofore conducted and has the full right and power to transfer the Assets;

(ii) HM has the exclusive right to bring actions for the infringement of, and HM has taken all actions and made all applicable applications and filings pursuant to relevant federal, state and local law required to perfect and protect their interest and proprietary rights in, all of the Assets;

(iii) HM has no present or future obligation or requirement to compensate any person with respect to any of the Assets, whether by the payment of royalties or not, or whether by reason of the ownership, use, license, lease, sale or any commercial use or any disposition whatsoever of any of the Assets;

(iv) the ownership, production, marketing, license, lease, use or other disposition of any product or service presently being licensed or leased by HM to any person does not and will not violate any license or agreement of HM with any person or infringe any right of any other person;

(v) there are no express or implied warranties outstanding with respect to any products or services provided by HM, except as may be provided by law;

(vi) none of the present or former employees of HM own directly or indirectly, or has any other right or interest in, in whole or in part, any of the Assets; and

(vii) the Assets constitute all such rights necessary for HM to conduct its business as now conducted.

5.7 Inventory and Current Products. All Inventory of HM is of a quality, quantity and condition useable or saleable in the ordinary course of business, except as reserved in accordance with U.S. GAAP consistent with past practices. Except as reserved in accordance with U.S. GAAP consistent with past practices or as set forth on Schedule 5.7, none of such Inventory is obsolete and no write-down of such Inventory has been made or should have been made in the period since the date of the Balance Sheet. The quantities of Inventory are not excessive and are reasonable in the present circumstances of HM. All work-in-process and finished goods Inventory is free of any defect or other deficiency. All of such Inventory is located at the facilities of HM and no inventory is held on a consignment basis. HM owns its Inventory free and clear of all Liens other than Permitted Liens. Schedule 5.7 sets forth a list of all Products being developed, manufactured, marketed or sold by HM as of the Closing Date.

5.8 Accounts Receivable. The accounts receivable of HM as of the Closing Date are: (i) valid and genuine and have arisen solely out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practice; (ii) not subject to valid defenses, set-offs or counterclaims; and (iii) collectible after billing at the full recorded amount thereof in each case as reserved in accordance with U.S. GAAP consistent with past practices and are owned by HM free and clear of all Liens other than Permitted Liens.

5.9 Taxes.

(a) All Tax Returns required to have been filed by or with respect to HM have been duly and timely filed with the appropriate Tax Authority, and each such Tax Return correctly and completely reflects liability for Taxes and all other information required to be reported thereon. All Tax Returns have been properly and accurately compiled and completed in all material respects, fairly present the information purported to be shown therein, and reflect in all material respects all liabilities for the applicable Taxes for the periods covered by such Tax Returns. All Taxes owed by HM (whether or not shown on any Tax Return) have been timely paid in full on or before their due date. HM has adequately provided for, in its books of account and related records, liability for all unpaid Taxes, including, but not limited to, current Taxes not yet due and payable.

(b) There is no Action currently proposed, threatened or pending against, or with respect to, HM or the Assets in respect of any Taxes or Tax Return. No material issue has been raised in writing in any Tax examination with respect to HM which could result in liability for Taxes for HM for any period. HM is not the beneficiary of any extension of time within which to file any Tax Return, nor has HM made (or caused to be made on its behalf) any requests for such extensions. No claim is pending or, to the knowledge of HM or the Representing Parties, threatened by a Governmental Entity in a jurisdiction where HM does not file Tax Returns that HM is or may be subject to taxation by such jurisdiction or that HM must file Tax Returns. Except as set forth in Schedule 5.9, HM has not conducted business in any country other than the U.S. to the extent that HM is obligated to pay

Taxes in such country. There are no Liens encumbering any of the Assets of any HM with respect to Taxes (except where such Lien arises as a matter of Law prior to the due date for paying the related Taxes).

(c) HM has withheld and timely paid all Taxes required to have been withheld and paid and has complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto.

(d) HM has delivered to YGYI correct and complete copies of all Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by HM since year 2009. HM has not waived (or is subject to a waiver of) any statute of limitations in respect of Taxes or has agreed to (or is subject to) any extension of time with respect to a Tax assessment or deficiency.

(e) HM has not received (and is not subject to) any ruling from any Tax Authority or has entered into (or is subject to) any agreement with a Tax Authority, except as set forth on Schedule 5.9.

(e) HM is not a party to any Tax allocation or sharing agreement, or other agreement relating to the allocation or sharing of, or liability or indemnification for, Taxes between HM and any other Person. HM does not have liability for the Taxes of any other Person. HM is not a party to any joint venture, partnership or other arrangement that is, or could be, treated as a partnership for federal income tax purposes.

5.10 Compliance with Law.

(a) HM has complied in all material respects with every, and is not in violation of any, applicable Law to which HM or the Business or Assets are or have been subject. No event has occurred and no circumstances exist that (with or without the passage of time or the giving of notice, or both) may result in a violation of, conflict with or the failure on the part of HM to comply with, any applicable Law. Neither HM nor the Representing Parties has received notice regarding any violation of, conflict with or failure to comply with any applicable Law by, or which may have a Material Adverse Effect on, HM, the Business or Assets. No investigation or review by any Governmental Entity with respect to HM is pending or, to the knowledge of HM or the Representing Parties, threatened.

(b) Neither HM or, to the knowledge of HM or the Representing Parties, any director, officer, agent, employee or other person acting on behalf of HM has, in the course of its, his or her actions for, or on behalf of, HM (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity or (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee or Governmental Entity from corporate funds. HM carries on and conducts, and has carried on and conducted at all times, the Business in compliance with all Laws governing international business activities HM's Assets have not been, are not, and will not be derived from or commingled with proceeds of any activities that are proscribed by the Foreign Corrupt Practices Act and other Laws relating to bribery or corruption, and were not procured or obtained through any payments to or for the benefit of officials of any Governmental Entity or to any other Person, regardless of the form, whether in money, property or services, to obtain favorable treatment in obtaining, retaining or directing business or to obtain special concessions or to pay for favorable treatment for business secured or for special concessions already obtained. HM is not currently nor has it been within the past five years, the target of any inquiry, investigation, settlement, plea agreement or enforcement Action by any Governmental Entity involving an alleged or suspected violation of any Laws governing international business activities, including export control laws, trade and economic sanctions.

(c) No "fair price," "moratorium," "control share acquisition," "interested stockholder," "business combination" or other similar anti-takeover statute or regulation enacted in Delaware is applicable to HM, or the Transactions.

(d) HM has complied and is in compliance in all material respects with all anti-pyramid scheme Laws, and neither HM nor the Representing Parties has received any written notice from any Governmental Entity or written communications from any Person alleging that the Business of HM has been or is being conducted or maintained in violation of any anti-pyramid scheme Law.

5.11 Licenses and Permits.

(a) HM owns, holds or lawfully uses in the operation of the Business all licenses, permits, consents and authorizations (international, federal, state and local) which are necessary for it to conduct the Business as currently conducted or for the ownership and use of the Assets owned or used by HM in the conduct of the Business, free and clear of all Liens, other than Permitted Liens. No Person owns or has any proprietary, financial or other interest (direct or indirect) in any such licenses, permits, consents and authorizations (international, federal, state and local). All such licenses, permits, consents and authorizations (international, federal, state and local) are valid and in full force and effect, are listed on Schedule 5.11, and none will be terminated or impaired or become terminable or impaired as a result of the Transactions.

(b) No event has occurred and to the knowledge of HM and the Representing Parties no circumstances exist that (with or without the passage of time or the giving of notice, or both) may result in a violation of, conflict with, failure on the part of HM to comply with the terms of, or the revocation, withdrawal, termination, cancellation, suspension or modification of, any license, permit, consent or authorization (international, federal, state and local). HM is not in default or violation of, and neither HM nor either of the Representing Parties has received notice regarding any claim of default or violation of, conflict with, failure to comply with the terms of, or any revocation, withdrawal, termination, cancellation, suspension or modification of, any license, permit, consent or authorization (international, federal, state and local).

5.12 Title to Personal Properties.

(a) Schedule 5.12 sets forth a true and complete list of all the personal property, and assets owned, leased or used by HM as of the Closing Date with a current book value in excess of \$10,000, specifying whether and by whom each such Asset is owned or leased and, in the case of leased Assets, indicating the parties to, execution dates of, and annual payments under, such lease.

(b) With respect to personal property Assets that are owned, including all Assets reflected as owned on the Balance Sheet (other than inventory sold in the ordinary course of business since the date thereof), HM has good and valid title to all such Assets, free and clear of all Liens other than Permitted Liens.

(c) With respect to personal property Assets that are leased, HM has a valid leasehold interest in such leased Assets and all such leases are in full force and effect and constitute valid, binding and enforceable obligations of the parties thereto, except as may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally and (ii) the availability of injunctive relief and other equitable remedies. HM is not in breach of any of the terms of any such lease except as otherwise would not have a Material Adverse Effect on HM.

(d) Other than holders of Permitted Liens (solely to the extent of such Permitted Liens) and lessors of leased Assets (solely to the extent of their interest in such leased Assets), no Person has any interest in any equipment or other tangible Assets used in the Business.

5.13 Condition and Sufficiency of Assets. All buildings, plants, leasehold improvements, structures, facilities, equipment and other items of tangible property and Assets which are owned, leased or used by HM have been properly maintained and serviced, are in good operating condition and repair (subject to normal wear and tear given the use and age of such Assets), are usable in the ordinary course of business and conform in all material respects to all Laws relating to their construction, use and operation. The tangible and intangible Assets owned by HM constitute all the Assets and properties necessary to permit YGYI, from and after the Closing, to conduct the Business in the same manner as HM conducted such Business in the past or as currently contemplated.

5.14 Real Property.

(a) Schedule 5.14 contains a list of all Real Property and interests in Real Property currently leased or owned by HM and includes all interests in Real Property used in or necessary for the conduct of the Business and operations of HM as currently conducted.

(b) With respect to the leased Real Property, the Representing Parties have delivered to YGYI true and complete copies of all leases and subleases pursuant to which HM is a party or by which it is bound, and no party is in default or received notice of default under such leases or subleases. With respect to the Real Property owned by HM, HM has good and marketable title to the Real Property, free and clear of all Liens. The Representing Parties have delivered to YGYI true and complete copies of the following: (i) all deeds pursuant to which HM acquired title and (ii) all owner's policies of title insurance, together with copies of listed exceptions to title, covering such Real Property. Except as set forth to the contrary in any Leases, HM has peaceful, undisturbed and exclusive possession of the Real Property. Neither HM nor the Representing Parties have received notice of any outstanding claims under any expired leases or subleases to which HM is or was a party.

(c) The uses for which the buildings, facilities and other improvements located on the Real Property are zoned do not restrict or impair the use of the Real Property for purposes of the Business of HM.

(d) No Governmental Entity having the power of eminent domain over the Real Property has commenced or to the knowledge of HM or the Representing Parties threatened to exercise the power of eminent domain or a similar power with respect to all or any part of the Real Property. Neither HM nor the Representing Parties have received notice of any pending or threatened condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative Actions relating to any portion of the Real Property or any other matters which materially adversely affect the current use, occupancy or value thereof. Neither HM nor the Representing Parties have received notice of any pending or threatened special assessment proceedings affecting any portion of the Real Property.

(e) The Real Property and all present uses and operations of the Real Property comply with all Laws, covenants, conditions, restrictions, easements, disposition agreements and similar matters affecting the Real Property. The Real Property and the continued use, occupancy and operation as used, occupied and operated in the conduct of the Business, do not constitute nonconforming uses and are not the subject of any special use permit under any Law.

(f) The Real Property is in suitable condition for HM's Business as currently conducted and as currently contemplated. HM has good and valid rights of ingress and egress to and from all Real Property from and to the public street systems for all usual street, road and utility purposes.

(g) Except as otherwise set forth in leases to the contrary, no Person, is in possession of any of the Real Property or any portion thereof, and there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any Person, the right of use or occupancy of the Real Property or any portion thereof. No easement, utility transmission line or water main located on the Real Property adversely affects the use of the Real Property or any improvement on the Real Property.

(h) All water, sewer, gas, electric, telephone, internet and drainage facilities, and all other utilities required by any Law or by the use and operation of the Real Property in the conduct of the Business are installed to the property lines of the Real Property, are connected pursuant to valid permits to municipal or public utility services or proper drainage facilities, are fully operable and are adequate to service the Real Property in the operation of the Business and to permit compliance with the requirements of all Laws in the operation thereof. No fact or condition exists which could result in the termination or reduction of the current access from the Real Property to existing roads or to sewer or other utility services presently serving the Real Property.

5.15 Intellectual Property.

(a) Other than the domain names listed on Schedule 5.15(a) hereto, HM neither owns nor licenses any Intellectual Property that is used in or necessary for the Business as it is currently conducted (except for software that is commercially available at retail to consumers on nondiscriminatory pricing terms and is subject to "shrink-wrap" or "click-through" license agreements). HM owns the entire right, title and interest in and to all its Intellectual Property, free and clear of all Liens other than Permitted Liens.

(b) Except with respect to software licenses that are commercially available at retail to consumers on nondiscriminatory pricing terms and is subject to “shrink-wrap” or “click-through” license agreements, Schedule 5.15(b) lists all licenses, sublicenses and other agreements pursuant to which a third party authorizes HM to use, practice any rights under, or grant sublicenses with respect to, any Intellectual Property owned by such third party, including the incorporation of any such Intellectual Property into the Products of HM and, with respect to each license, whether the license is exclusive or non-exclusive and its term.

(c) Schedule 5.15(c) lists all licenses, sublicenses and other agreements pursuant to which HM authorizes a third party to use, practice any rights under, or grant sublicenses with respect to, any of its Intellectual Property or pursuant to which HM grants rights to use or practice any rights under any Intellectual Property owned by a third party and, with respect to each license, whether the license is exclusive or non-exclusive and its term.

(d) The Intellectual Property of HM constitutes all the Intellectual Property used in or necessary for the operation of the Business as currently conducted.

(e) All registration, maintenance and renewal fees related to HM’s Intellectual Property and any other certifications, filings or registrations that are included in its Intellectual Property that are currently due have been paid and all documents and certificates related to such Intellectual Property have been filed with the relevant Governmental Entity for the purposes of maintaining such Intellectual Property.

(f) HM owns or has legal right to use all of its Intellectual Property, free and clear of all Liens, except for Permitted Liens. There are no challenges, oppositions or cancellation or interference proceedings (or any basis therefor) with respect to the validity or enforceability of HM’s Intellectual Property. Schedule 5.15(f) lists all trademark filings, if any, made or registered by HM before any Governmental Entity and the status of any Actions before the United States Patent and Trademark Office or any other Governmental Entity anywhere in the world related to HM’s Intellectual Property, including the due date for any outstanding response by HM in such Actions. Neither HM nor either the Representing Parties has taken any action or failed to take any action that could reasonably be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation, waiver or unenforceability of HM’s Intellectual Property.

(g) To the knowledge of HM and the Representing Parties none of the Products or services currently or formerly developed, manufactured, sold, distributed, provided, shipped or licensed by HM, or which are currently under development, has infringed or infringes upon, or otherwise unlawfully used or uses, the Intellectual Property rights of any third party. HM’s Intellectual Property has not infringed or infringes upon, or otherwise unlawfully used or uses, any Intellectual Property of a third party. Neither HM nor the Representing Parties has received any communication alleging that HM or any of its Products, services, activities or operations infringe upon or otherwise unlawfully uses any Intellectual Property of a third party nor is there any basis for any claim of infringement or unlawful use. No Action has been instituted or threatened relating to any Intellectual Property formerly or currently used by HM. No Person has infringed or is infringing any Intellectual Property rights of HM or has otherwise misappropriated or is otherwise misappropriating or unlawfully using HM’s Intellectual Property.

(h) With respect to HM’s Proprietary Information, the documentation relating thereto is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the special knowledge or memory of others. HM has taken commercially reasonable steps to protect and preserve the confidentiality of all Proprietary Information owned by HM. Without limiting the generality of the foregoing, the Proprietary Information of HM is not part of the public knowledge and has not been used or divulged for the benefit of any Person. Any receipt or use by, or disclosure to, a third party of Proprietary Information owned by or pertaining to HM has been pursuant to the terms of a binding written confidentiality agreement. True and complete copies of all confidentiality agreements and any amendments thereto have been delivered to YGYI. HM is, and, to HM’s and the Representing Parties’ knowledge, all other parties thereto are, in compliance with the provisions of the confidentiality agreements. HM is in compliance with the terms of all Contracts pursuant to which a third party has disclosed to, or authorized HM to use, Proprietary Information owned by such third party.

(i) All current and former employees, consultants and contractors of HM have executed and delivered, and are in compliance with, enforceable agreements regarding the protection of HM’s Intellectual Property and have provided valid written current assignments of all Intellectual Property conceived or developed by

such employees, consultants or contractors in connection with their services for HM. True and complete copies of all such agreements have been delivered to YGYI. No such current or former employee, consultant or contractor or any other Person has any right, claim or interest in or to HM's Intellectual Property.

(j) All Intellectual Property that has been distributed, sold or licensed to a third party by HM that is covered by a representation or warranty conformed to or conforms to, and performed or performs in accordance with, the representations and warranties provided with respect to such Intellectual Property by or on behalf of HM for the time period during which such representations and warranties apply.

(k) The execution and delivery by HM and the Representing Parties of this Agreement does not, and the consummation by HM and the Representing Parties of the Transactions (in each case, with or without the giving of notice or lapse of time, or both), will not, directly or indirectly, result in the loss or impairment of HM's Intellectual Property, or give rise to any right of any party to terminate or reprice or otherwise renegotiate HM's rights to own any of its Intellectual Property or its rights under any license, nor require the consent of any Governmental Entity or other third party in respect of any such Intellectual Property.

5.16 Absence of Certain Changes or Events. Except as otherwise set forth on the Schedule 5.16, since the date of the Balance Sheet:

(a) There has been no event, occurrence, or fact, or any series of events, occurrences, or facts that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) HM has not amended or changed its Charter Documents;

(c) HM has not declared, set aside or paid any dividend or other distribution (whether in cash, stock or property) with respect to any Equity Securities or any other security;

(d) HM has not split, combined or reclassified any Equity Securities or other security, or issued, or authorized for issuance, any Equity Securities or other security;

(e) HM has not altered any term of any outstanding Equity Securities or other security;

(f) HM has not (i) increased or modified the compensation, including salary, bonuses, royalty, commissions or deferred compensation or benefits payable or to become payable by HM to any of its current or former directors, managers, employees, contractors or consultants; (ii) increased or modified any Benefit Plan, payment or arrangement made to, for or with any current or former directors, managers, employees, contractors or consultants of HM; (iii) entered into any employment, severance or termination agreement; or (iv) entered into any agreement or arrangement with any of its current or former directors, managers, employees, contractors or consultants providing any form of signing or stay on bonus or compensation;

(g) Other than the sale of inventory in the ordinary course of business, HM has not sold, leased, transferred or assigned any of its Assets;

(h) HM has not incurred, assumed or guaranteed any Indebtedness;

(i) HM has not created or assumed any Lien on any Asset, except for Permitted Liens;

(j) HM has not made any loan, advance or capital contribution to, or investment in, any Person;

(k) HM has not entered into any Contract other than in the ordinary course of business;

(l) Other than in the ordinary course of business (i) no Contract has been terminated or cancelled; (ii) no rights under any Contract have been waived or accelerated; and (iii) no Contract that would be required to be listed as a Contract pursuant to Section 5.17 if such Contract were in effect on the Closing Date, has been terminated or cancelled;

(m) HM has not sold, transferred, pledged or assigned, and there has been no reduction in the value of, any of its Intellectual Property;

(n) There has not been any labor dispute or any activity or proceeding by a labor union or representative thereof to organize any employees of HM;

(o) There has not been any violation of or conflict with any Law to which the Business or Assets of HM are subject;

(p) Neither HM nor either of the Representing Parties has agreed or entered into any arrangement to take any action which will result in any representation or warranty set forth in this Article V being untrue or incorrect on the Closing Date;

(q) There has not been any damage, destruction or loss with respect to the Assets of HM, whether or not covered by insurance;

(r) Neither HM nor either of the Representing Parties has made any change in accounting policies or practices;

(s) Neither the Representing Parties nor any officers or employees of HM has left or given notice he or she intends to leave HM;

(t) Neither HM nor either of the Representing Parties has made any Tax election, changed its method of Tax accounting or settled any claim for Taxes;

(u) Neither HM nor either of the Representing Parties has settled any Action; and

(v) Neither HM nor the Representing Parties has agreed, whether in writing or otherwise, to do any of the foregoing.

5.17 Contracts.

(a) Except as set forth on Schedule 5.17(a), HM is not a party or is subject to, or its Assets are bound by any (herein, the "HM Contracts"):

(i) Contract for the purchase by HM of materials, supplies, goods, services, equipment or other Assets;

(ii) Contract for the sale by HM of materials, supplies, goods, services, equipment or other Assets or that requires HM to purchase its total requirements of any product or service from a third party;

(iii) Employment, consulting, termination or severance Contract, other than any such Contract that is terminable at-will by HM without liability to HM;

(iv) Contract containing noncompetition, nonsolicitation or confidentiality covenants restricting HM (including geographic restrictions);

(v) Partnership, joint venture or similar Contract;

(vi) Distribution, dealer, marketing, consultant, representative or sales agency Contract;

(vii) Maintenance Contract pursuant to which HM is rendering or responsible for providing maintenance services;

(viii) Contract evidencing an obligation to purchase, sell, lease or sublease personal property or Real Property;

(ix) Guaranty, surety or contribution Contract or any Contract that provides for the indemnification by HM of any Person, the undertaking by HM to be responsible for consequential damages or the assumption by HM of any Tax, environmental or other liability;

(x) Contract with any Governmental Entity;

(xi) Note, debenture, bond, equipment trust, letter of credit, loan or other Contract for Indebtedness or lending of money (other than to employees for travel expenses in the ordinary course of business) or any undertaking of the Indebtedness or Liability of any other Person;

(xii) Contract for any capital expenditures or leasehold improvements;

(xiii) Contract that grants any distribution rights either to or from HM in any market, field or territory;

(xiv) Contract that relates to the acquisition or disposition of any business (whether by merger, sale of stock, sale of Assets or otherwise);

(xv) License, sublicense, royalty or similar agreements;

(xvi) Collective bargaining Contract or other Contract with any labor organization, union or association;

(xvii) Contract that contains exceptional or unusual terms or conditions or is not made at arm's length and in the best interest of HM; or

(xviii) Contract that is otherwise material to HM and not previously disclosed pursuant to this Section 5.17.

(b) The HM Contracts are in full force and effect and are in all material respects valid and binding obligations of the parties thereto, enforceable in accordance with their terms, and no defenses, off sets or counterclaims have been asserted or, to the knowledge of HM and the Representing Parties, may be made by any party thereto, nor has HM waived any right thereunder. HM's rights and obligations under all HM Contracts to be assigned hereby to YGYI are assignable as contemplated by this Agreement and will be duly and validly assigned to YGYI on the Closing Date; such assignment will not give rise to the ability of any other party to such agreements to terminate such agreements or to otherwise modify the rights and obligations thereunder; and such assignments will not result in any liability being imposed on YGYI other than to perform its assumed obligations under such agreements after the Closing.

(c) Neither HM nor, to the knowledge of the Representing Parties, any other party thereto, is in default in the performance, observance or fulfillment of any obligation, covenant, condition or other term contained in any HM Contract, and HM has not given or received notice to or from any Person relating to any such alleged or potential default that has not been fully cured. No event has occurred which (with or without the giving of notice or lapse of time, or both) may conflict with or result in a violation or breach of, or give any Person the right to exercise any remedy under or accelerate the maturity or performance of, or cancel, terminate or modify, any HM Contract.

(d) Except as set forth in the Schedule 5.17(d), neither HM nor either of the Representing Parties is required to obtain any Consent under any of the HM Contracts in connection with the execution and delivery by HM of this Agreement or the consummation of the Transactions.

(e) The Representing Parties have delivered true and complete copies of each HM Contract to YGYI.

5.18 Litigation. Except as set forth on Schedule 5.18, there is no Action by any Person or Government Authority pending, or to the knowledge of HM or the Representing Parties, threatened: (i) against or affecting HM or its Assets, HM or the Representing Parties; (ii) that challenges or seeks to prevent, enjoin or otherwise delay the Transactions; (iii) that could have the effect of restraining or prohibiting YGYI's ownership or operation (or that of its Subsidiaries or Affiliates) of all or any portion of the Business or Assets of HM; or (v) that could compel YGYI or its Affiliates to dispose of or hold separate all or any material portion of the Business or Assets of HM. . No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action. There is no Action against any current or former director, officer or employee of HM with respect to which HM has or is reasonably likely to have an indemnification obligation. There is no unsatisfied order, judgment, penalty or award against or affecting HM or any of its Assets.

5.19 Employee Benefits.

(a) Schedule 5.19(a) sets forth a true and complete list of all Benefit Plans sponsored, maintained or contributed to or required to be contributed to HM for the benefit of any present or former directors, employees, contractors or consultants of HM (each a "HM Benefit Plan"). HM has no intent or commitment to create any additional Benefit Plans or amend any of its Benefit Plans.

(b) The Representing Parties have delivered to YGYI a true and complete set of copies of (i) all HM Benefit Plans and related trust agreements, annuity contracts, other funding instruments, and all other material Contracts and agreements, including third party administration agreements and service agreements, maintained in connection with the operation of HM Benefit Plans; and (ii) any summaries of material modification, if any, concerning HM Benefit Plans.

(c) Each HM Benefit Plan has been maintained, operated and administered in all material respects in accordance with such HM Benefit Plan's respective terms, and in compliance with all applicable laws.

(d) With respect to each HM Benefit Plan, there are no Actions, (other than routine claims for benefits in the ordinary course) pending or threatened against any such HM Benefit Plan, HM or any trustee or agent of any such HM Benefit Plan.

(e) Full payment has been made of all amounts which HM was required to have paid as a contribution to any HM Benefit Plan as of the last day of the most recent fiscal year of each HM Benefit Plan ended prior to the Closing Date.

(f) Each HM Benefit Plan is, and its administration is and has been during the six-year period preceding the Closing Date, in compliance with, and HM has not received any claim or notice that any such HM Benefit Plan is not in compliance with, all applicable Laws.

(g) HM is not in default in performing any of its contractual obligations under any of HM Benefit Plans or any related trust agreement or insurance contract.

(h) There are no outstanding liabilities of any HM Benefit Plan other than liabilities for benefits to be paid to participants in any HM Benefit Plan and their beneficiaries in accordance with the terms of such HM Benefit Plan.

(i) HM has the right under the terms of each HM Benefit Plan and under applicable Law to amend, revise, merge or terminate such plan (or its participation in such plan) or transfer the Assets of such plan to another arrangement, plan or fund at any time exclusively by action of HM, and no additional contributions would be required to properly effect such termination.

(j) No HM Benefit Plan provides benefits to any individual after termination of employment.

(k) The consummation of the Transactions will not (either alone or in conjunction with any other event) (i) entitle any current or former director, employee, contractor or consultant of HM to severance pay,

unemployment compensation or any other payment; (ii) accelerate the time of payment or vesting or increase the amount of compensation due to any such director, employee, contractor or consultant or result in the payment of any other benefits to any Person or the forgiveness of any Indebtedness of any Person;

(l) With respect to each HM Benefit Plan that is funded wholly or partially through an insurance policy, all premiums required to have been paid as of the Closing Date under such insurance policy have been paid, and, as of the Closing Date, there are no liabilities of HM under any insurance policy or ancillary agreement with respect to such insurance policy in the nature of a retroactive rate adjustment, loss sharing arrangement or other actual or contingent liability arising wholly or partially out of events occurring prior to the Closing Date.

(m) HM has no duty or obligation to indemnify or hold another Person harmless for any liability attributable to any acts or omissions by such Person with respect to any HM Benefit Plan.

5.20 Labor and Employment Matters.

(a) Schedule 5.20(a) sets forth (i) (A) a list of all directors, employees, contractors and consultants of HM (including title and position) as of the Closing Date and (B) the compensation and benefits of each such director, employee, contractor and consultant and (ii) a list of all former directors, employees, contractors and consultants of HM who are receiving benefits or scheduled to receive benefits in the future, and the pension benefit, medical insurance coverage and other benefits of each such former director, employee, contractor and consultant. None of the above referenced benefits includes unusual or exceptional terms or conditions. All directors, officers, employees, contractors and consultants of HM may be removed or terminated by HM at any time with or without cause, but only for reasons not prohibited by and otherwise consistent with federal, state and local Law and without any severance or other liability to HM or YGYI.

(b) HM is not a party or subject to any labor union or collective bargaining agreement. There are no pending or threatened labor disputes, work stoppages, requests for representation, pickets, work slow-downs due to labor disagreements or any Actions which involve the labor or employment relations of HM. There is no unfair labor practice, charge or complaint pending, unresolved or, threatened before any governmental agency. No event has occurred or circumstance exists that may provide the basis of any work stoppage or other labor dispute.

(c) HM has complied with each, and is not knowingly in violation of any, Law relating to anti-discrimination and equal employment opportunities and there are, and have been, no violations of any other Law with respect to the hiring, hours, wages, occupational safety and health, employment, promotion, termination or benefits of any employee or other Person. HM has filed and/or posted all reports, information and notices required under any Law with respect to the hiring, hours, wages, occupational safety and health, employment, promotion, termination or benefits of any employee or other Person, and will timely file all such reports, information and notices required by any Law to be given prior to the Closing. HM has maintained all records required by any applicable Law.

(d) HM has paid or properly accrued in the ordinary course of business all wages and compensation due to employees, including all vacations or vacation pay, holidays or holiday pay, sick days or sick pay and bonuses.

(e) HM is not a party to any Contract which restricts HM from relocating, closing or terminating any of its operations or facilities or any portion thereof. The consummation of the Transactions will not create liability for any act by HM on or prior to the Closing under any other Law respecting reductions in force or the impact on employees of plant closings or sales of businesses.

(f) Schedule 5.20(f) sets forth a true and complete list of all employees of HM working in the United States who are not U.S. citizens and a description of the legal status under which each such employee is permitted to work in the United States. All employees of HM who are performing services for HM in the United States are legally able to work in the United States and will be able to continue to work in the United States following the consummation of the Transactions.

(g) Except as set forth on Schedule 5.20(g), no Person that was engaged by HM as an independent contractor or in any other non-employee capacity can or will be characterized or deemed to be an employee of HM under applicable Law for any purpose whatsoever including, without limitation, for purposes of federal, state and local income taxation, workers' compensation, unemployment insurance and eligibility for HM's group benefit.

(h) Except as set forth on Schedule 5.20(h), there are no covenants, agreements or restrictions, included but not limited to, employment agreements not to compete, prohibiting, limiting or in any way restricting any employee of HM from engaging in any type of business activity in any location. To the knowledge of HM and the Representing Parties, no employee, consultant or contractor of HM has been, is or will be, by performing services for HM, in violation of any term of any employment, invention disclosure or assignment, confidentiality, noncompetition or other restrictive covenant or agreement as a result of such employee's, consultant's or independent contractor's employment by or contract with HM or any services rendered by such employee, consultant or independent contractor.

5.21 Environmental.

(a) HM has obtained and is in compliance with, all Environmental licenses, permits, consents and orders required by Environmental Law or Environmental Actions in connection with the operations of the Business and the Real Property, all of which are listed on Schedule 5.21(a). All such licenses, permits, consents and orders are valid and in full force and effect and none will be terminated or impaired or become terminable as a result of the Transactions. HM has been, and is currently, in compliance with all Environmental Laws and final Environmental Actions. Neither HM nor the Representing Parties has received notice alleging that HM is in violation of any Environmental Laws or final Environmental Actions.

(b) There are no pending or to the knowledge of HM and the Representing Parties, threatened Environmental Actions against or affecting HM, and there are no facts or circumstances which could be expected to form the basis for any Environmental Action against HM.

(c) HM has not entered into, agreed to or is the subject of, an Environmental Action relating to an investigation or cleanup of a Hazardous Material or any Environmental Law.

(d) No Lien has been attached to or asserted or threatened against the Assets, the Real Property or the rights of HM pursuant to any Environmental Law or Environmental Action and there are no facts, circumstances or other conditions which could be expected to give rise to any Liens on or affecting the Assets or Real Property.

(e) There has been no treatment, storage, disposal or release of any Hazardous Material at, from, into, on or under any Real Property or any other property currently or formerly owned, operated or leased by HM in violation of any Environmental Laws or final Environmental Action. No Hazardous Materials are present in, on, about or migrating to or from any Real Property that could be expected to give rise to the violation of an Environmental Law or give rise to an Environmental Action against HM.

(f) There are no aboveground or underground storage tanks on, under or about the Real Property. Any aboveground or underground storage tanks previously located on, under or about the Real Property or any other property currently or formerly owned, operated or leased by HM or its Affiliates have been removed in accordance with all Environmental Laws and no residual contamination, if any, remains at such sites in excess of standards applicable to residential use of the Real Property.

(g) HM has not transported or arranged for the treatment, storage, handling, disposal or transportation of any Hazardous Material to any off-site location which is an environmental clean-up site, and none of the Real Property is an environmental clean-up site.

(h) The Representing Parties have provided to YGYI true and complete copies of, or access to, all written environmental assessments, materials, reports, data, analyses and compliance audits that have been prepared

by or on behalf of HM with respect to the Real Property or any other real property formerly owned, operated or leased by HM or its Affiliates.

5.22 Insurance.

(a) Schedule 5.22 sets forth: (i) a true and complete list of each insurance policy and fidelity bond which covers HM and the Business and Assets, its directors, and employees and (ii) a list of all pending claims and the claims history for HM during the current year and the preceding three years (including with respect to insurance obtained but not currently maintained). There are no pending claims under any of such policies as to which coverage has been questioned, denied or disputed by the insurer or in respect of which the insurer has reserved its rights. Schedule 5.22 describes any self-insurance arrangement by or affecting HM and the loss experience for all claims that were self-insured in the current year and the preceding three years.

(b) All such insurance policies are issued by an insurer that is financially sound and reputable, are in full force and effect and are enforceable in accordance with their terms and will continue in full force and effect with respect to HM following the Transactions. Such policies provide adequate insurance coverage for HM and the Business, Assets, directors, and employees and are sufficient for compliance with all Laws and Contracts to which HM is a party or by which it is bound.

(c) All premiums due under such policies have been paid in full or, with respect to premiums not yet due, accrued. Neither HM nor the Representing Parties has received a notice of cancellation of any policy or of any changes that are required in the conduct of the Business as a condition to the continuation of coverage under or renewal of any such policy. There is no existing default or event which (with or without the giving of notice or lapse of time, or both) would constitute a default under any policy or induce any insurer to terminate or cancel any such policy. Neither HM nor the Representing Parties has knowledge of any threatened, or any basis for, termination of, or material premium increase with respect to any such policy and none of such policies provides for retroactive premium adjustments.

5.23 Product Warranty.

(a) There are no warranties (express or implied) outstanding with respect to any products currently or formerly manufactured, sold, distributed, provided, shipped or licensed ("Products"), or any services rendered, by HM beyond that set forth in the standard conditions of sale or service or written warranty provided upon sale of a Product (which have been provided to YGYI), except as identified in Schedule 5.23.

(b) All Products that have been or are being tested, developed, labeled, stored, promoted, distributed, manufactured, sold and/or marketed by HM have been and are being tested, developed, labeled, stored, promoted, distributed, manufactured, sold and/or marketed in compliance with all Product specifications, all express and implied warranties and all requirements under applicable Law.

(c) There are no material design, manufacturing or other defects, latent or otherwise, with respect to any Product and such Products are not toxic when used in accordance with their intended use. Each Product that has been manufactured, sold, distributed, provided, shipped or licensed contained all warnings required by applicable Law and such warnings have been in accordance with reasonable industry practice.

(d) HM has no any material liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any Product. Neither HM nor any of its suppliers have committed any act or failed to commit any act, which would result in, and there has been no occurrence which would give rise to or form the basis of, any product liability, product defect or liability for breach of warranty in excess of Ten Thousand Dollars (\$10,000) (whether covered by insurance or not) on the part of HM with respect to any Product.

(e) Neither HM nor any of its suppliers has voluntarily made, or been required by any Governmental Entity to make, any recall of, or suspend or discontinue, any Product. To the knowledge of HM and the Representing Parties, there are no facts, circumstances or conditions that would reasonably be expected to form the basis for any Action with respect to a recall, suspension or discontinuance of any Product. Since December 31,

2010, there has been no inspections, inspection reports or other written correspondence from any Governmental Entity that asserts or alleges that the operation of HM is or was not or may not be in compliance with any applicable Laws or regulatory requirement.

(f) The Financial Statements reflect adequate reserves (in accordance with U.S. GAAP) for Product design and warranty claims and other damages in connection with any Product manufactured, sold, distributed, shipped or licensed, or service rendered, by HM on or prior to date of Balance Sheet. The accounting records of HM will reflect adequate reserves (in accordance with U.S. GAAP) for all such claims in connection with Products manufactured, sold, distributed, shipped or licensed, or services rendered by, HM from date of the Balance Sheet to the Closing Date.

5.24 Books and Records. The minute books (containing the records of the meetings, or written consents in lieu of such meetings, of the stockholders, the board of directors and any committees of the board of directors), the stock certificate books and the stock record books of HM are correct and complete and have been maintained in accordance with sound business practices. The minute books of HM contains true and complete records of all meetings or actions taken by written consent of the stockholders, the board of directors and any committees of the board of directors of HM, and no meeting or action by written consent in lieu of such meeting, of any such stockholders, the board of directors or committee of such board of directors, has been held for which minutes have not been prepared and not contained in the minute books. All of the books and records of HM, including minute books, are in the possession of HM. Current, true and correct copies of the minute books have been provided to YGYI.

5.25 Suppliers and Customers. Schedule 5.25 sets forth: (i) each supplier of material or manufacturing to HM; (ii) each supplier who constitutes a sole source of supply to HM; and (iii) each customer that has contributed in excess of five percent (5%) of HM's revenues for the most recent completed fiscal year. The relationships of HM with each such supplier, manufacturer, and customer are good commercial working relationships. No such supplier or customer has canceled or otherwise terminated or materially modified, or threatened to cancel or otherwise terminate or materially modify, its relationship with HM. Neither HM nor the Representing Parties has received notice or has reason to believe that any such supplier or customer may cancel or otherwise materially modify its relationship with HM or limit or reduce its supply of services, supplies or materials to, or its purchases of products, materials, goods or services from, HM, either as a result of the Transactions or otherwise. No supplier or customer of HM which was a material customer of or supplier to HM during the prior fiscal year has terminated its relationship with HM or been terminated by HM.

5.26 Consultants. HM has provided YGYI with a list of the names and addresses of all current and former Consultants of HM for the past three (3) fiscal years, copies of all Contracts between such Consultants and HM and the compensation paid to each Consultant for the past three (3) fiscal years. Except as set forth on Schedule 5.26 there are no suits, actions, claims, inquiries, investigations, legal, administrative or arbitration proceedings pending or, to the knowledge of HM or either of the Representing Parties, threatened, against or affecting HM or its directors, managers, officers or employees, including but not limited to the Representing Parties, by any Consultant or pending or threatened by HM against any Consultant. Except as set forth on Schedule 5.26, each Consultant is in compliance with such Consultant's written agreement with HM and the rules and regulations relating to HM's Consultants. Since January 1, 2013, HM has not received any notice from any Consultant of his or her intention to alter or terminate his or her business relationship with HM or to compete in any way with HM.

5.27 Bank Accounts. Schedule 5.27 sets forth the name of each bank, investment, safe deposit company or other financial institution in which HM has an account, lock box or safe deposit box, a list of each deposit, savings, brokerage, securities or similar account and the names of all persons authorized to draw thereon or have access thereto. All payments made by HM have been made in the ordinary course through banking channels.

5.28 Powers of Attorney. There are no outstanding powers of attorney executed by or on behalf of HM or the Representing Parties in favor of any Person.

5.29 Loans to or from Directors, Managers, Employees, or Consultants. Except as set forth on Schedule 5.29, HM has not loaned any monies to or borrowed any monies from, any director, manager or employee of, or consultant to, HM.

5.30 Arms-Length Transactions. Except as set forth on Schedule 5.30, all of the material transactions with any Person by HM have been conducted on an arms-length basis. Except as set forth on Schedule 5.30: (i) neither HM nor any director, officer or employee of HM or its Affiliates has any direct or indirect interest, profit participation or ownership (other than through non-controlling investments in securities of publicly-held corporations) in businesses which are competitors of HM and (ii) none of HM or any officer, director or employee of HM or its Affiliate is an Affiliate of any Person that has a material business relationship with HM.

5.31 Solvency.

(a) The fair value of HM's Assets exceeds the amount of HM's existing debts and liabilities (including known contingent liabilities). HM's Assets do not constitute unreasonably small capital to carry on the Business for the current fiscal year as now conducted and as proposed to be conducted, including its capital needs taking into account the particular capital requirements of the Business conducted by HM and projected capital requirements and capital availability thereof. The current cash flow of HM, together with the proceeds HM would receive were it to liquidate all of its Assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its debt when such amounts are required to be paid. HM is, and has been, able to timely pay its debts, liabilities and obligations. HM intends to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debts).

(b) Immediately after the Closing: (i) HM will be solvent, will be able to pay HM's debts as they mature and No solvency proceeding of any character, including bankruptcy, receivership, reorganization, composition or arrangement with creditors (including any assignment for the benefit of creditors), voluntary or involuntary, affecting the Business or the Representing Parties (other than as a creditor) is pending or is currently being contemplated by HM or the Representing Parties or, to the knowledge of HM and the Representing Parties, is being threatened against the Representing Parties or HM by any other Person. Neither HM nor the Representing Parties has made any assignment for the benefit of creditors or taken any action in contemplation of, or which would constitute the basis for, the institution of any such insolvency proceedings.

5.32 Completeness of Disclosure.

(a) No representation or warranty by HM or of the Representing Parties in this Agreement, and no statement made by HM in the HM Disclosure Schedule or any Ancillary Document furnished or to be furnished to YGYI pursuant hereto contains any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or therein or necessary to make any statement herein or therein not misleading. Except as specifically set forth in this Agreement or the HM Disclosure Schedule, there are no facts or circumstances which, to the knowledge of HM or the Representing Parties, could be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) No investigations by YGYI, YGYI's Representatives or any other Person shall reduce or otherwise affect the obligations or liabilities of HM or the Representing Parties with respect to any representations, warranties, covenants, or agreements made herein or in any Ancillary Document executed and delivered in connection with the Transactions.

5.33 Brokers or Finders. Other than as set forth on Schedule 5.33, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based upon arrangements made by or on behalf of HM or the Representing Parties.

The Representing Parties represent and warrant to YGYI that to the best of their actual knowledge, after reasonable inquiry, the statements contained in this Article V are true and correct, except as may be set forth in the HM Disclosure Schedule.

ARTICLE VI

CONDITIONS TO CONSUMMATION OF THE SALE

6.1 Conditions to Obligations of HM and the Representing Parties. The obligations of HM and the Representing Parties to consummate the Transactions shall be subject to the fulfillment, or written waiver by HM and the Representing Parties at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of YGYI set out in this Agreement shall be true and correct in all material respects at and as of the time of the Closing as though such representations and warranties were made at and as of such time, except those that speak as of the date of this Agreement shall be updated;

(b) YGYI shall have performed and complied in all material respects with all covenants, conditions, obligations and agreements required by this Agreement to be performed or complied with by YGYI on or prior to the Closing Date;

(c) YGYI shall have delivered to HM and the Representing Parties an officer's certificate of YGYI to the effect that the conditions set forth in Section 6.1(a) and (b) have been satisfied; and

(d) YGYI shall have paid the Closing Cash Payment.

6.2 Conditions to Obligations of YGYI. The obligations of YGYI to consummate the Transactions shall be subject to the fulfillment or written waiver by YGYI, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of HM and the Representing Parties set out in this Agreement shall be true and correct in all material respects at and as of the time of the Closing as though such representations and warranties were made at and as of such time, except that those that speak as of the date of this Agreement shall be updated;

(b) HM shall have performed and complied in all material respects with all covenants, conditions, obligations and agreements required by this Agreement to be performed or complied with by HM on or prior to the Closing Date;

(c) HM shall have delivered to YGYI a certificate of the Secretary of HM to the effect that the conditions set forth in Section 6.2(a) and (b) hereof have been satisfied;

(d) HM shall have delivered to YGYI the financial statements described in Section 3.5;

(e) HM shall have delivered to YGYI the additional information described in Section 3.5;

(f) HM's stockholders shall have approved the transactions in accordance with Delaware law and evidence thereof shall have been provided to YGYI;

(g) None of HM's stockholders shall have asserted any dissenters' rights under Delaware law;

(h) HM shall have obtained any consent required from Dare Associates L.C. and ZenPrint, LLC for the transfer of the applicable Assets to YGYI or its designee;

(i) HM shall have provided a form of an amended and restated Certificate of Incorporation satisfactory to YGYI that will be used to change of the name of HM to a name that does not include the words "heritage" or "maker (which filing shall be made effective promptly following the Closing); and

(j) HM shall have provided any documents and necessary executed transfer forms confirming the assignment of all Intellectual Property owned by HM.

6.3 Other Conditions to Obligations. The obligations of the Parties to consummate the Transactions shall be subject to the fulfillment, or written waiver by each of YGYI and HM, at or prior to the Closing, of each of the following conditions:

(a) All director, stockholder, lender, lessor and other parties' consents and approvals, as well as all filings with, and all necessary consents or approvals of, all federal, state and local governmental authorities and agencies, as are required under this Agreement, applicable law or any applicable contract or agreement (other than as contemplated by this Agreement) to complete the Transactions shall have been secured; and

(b) No statute, rule, regulation, executive order, decree, preliminary or permanent injunction, or restraining order shall have been enacted, entered, promulgated or enforced by any Governmental Authority that prohibits or restricts the consummation of the Transactions.

ARTICLE VII COVENANTS OF THE PARTIES

7.1 Access to Information. Until the Closing, HM shall:

(a) Furnish to YGYI and each of its Representatives all financial, operating, and other data and information concerning the Business and the Assets that YGYI or its Representatives shall from time to time reasonably request;

(b) Afford YGYI and each of its Representatives reasonable access to the offices, properties, books, records, contracts, and documents (including Tax Returns filed and those in preparation) of HM; and

(c) Give YGYI and each of its Representatives the opportunity to ask questions of, and receive prompt answers from, HM's Representatives.

7.2 Conduct Pending the Closing. From the date of this Agreement until the Closing Date, except as otherwise agreed to in writing by YGYI or otherwise permitted or contemplated by this Agreement, HM shall:

(a) Conduct its Business in the usual, regular, and ordinary course in substantially the same manner as heretofore conducted and use all commercially reasonable efforts to maintain and preserve the working capital consistent with past practices and present business organization of HM intact and to keep available the services of HM's present officers and employees and preserve the present relationships of HM with its suppliers and customers;

(b) Maintain the books, accounts and records of HM on a basis consistent with past practices and in a businesslike manner in accordance with sound commercial practice, and not institute or introduce any new methods of purchase, sale, accounting, billing, or operation relating to HM that are not consistent with its past practices;

(c) Not increase the compensation payable to or to become payable to any officer, employee or independent contractor of HM from the current compensation levels of any such Person (other than previously scheduled or contractually agreed compensation increases);

(d) Not incur or agree to incur any liability (other than liabilities to third parties incurred in the ordinary course of business consistent with past business practices);

(e) Not create any new Lien on any Asset, other than Permitted Liens;

(f) Not sell, assign, lease or otherwise transfer or dispose of any of the Assets, except for sales of inventory in the ordinary course of business consistent with past business practices;

(g) Not incur any individual capital expenditure in excess of Five Thousand Dollars (\$10,000) or aggregate capital expenditures in excess of Ten Thousand Dollars (\$25,000);

(h) Not declare a dividend or distribution of any money, property or asset to any stockholders and not issue any debt securities of HM or any other debt security secured by any Asset;

- (i) Not adopt any new superannuation plan or Benefit Plan or arrangement;
- (j) Not amend any superannuation plan or Benefit Plan to accelerate the payment or vesting of any benefit or amount payable under such superannuation plan or Benefit Plan or increase, extend, expand, or enhance, in any manner, the benefits payable under any superannuation plan or Benefit Plan;
- (k) Not amend its Certificate of Incorporation or Bylaws or other Charter Documents;
- (l) Not allow the transfer by any HM stockholders of any shares of stock of HM; and/or
- (m) Not take any other action that would cause any representation and warranty of HM or the Representing Parties to be inaccurate as of the Closing Date.

7.3 Consents. HM will use commercially reasonable efforts to obtain all consents and approvals required under any Contract to which either HM is a party or by which either HM is bound to enable HM to effect the sale of the Assets pursuant hereto. HM shall promptly notify YGYI of any failure or prospective failure to obtain any such Consent and, if requested, shall provide to YGYI copies of the Consents obtained by HM. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any contract, or any claim or right or any benefit arising thereunder or resulting therefrom, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights of YGYI or HM thereunder. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would affect the rights of HM thereunder so that YGYI would not in fact receive all such rights, HM will cooperate with YGYI in any arrangement designed to provide for YGYI the benefits under any of such contracts, including, without limitation, enforcement for the benefit of YGYI of any and all rights of HM against a third party thereto arising out of the breach or cancellation by such third party or otherwise; and any transfer or assignment to YGYI by HM of any contract which shall require the consent or approval of any third party, shall be made subject to such consent or approval being obtained.

7.4 Regulatory Approvals and Filings. Each Party covenants and agrees to use commercially reasonable efforts to promptly prepare and file all necessary permits, consents, approvals, and authorizations, and make all filings, with all Governmental Entities and all other Persons necessary or advisable to consummate the Transactions. The Parties will cooperate with each other and their Representatives in the preparation of any documents or other materials that may be required by any Government Entity to consummate the Transaction.

7.5 Cooperation. HM, the Representing Parties, YGYI shall consult with each other prior to making any filing with any Governmental Entity in connection with the Transactions and promptly after each such filing provide the other with a copy thereof.

7.6 Public Announcements. Neither YGYI, HM nor the Representing Parties nor any of their respective Affiliates or Representatives, shall issue any press releases or otherwise make any public statements with respect to this Agreement and the Transactions without the prior written consent of YGYI and HM (such consent not to be unreasonably conditioned, withheld or delayed); provided that YGYI may, without such approval, make such press releases or other public announcement, including, but not limited to, oral statements, as it believes are required pursuant to any listing agreement with any national securities exchange or stock market or applicable securities Laws, in which case the Party required to make the release or announcement shall allow the other Party reasonable time to comment on such release or announcement in advance of such issuance; provided, further, that each of the Parties may make internal announcements to their respective employees that are consistent with the Parties' prior public disclosures regarding the Transactions.

7.7 Employees and Employee Benefits.

(a) Effective one Business Day before Closing Date, HM shall have terminated all Employees of the Business who are actively at work on such date, and at YGYI's sole discretion, YGYI or its Subsidiaries or Affiliates may offer employment, on an "at will" basis, to any or all of such Employees.

(b) Unless assumed by YGYI pursuant to Section 2.2, HM shall be solely responsible, and YGYI shall have no obligations whatsoever for, any compensation or other amounts due and payable to any Employee (or former Employee) of HM, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits, or severance pay payable to any Employee (or former Employee) of HM for any period relating to the service with HM at any time prior to the Closing Date and HM shall pay all such amounts to all entitled Employees on or prior to the Closing Date.

(c) HM shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health, accident or disability benefits brought by or in respect of Employees (or former Employees) or agents of HM that were incurred or made prior to the Closing Date. HM shall remain solely responsible for all worker's compensation claims of any Employees (or former Employees) that relate to events occurring prior to the Closing Date or that were incurred or made prior to the Closing Date. HM shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) YGYI shall ensure that each Employee terminated by HM that is hired by YGYI receives full credit as an employee of YGYI for such Employee's accrued vacation, personal days and sick pay to which such Employee was entitled as an employee of HM, in the amounts set forth on Schedule 7.7(d) of the HM Disclosure Schedule, for purposes of eligibility and vesting for, and determining the amount of, vacation and paid time off under the policies of YGYI. If any such Employee described in this subsection demands that HM or YGYI pay or cash out any accrued vacation, personal days or sick pay to which such Employee claims he or she was entitled in connection with his or her employment with HM prior to the Closing, YGYI shall promptly pay to such Employee all such claimed accrued but unused vacation, personal days and sick pay of such Employee, up to the amounts set forth for such Employee on Schedule 7.7(d).

ARTICLE VIII

COVENANTS OF HM AND THE REPRESENTING PARTIES

8.1 Covenant to Satisfy Conditions. HM shall use commercially reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all things, necessary, proper, and advisable under Laws to preserve its Working Capital in the ordinary course of business, consistent with past practices, and to consummate and make effective the Transactions.

8.2 No Shop. HM and the Representing Parties covenant and agree to, not directly or through any representative, solicit or respond favorably to any solicitation from or otherwise enter into negotiations or reach any agreement with any person or entity regarding (i) the merger or consolidation of HM; (ii) the sale of any of the Assets of HM (other than sales of inventory in the ordinary course of business consistent with past practices); or (iii) the sale of any of the Capital Stock of HM, or any options, convertible securities, convertible debt, or other rights to acquire any Capital Stock of HM, and to promptly (within one Business Day) furnish YGYI copies of any proposals received from any Person proposing a transaction contemplated by this Section 8.2. HM and the Representing Parties, agree that the provisions of this Section 8.2 shall be binding on HM and the Representing Parties through and including the Closing Date.

8.3 Third Party Consents. If any required Consent cannot be obtained prior to the Closing Date and such requirement has not been waived by YGYI, HM and the Representing Parties will cooperate as reasonably necessary with YGYI to obtain such Consent as soon as practical following the Closing.

8.4 Taxes. HM shall make all federal and tax filings, and pay all taxes of any kind then due, for all periods up to the Closing Date, except for such sales taxes and payroll taxes that have been accrued for and reflected on the Balance Sheet.

ARTICLE IX

INDEMNIFICATION

9.1 Indemnification by HM and the Representing Parties.

(a) During the period commencing on the Closing Date and ending on the date that is eighteen (18) months after the Closing Date, HM shall indemnify and hold harmless YGYI and its respective officers, directors and stockholders (each an “**YGYI Indemnified Party**”), from and against any and all demands, claims, actions or causes of action, judgments, assessments, losses, liabilities, damages or penalties and reasonable attorneys’ fees and related disbursements (collectively, “**Claims**”) suffered by such YGYI Indemnified Party resulting from or arising out of any: (i) inaccuracy in or breach of any of the representations or warranties made by HM at the time they were made, and, except for representations and warranties that speak as of a specific date or time (which need only be true and correct as of such date or time), on and as of the Closing Date; (ii) breach or nonfulfillment of any covenants or agreements made by HM or the Representing Parties; (iii) misrepresentation made by HM in the Schedules or Exhibits annexed hereto or in any Ancillary Document furnished by HM or the Representing Parties pursuant hereto or in connection with the Transactions; and (iv) any Claim relating to any HM liability not expressly assumed by YGYI as herein provided.

(b) During the period commencing on the Closing Date and ending on the date that is eighteen (18) months after the Closing Date, the Representing Parties shall indemnify and hold harmless the YGYI Indemnified Parties, from and against any and all Claims suffered by such YGYI Indemnified Party resulting from or arising out of any: (i) inaccuracy in or breach of the representations or warranties made by the Representing Parties in the last paragraph of Article V at the time they were made, and, except for representations and warranties that speak as of a specific date or time (which need only be true and correct as of such date or time), on and as of the Closing Date; or (ii) breach or nonfulfillment of any covenants or agreements made by HM or the Representing Parties.

9.2 Indemnification by YGYI. During the period commencing on the Closing Date and ending on the date that is eighteen (18) months after the Closing Date, YGYI shall indemnify and hold harmless HM, the Representing Parties, and their respective officers, directors, stockholders, members, managers, employees, and agents (each an “**HM Indemnified Party**”), from and against any and all Claims suffered by such HM Indemnified Party resulting from or arising out of any: (i) inaccuracy in or breach of the representations or warranties made by YGYI on and as of the Closing Date; (ii) breach or nonfulfillment of any covenants or agreements made by HM or the Representing Parties; (iii) misrepresentation made by YGYI in the Schedules or Exhibits annexed hereto or in any Ancillary Document furnished by YGYI pursuant hereto or in connection with the Transactions; (iv) any Claim relating to any liability assumed by YGYI as herein provided; and (v) any Claim brought by a third party based upon, resulting from, relating to or arising out of the business or operations of YGYI or any of its Affiliates conducted after the Closing.

9.3 Indemnification Procedures for Third-Party Claims. The party making a claim under this Article IX is referred to as the “**Indemnified Party**,” and the party against whom such claims are asserted under this Article IX is referred to as the “**Indemnifying Party**.”

(a) Upon obtaining knowledge of any Claim by a third party that has given rise to, or is expected to give rise to, a claim for indemnification hereunder, the Indemnified Party shall give written notice (“**Notice of Claim**”) of such claim or demand to the Indemnifying Party, specifying in reasonable detail such information as the Indemnified Party may have with respect to such indemnification claim (including copies of any summons, complaint or other pleading that may have been served on it and any written claim, demand, invoice, billing or other document evidencing or asserting the same). Subject to the limitations set forth in Section 9.3(b) hereof, no failure or delay by an Indemnified Party in the performance of the foregoing shall reduce or otherwise affect the obligation of the Indemnifying Party to indemnify and hold the Indemnified Party harmless, except to the extent that such

failure or delay shall have actually adversely affected the Indemnifying Party's ability to defend against, settle or satisfy any Claims for which the Indemnified Party is entitled to indemnification hereunder.

(b) If the claim or demand set forth in the Notice of Claim given by an Indemnified Party pursuant to Section 9.3(a) hereof is a claim or demand asserted by a third party, the Indemnifying Party shall have fifteen (15) days after the date on which the Notice of Claim is delivered to notify the Indemnified Party in writing of its election to defend such third party claim or demand on behalf of the Indemnified Party. If the Indemnifying Party elects to defend such third party claim or demand, the Indemnified Party shall make available to the Indemnifying Party and its agents and representatives all records and other materials that are reasonably required in the defense of such third party claim or demand and shall otherwise cooperate with, and assist the Indemnifying Party in the defense of, such third party claim or demand, and so long as the Indemnifying Party is defending such third party claim in good faith, the Indemnified Party shall not pay, settle or compromise such third party claim or demand. If the Indemnifying Party elects to defend such third party claim or demand, the Indemnified Party shall have the right to participate in the defense of such third party claim or demand at the Indemnifying Party's expense. In the event, however, that such Indemnified Party reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party could reasonably be expected to present counsel with a conflict of interest, then the Indemnified Party may employ separate counsel to represent or defend it in any such action or proceeding at its own expense. If the Indemnifying Party does not elect to defend such third party claim or demand or does not defend such third party claim or demand in good faith, the Indemnified Party shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to defend such third party claim or demand; provided, however, that: (i) such Indemnified Party shall not have any obligation to participate in the defense of or defend any such third party claim or demand; (ii) such Indemnified Party's defense of or its participation in the defense of any such third party claim or demand shall not in any way diminish or lessen the obligations of the Indemnifying Party under the agreements of indemnification set forth in this Article IX; and (iii) such Indemnified Party may not settle any claim without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

(c) Except for third party claims being defended in good faith, the Indemnifying Party shall satisfy its obligations under this Article IX in respect of a valid claim for indemnification hereunder that is not contested by the Indemnified Party in good faith by wire transfer of immediately available funds to the Indemnified Party within thirty (30) days after the date on which Notice of Claim is delivered to the Indemnified Party.

9.4 Indemnification Procedures for Non-Third Party Claims. In the event any Indemnified Party should have an indemnification claim against the Indemnifying Party under this Agreement that does not involve a claim by a third party, the Indemnified Party shall promptly deliver notice of such claim to the Indemnifying Party in writing and in reasonable detail. The failure by any Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party, except to the extent that Indemnifying Party have been actually prejudiced by such failure. If the Indemnifying Party does not notify the Indemnified Party within fifteen (15) business days following its receipt of such notice that the Indemnifying Party dispute such claim, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the Indemnifying Party under this Article IX and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand, or in the case of any notice in which the amount of the claim is estimated, on such later date when the amount of such claim is finally determined. If the Indemnifying Party disputes its liability with respect to such claim in a timely manner, the Indemnifying Party and the Indemnified Party shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be submitted to a court of law.

9.5 Indemnification Priority and Limitations.

(a) For all matters arising under or in connection with this Section 9.1, YGYI shall recover, subject to the limitations contained in this Article IX, (i) *first*, from the funds owed to HM for the 4% Payment (to the extent not previously distributed); and (ii) *second*, to the extent Losses are not fully recovered, the Indemnified Parties shall be entitled to recover any remaining Losses directly from HM and the Representing Parties.

(b) The indemnification provided for in Sections 9.1 and 9.2 shall be subject to the following limitations:

(i) An Indemnifying Party shall not be liable to an Indemnified Party for indemnification hereunder until the aggregate amount of all Losses exceeds \$25,000 (the “Deductible”), in which event the Indemnifying Party shall be responsible only for any such Losses in excess of such Deductible; and

(ii) The aggregate liability of HM and the Representing Parties for indemnification under Section 9.1 shall not exceed Two Million Dollars (\$2,000,000).

9.6 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; provided, that the representations and warranties in Sections 4.1, 4.2, 5.1, 5.2, 5.3, and 5.6 shall survive indefinitely.

9.7 Exclusive Remedy. The Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Claims (other than Claims arising from fraud or willful misconduct on the part of a Party hereto in connection with the Transactions) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article IX; provided however that nothing in this Agreement, including without limitation the provisions of Section 9.5, shall limit any Party’s right to seek and obtain any equitable relief to which such Party shall be entitled or to seek any remedy on account of any Person’s fraudulent or willful misconduct.

ARTICLE X

TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of YGYI, HM and the Representing Parties;

(b) by YGYI or HM if the Closing shall not have occurred on or before August 15, 2013;

(c) by YGYI, HM or Representing Parties if any Governmental Authority shall have issued an injunction, order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting any material portion of the Transactions and such injunction, order, decree, ruling or other action shall have become final and nonappealable;

(d) by YGYI if any of the conditions to the Closing set forth in Section 6.2 shall not have been fulfilled by August 15, 2013 and shall not have been waived in writing by YGYI;

(e) by HM if any of the conditions to the Closing set forth in Section 6.1 shall not have been fulfilled by August 15, 2013 and shall not have been waived in writing by HM.

10.2 Procedure and Effect of Termination. In the event of termination of this Agreement pursuant to Section 10.1 hereof, written notice thereof shall forthwith be given by the terminating party to the other party, and, except as set forth below, this Agreement shall terminate and be void and have no effect and the Transactions shall be abandoned without any further action by the parties hereto. Notwithstanding the foregoing, if this Agreement is terminated other than pursuant to Section 10.1(a), such termination will not affect any right or remedy which accrued hereunder or under applicable Laws prior to or on account of such termination, and the provisions of this Agreement shall survive such termination to the extent required so that each party may enforce all rights and remedies available to such party hereunder or under applicable Laws in respect of such termination and so that any party responsible for any breach or nonperformance of its obligations hereunder prior to termination shall remain liable for the consequences thereof. If this Agreement is terminated as provided herein, each party hereto shall redeliver, and shall cause its agents (including, without limitation, attorneys and accountants) to redeliver, all

documents, work papers and other material of each party hereto relating to the Transactions, whether obtained before or after the date hereof.

ARTICLE XI

CONFIDENTIALITY AND NON-COMPETITION

11.1 Confidentiality. At all times after the Closing Date, HM and the Representing Parties shall retain in strictest confidence, and shall not use for its benefit or for the benefit of others all confidential information comprising or related to the Assets described in this Agreement including, without limitation, the technology, trade secrets, customer lists transferred hereby to YGYI, pricing policies, marketing plans or strategies, product development techniques or plans, or technical processes, designs and design projects respecting the Business.

11.2 Non-Competition.

(a) (i) For a period of four (4) years from and after the Closing Date, HM shall not, directly or indirectly: (i) engage in a business or enterprise (either as proprietor, partner, employee, agent, consultant, or controlling stockholder) that qualifies as a “competing business” (as defined in subsection (b) hereof) or (ii) solicit or attempt to solicit sales or licenses of any competing businesses, interfere with, or disrupt or attempt to disrupt the relationship (contractual or otherwise) between HM, YGYI and their customers, suppliers, agents, consultants, officers or employees relating to the Product; and (ii) each of the Representing Parties agrees to the confidentiality and non-competition provisions set forth in their respective employment agreements, if any.

(b) The provisions of this Section 11.2 shall not prevent HM or the Representing Parties from investing their assets in securities of any corporation, or otherwise acquiring an equity interest in any enterprise, equity securities of which are publicly owned and traded, provided that such investments or interests shall not result in: (i) HM and the Representing Parties owning beneficially, in the aggregate, 10% or more of the equity securities of any enterprise engaged in a business offering products or services competitive to the Business (a “competing business”) or (ii) HM or the Representing Parties being able to control or actively participate in the policy decisions of such competing business.

(c) It is the desire and intent of the parties that the provisions of this Section 11.2 shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If any particular provision or portion of this Section 11.2 shall be adjudicated to be invalid or unenforceable in any jurisdiction, this Section 11.2 shall be deemed amended to delete therefrom such provision or portion adjudicated to be invalid or unenforceable, such amendment to apply only with respect to the operation of this subsection (c) in the particular jurisdiction in which such adjudication is made. HM and the Representing Parties agree that it would be difficult to measure the damages to YGYI from the breach by of the provisions of this Section 11.2, that injury to YGYI from such breach would be impossible to calculate, and that monetary damages would therefor be an inadequate remedy; accordingly, HM and Representing Parties agree that YGYI shall be entitled, in addition to all other remedies it might have, to injunctions or other appropriate orders to restrain any such breach without showing or proving any actual damages. Nothing herein shall be construed as prohibiting YGYI from pursuing any other remedies for such breach or threatened breach.

(d) The undertakings and covenants of the HM and the Representing Parties contained in this Section 11.2 are an integral part of the transactions set forth in this Agreement and the consideration paid by YGYI pursuant to this Agreement shall be consideration not only for the Assets but also for such undertakings and covenants.

ARTICLE XII

MISCELLANEOUS

12.1 Reasonable Efforts. Subject to the conditions of this Agreement, each of the Parties shall use the efforts that a reasonable person would make so as to achieve that goal as expeditiously as possible to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary or advisable under applicable laws to

consummate the Transactions contemplated by this Agreement as promptly as practicable including but not limited to: (i) taking such actions as are necessary to obtain any required approval, consent, ratification, filing, declaration, registration, waiver, or other authorization and (ii) satisfying all conditions to Closing at the earliest possible time.

12.2 Transaction Costs. Each Party shall pay its own fees and expenses (including without limitation the fees and expenses of its representatives, attorneys, and accountants) incurred in connection with negotiation, drafting, execution, and delivery of this Agreement.

12.3 Assignment. No Party may assign any of its rights or delegate any performance under this Agreement except with the prior written consent of the other Parties.

12.4 Binding. This Agreement binds, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

12.5 Governing Law. The laws of the State of California (without giving effect to its conflict of laws principles) govern all matters arising out of this Agreement, including without limitation tort claims.

12.6 Entirety of Agreement. This Agreement constitute the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, if any.

12.7 Further Assurances. Each of HM, the Representing Parties, YGYI and shall execute and deliver such additional documents and instruments and perform such additional acts as the other party may reasonably request to effectuate or carry out and perform all the terms of this Agreement and the Transactions contemplated hereby, and to effectuate the intent of this Agreement. In this regard, to the extent all consents and approvals required under any Contract to which either HM is a party or by which HM is bound to enable HM to effect the sale of the Assets pursuant hereto are not obtained on or before the Closing Date as contemplated by Section 7.3 above, within the thirty (30) day period after the date of this Agreement, HM will obtain all consents and approvals required under any Contract to which either HM is a party or by which HM is bound to enable HM to effect the sale of the Assets pursuant hereto.

12.8 Jurisdiction: Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, any of this Agreement must be brought against any of the parties in the courts of the State of California, or, if it has or can acquire jurisdiction, in the United States District Court for San Diego County, and each of the parties consents to the jurisdiction of those courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Nothing in this Section 12.8, however, affects the right of any party to serve legal process in any other manner permitted by law. All references to a time of day in this Agreement are references to the time in the State of California.

12.9 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

12.10 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

12.11 No Third-Party Rights. Nothing expressed or referred to in this Agreement gives any Person other than the Parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, and this Agreement and all of its provisions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns. The undersigned are signing this Agreement on the date stated in the introductory clause.

12.12 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

12.13 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such

determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12.14 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the fourth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth in the first paragraph of this Agreement.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGEVITY INTERNATIONAL, INC.

By: *Steve Wallach*
Name: *STEVE WALLACH*
Title: *CEO*

8-7-2013

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:

CHRISTOPHER LEE

DOUG CLOWARD

SHARON MURDOCH

JUSTIN BIGGS

BRYTT CLOWARD

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGEVITY INTERNATIONAL, INC.

By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: *Patti Gardner*
Name: *Patti Gardner*
Title: *President*

REPRESENTING PARTIES:

CHRISTOPHER LEE

DOUG CLOWARD

SHARON MURDOCH

JUSTIN BIGGS

BRYTT CLOWARD

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.


YOUNGVEVITY INTERNATIONAL, INC.

By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:



CHRISTOPHER LEE

DOUG CLOWARD

SHARON MURDOCH

JUSTIN BIGGS

BRYTT CLOWARD

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGEVITY INTERNATIONAL, INC.

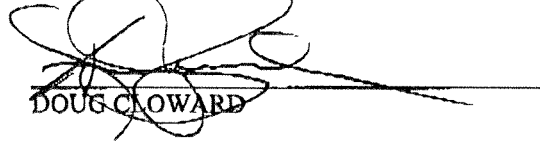
By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:

CHRISTOPHER LEE



DOUG CLOWARD

SHARON MURDOCH

JUSTIN BIGGS

BRYTT CLOWARD

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGENTY INTERNATIONAL, INC.

By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:

CHRISTOPHER LEE

DOUG CLOWARD



SHARON MURDOCH

JUSTIN BIGGS

BRYTT CLOWARD

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGEVITY INTERNATIONAL, INC.

By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:

CHRISTOPHER LEE

DOUG CLOWARD

SHARON MURDOCH



JUSTIN BIGGS

BRYTT CLOWARD

[Signature page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

YOUNGEVITY INTERNATIONAL, INC.

By: _____
Name:
Title:

HERITAGE MAKERS, INC.

By: _____
Name:
Title:

REPRESENTING PARTIES:

CHRISTOPHER LEE

DOUG CLOWARD

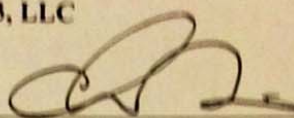
SHARON MURDOCH

JUSTIN BIGGS



BRYTT CLOWARD

HM-3, LLC

By: 
Name: CHRISTOPHER LEE
Title: MANAGER

HM DISCLOSURE SCHEDULE

This HM Disclosure Schedule (this “**Schedule**”) is made and given pursuant to Article 5 of that certain Asset Purchase Agreement, dated as of August 7, 2013 (the “**Agreement**”), by and among Youngevity International, Inc., a Delaware corporation (“**YGYI**”), Heritage Makers, Inc., a Delaware corporation (“**HM**”), HM-3, LLC, a Utah limited liability company (“**HM-3**”), Christopher Lee (“**Lee**”), Doug Cloward (“**D. Cloward**”), Sharon Murdoch (“**Murdoch**”), Justin Biggs (“**Biggs**”), and Brytt Cloward (“**B. Cloward**” and together with HM-3, Lee, D. Cloward, Murdoch, and Biggs, the “**Representing Parties**”). All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided.

The schedule numbers below correspond to the section numbers of the representations and warranties in the Agreement; provided, however, that any information disclosed herein under any schedule number shall be deemed to be disclosed and incorporated into any other schedule number in this Schedule to the extent it is reasonably apparent that such disclosure is applicable to such other schedule, whether or not repeated under any schedule number. The non-numerical headings in this Schedule are for convenience only and shall not control or affect the meaning of this Schedule.

Nothing in this Schedule is intended to broaden the scope of any representation or warranty contained in the Agreement or to create any covenant. Inclusion of any item in this Schedule (1) does not represent a determination that such item is material or establish a standard of materiality, (2) does not represent a determination that such item did not arise in the ordinary course of business, (3) does not represent a determination that the transactions contemplated by the Agreement require the consent of third parties, (4) does not represent a determination that such item is required to be referred to or disclosed on this Schedule, and (5) shall not constitute, or be deemed to be, an admission to any third party concerning such item. This Schedule includes brief descriptions or summaries of certain agreements and instruments, copies of which are available upon reasonable request. Such descriptions do not purport to be comprehensive, and are qualified in their entirety by reference to the text of the documents described.

SCHEDULE 5.1

Organization and Good Standing

1. HM is qualified to do business in Utah, and its Assets and employees are located in Utah.
2. HM's independent consultants are located in all 50 states and in the following Canadian provinces: Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, and Saskatchewan.

SCHEDULE 5.2

Capitalization

HM-3 owns 1,000 shares of the common stock of HM.

SCHEDULE 5.4

Conflicts; Authorizations

1. The execution, delivery, and performance by HM of the Agreement and the other transaction documents to which HM is a party and the consummation of the transactions contemplated thereby will require the consent of and/or the waiver of the applicable terms by the other party to each of the following agreements:
 - a. Lease Agreement (see Schedule 5.14).
 - b. Services Agreement (see Schedule 5.17(a), item 4).
 - c. Master Services Agreement (see Schedule 5.17(a), item 5).
 - d. Merchant Application Processing Agreement (see Schedule 5.17(a), item 7).
 - e. ISDN PRS, DSS Advanced or UAS Bulk Rated Agreement (see Schedule 5.17(a), item 9).
 - f. Payment Gateway Merchant Service Agreement (see Schedule 5.17(a), item 10).
 - g. Employer Services Agreement (see Schedule 5.17(a), item 14).
 - h. Quick Confirmation Agreement (see Schedule 5.17(a), item 15).
2. The licenses and permits set forth on Schedule 5.11, items 1-3 are not transferable.

SCHEDULE 5.5Financial Statements/Internal Accounting Controls

1. The Financial Statements are attached hereto.
2. All liabilities associated with “Zero Dollar” points (given as marketing incentives) as of the Closing. As of June 30, 2013, the “Zero Dollar” points outstanding were 318,872, which points are estimated to be valued at \$63,774.
3. All liabilities and obligations incurred or to be incurred in connection with the Top Achievers Club event to be held in January 2014.
4. All liabilities and obligations incurred or to be incurred in connection with the Fall convention or conference.
5. All liabilities and obligations arising under the executory contracts listed on Schedule 5.17(a).
6. HM’s monthly process for calculating deferred revenue and deferred expense associated with points is as follows:
 - a. Deferred revenue: HM defers revenue until points are used and the corresponding product is shipped or until points expire. Revenue from points is recognized by adjusting the deferred revenue account on the balance sheet to match the deferred revenue report. HM’s IT department provides the accounting department with a spreadsheet report from the HM Studio web database that details points outstanding and corresponding cash paid for said points. This report summarizes the deferred revenue balance (by points and cash paid for points), broken down by the month the points were purchased/issued. As points are used or expire, they are eliminated from the report each month. A journal entry is made in QuickBooks to adjust the general ledger deferred revenue balance. The offsetting entry is recognized revenue.
 - b. Deferred costs: HM defers sales force commission and bonus costs and attempts to match them to revenue by deferring and recognizing costs in the same way revenues are deferred and recognized. HM compares commission and bonus costs to sales booked each month. The percentage that commission and bonus costs are to sales bookings in a given month is applied to the deferred revenue report (described above) to calculate deferred costs. For example, if the deferred revenue balance from March 2013 purchases is \$300,000 and the commission and bonus costs as a percentage of sales bookings for the corresponding period was 40%, then the deferred cost balance for March 2013 sales would be \$120,000 ($\$300,000 \times .40$). This same calculation is prepared for each of the prior twenty-four (24) months that still have points outstanding. A journal entry is made in

QuickBooks to adjust the deferred cost balance. The offsetting entry is recognized cost.

**SCHEDULE 5.5, ITEM 1 – ATTACHMENT
FINANCIAL STATEMENTS**

SCHEDULE 5.6

Title to Assets

1. See Schedule 5.4, item 1 (all subparts).
2. See Schedule 5.12, items 2 and 3.
3. See Schedule 5.14.
4. See Schedule 5.15(b), item 2.
5. See Schedule 5.17(a), items 10 and 24.
6. See Schedule 5.23.

SCHEDULE 5.7Inventory and Current Products

HM offers the following Products:

Item	Quantity on Hand as of June 30, 2013
HM 12x12 Post-Album Page Protectors (10-pk)	18,570
HM 12x12 Storybook (Family Reunion)	37
HM 2013 Idea Book Spring/Summer	7,058
HM 7" HM Keepsake Bracelet Supply (10)	211
HM 8.5x11 Booklet Sample - HM Football	112
HM 8x10 Metal Prints	18
HM 8x8 Canvas Sample - "June"	97
HM 8x8 Sample Book (My Great Grandpa)	99
HM 8x8 Softbound Book Sample - Tucked In	48
HM Beautiful Shirt 2xl	7
HM Beautiful Shirt Large	2
HM Beautiful Shirt M	9
HM Beautiful Shirt Small	5
HM Beautiful Shirt XL	7
HM Book Sleeve 11.5x8.5 (yellow)	123
HM Book Sleeve 13x11 (purple)	986
HM Book Sleeve 5x5 (green)	4,809
HM Book Sleeve 7.5x10 (violet)	1,332
HM Book Sleeve 7x5 (orange)	1,014
HM Book Sleeve 8x8 (blue)	3,080
HM Book12x12 Book Cover	81
HM Build It Big DSWA Book	26
HM Business Builder Kit	22
HM Card Sampler	66
HM Charm Bracelet	0
HM Clearance! Idea Book 2012 Spring/Summer (25)	13,775
HM Connect Meeting Lanyards	66
HM Consultant Bag	1,918
HM Consultant Guide	83

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Item	Quantity on Hand as of June 30, 2013
HM Consultant Kit	0
HM Drawing Slips (100 slips)	1,790
HM Expanding Folder	53
HM Flipbook Sample - Sweet Boy	87
HM Flower Cadet Hat	52
HM Gift Bag	360
HM Host Coaching Cards (10)	7,300
HM Host Workshop Planners (25)	21,850
HM Idea Book Fall 2013 (64pg self cover)	0
HM Keepsake Necklace w/, Pendant Supply (10)	2,357
HM Lapboards (5 pack)	580
HM Love Mug	41
HM More Build It Big	32
HM New 2012-13 Your Story Your Way Magazine (10)	16,440
HM New Club HM Member Cards (10)	3,950
HM New Consultant training Cards (10)	8,250
HM Opportunity Brochure (25)	14,500
HM Order Forms (25)	8,475
HM Playing Card game Sample	69
HM Posts screw end sets PS4	1,800
HM Read My Book Kid - M	6
HM Reunion Pen Pack	137
HM Sample Book 7x10	43
HM Sample Product - 11.5x8.5 "Angelastro Family"	110
HM Sample Product - 8.5x11 Calendar	292
HM Sample Product - Post Album Book	29
HM Small Love Zip-Up Hoodie	4
HM Studio Art Sampler (10 Pack)	5,100
HM Studio Starter Guide (25)	7,275
HM Tradeshow Flyers (50)	15,950
HM Training DVD	1,442
HM Wood Blocks Reunion 2012	10
HM Workshop Envelope	3,810
HM Workshop Invites (25)	31,300
HM Your Story Your Way Business Magazine (25)	2,200

SCHEDULE 5.9

Taxes

1. Federal and state corporate income taxes that will be incurred by HM in connection with the Transactions have not been provided for in the books and records of HM.
2. HM is obligated to, and does, pay taxes in Canada.

SCHEDULE 5.11Licenses and Permits

1. Utah State Tax Commission Sales Tax License and/or Use Tax Certificate of Registration, Account # J07179
2. Provo City Business License # 46953
3. HM pays sales taxes in the following jurisdictions and holds a sales tax license where required in such jurisdictions:

AK	Kenai Peninsula Borough
	Others in consideration
AL	Seller Use
	City/County
	Alabaster
	Auburn
	Millbrook
	Montgomery
	Jefferson Co
	Montgomery Co
	AlaTax
	AlaRDS
	Birmingham
	STACS-Franklin Co.
	City of Prattville
	City of Hartselle
	STACS-Colbert Co.
Helena	
AR	State Return
AZ	State Return
	AZ RDS
	Chandler
	Mesa
	Peoria
	Phoenix
	Scottsdale
	Tucson
	Glendale
	Tempe
	Avondale
	Flagstaff

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CA	CA PrePay
	State Return
CO	State with PP, FR, and SPV RTA combined return
	Arvada
	Aurora
	Boulder
	Brighton
	Broomfield
	Centennial
	Colorado Springs
	Commerce
	Grand Junction
	Littleton
	Longmont
	Parker
	Thorton
	Westminster
Castle Rock	
CT	State Return
DC	State Return
DE	No Return
FL	State Return
GA	State Return
GU	No Return
HI	State Return
	Annual Reconciliation
IA	State Return
ID	State Return
IL	State Return
IN	State Return
KS	State Return
KY	State Return
LA	State Return
	Ascension
	Bienville
	Bossier City
	Caddo Shreveport
	Livingston
	Baton Rouge
	Desoto

	St. Landry
	St. Tammany
MA	State Return
MD	State Return
ME	State Return
MI	State Return
	Annual Reconciliation
MN	State Return
MO	State Return
MS	State Return
MT	No Return
NC	State Return
ND	State Return
NE	State Return
NH	No Return
NJ	State Return
NM	State Return
NV	State Return
NY	State Return
OH	State Return
OK	State Return
OR	No Return
PA	State Return
PR	No Return
RI	Payment
	Annual Reconciliation
SC	State Return
SD	State Return
TN	State Return
TX	AAA TX PrePay
	State Return
UT	State Return
VA	State Return
VT	State Return
WA	State Return
	Longview, WA B&O tax
WI	State Return
WV	State Return
WY	State Return
CAN	GST/HST -Canadian Return

SCHEDULE 5.12Title to Personal Properties

1. HM owns the following personal property with a current book value in excess of \$5,000:

<u>Fixed Asset Category</u>	<u>Description</u>
Computer Equipment	Mac Book Pro, accessories, Mac hard drive, external HD, Creative Suite, photoshop Elements
Computer Equipment	Patti Exp Rpt -2 Apple computers :Brytt's MacBoo Pro Retina SN: C02JP0JQDKQ2, Don L.'s - MacBook Pro C02GP22ZDV10

2. Certain cell phones used by employees for work purposes are owned by such employees (see Schedule 5.19(a), item 4).
3. The following UCC-1 Financing Statements (including any amendments and/or addendums thereto) have been filed in the jurisdictions listed below by the secured parties listed below with respect to certain assets (or potential assets) of HM, all as described in such financing statements:

<u>Secured Party</u>	<u>UCC-1 File Number</u>	<u>Jurisdiction</u>
Xerox Corporation	393974201146	Utah
Dell Financial Services L.L.C.	81645066	Delaware
Xerox Corporation	82623914	Delaware
Xerox Corporation	94195795	Delaware
TCF Equipment Finance, Inc.	00484364	Delaware

4. See Schedule 5.17(a), items 10 and 24.

SCHEDULE 5.14

Real Property

HM leases that certain real property located at 1837 South East Bay Blvd, Suite 201, Provo, Utah 84606 pursuant to the terms of that certain Lease Agreement dated September 25, 2006 with Dare Associates, L.C.

SCHEDULE 5.15

Intellectual Property

Schedule 5.15(a)

1. HM owns the following domain names and the websites and information located thereat. HM has not applied for or received any copyrights with respect to the following.
 - a. heritagemakers.com
 - b. clubhm.com
 - c. tuckedin.com
 - d. whileimaway.org
 - e. iwishforyou.org
 - f. thestaryouare.org
 - g. thehmall.com
 - h. myhmstudio.com
 - i. myheritagemakers.com
 - j. heritagemakers.biz
 - k. heritagemakers.info
 - l. heritagemakers.net
 - m. heritagemakers.org
 - n. heritage-makers.com
 - o. hmbeta.com
 - p. heratagemakers.com
 - q. heritigemakers.com
 - r. heritagemakers.co.uk
2. Heritage Studio (the website) and all of the corresponding software, including the associated and integrated internal software Heritage utilizes to manage the increase and reduction of points.
3. See Schedule 5.15(b), item 2.
4. See Schedule 5.15(c).
5. See Schedule 5.15(f).

Schedule 5.15(b)

1. Each independent contractor that has done work for HM is required to enter into an Artist/Publisher License Agreement, the form of which has been provided to YGYI.
2. Non-exclusive, perpetual software licenses have been issued to HM in connection with the following applications:

<u>Serial Number</u>	<u>Installed Applications</u>
cronus	Adobe ColdFusion
hmfiler01	Adobe ColdFusion
MXX65005R7 NA680	Adobe ColdFusion
8D7Y3H1	Adobe ColdFusion
8Y7SFN1	Adobe ColdFusion
MXX65005R7 NA680	Adobe ColdFusion 8 with JRun
8D7Y3H1	Adobe ColdFusion 9 with JRun
8Y7SFN1	Adobe ColdFusion 9 with JRun
8Y7SFN1	Adobe ColdFusion Builder
8Y7SFN1	Adobe Creative Suite Design Standard
8Y7SFN1	Adobe Creative Suite Web Premium
8Y7SFN1	Adobe Flash Builder
HDRKYJ1	Adobe Photoshop Elements
16BDQ81	Adobe Photoshop Elements
HDRKYJ1	AVG
HDRKYJ1	AVG
1JQDYD1	AVG
1JQDYD1	AVG
14HWY81	AVG
14HWY81	AVG
3GH0BG1	AVG
3GH0BG1	AVG
DMW0CG1	AVG
DMW0CG1	AVG
HDH89C1	AVG
HDH89C1	AVG
16BDQ81	AVG
16BDQ81	AVG
HDRKYJ1	AVG CloudCare
1JQDYD1	AVG CloudCare
14HWY81	AVG CloudCare
3GH0BG1	AVG CloudCare
DMW0CG1	AVG CloudCare
HDH89C1	AVG CloudCare
16BDQ81	AVG CloudCare
hmdc1	AVG Remote Administration
8Y7SFN1	AVG Remote IT
HJ4JW61	Camtasia Studio
8D7Y3H1	CCH ZIPproduct Manager

<u>Serial Number</u>	<u>Installed Applications</u>
8Y7SFN1	CCH ZIPproduct Manager
14HWY81	CCScore
HDH89C1	Charles
HDH89C1	Charles
8Y7SFN1	Charles
MXX65005R7 NA680	CollabNet Subversion
MXX65005R7 NA680	FogBugz
8Y7SFN1	Git version
cronus	GoodSync
MXX65005R7 NA680	HM Build PDF
8D7Y3H1	HM Build PDF
8D7Y3H1	HM ContentItemX Repair
MXX65005R7 NA680	HM FTP Service
MXX65005R7 NA680	HM Master Controller
MXX65005R7 NA680	HM Postprocessor Service
MXX65005R7 NA680	HM Preprocessor Service
MXX65005R7 NA680	HM Production 3 Creator
8D7Y3H1	HM Production 3 Creator
MXX65005R7 NA680	HM Production Creator
MXX65005R7 NA680	HM Undelete Pages
MXX65005R7 NA680	ImageGenerator
8D7Y3H1	ImageMagick -3 Q16
8Y7SFN1	ImageMagick -3 Q16
cronus	ImgBurn
1JQDYD1	IP Office Admin Suite
14HWY81	IP Office Admin Suite
3GH0BG1	IP Office Admin Suite
DMW0CG1	IP Office Admin Suite
HDH89C1	IP Office Admin Suite
HJ4JW61	IP Office Admin Suite
16BDQ81	IP Office Admin Suite

<u>Serial Number</u>	<u>Installed Applications</u>
hmfiler01	Ipswitch WS_FTP Pro
MXX65005R7 NA680	Ipswitch WS_FTP Pro
MXX65005R7 NA680	Java 2 SDK, SE
8D7Y3H1	Java 2 SDK, SE
8Y7SFN1	Java SE Development Kit 7 Update
DMW0CG1	KODAK i1200 - Smart touch
HJ4JW61	KODAK i1200 - Smart Touch
DMW0CG1	KODAK i1210/i1220 Scanner
HJ4JW61	KODAK i1210/i1220 Scanner
DMW0CG1	Kodak s1220 Photo Scanning System
HJ4JW61	Kodak s1220 Photo Scanning System
cronus	LogMeIn
MXX65005R7 NA680	Macromedia ColdFusion MX
6KR6G51	Microsoft Exchange Server
6KR6G51	Microsoft Exchange Server Best Practices Analyzer Tool
hmdc1	Microsoft Group Policy Management Console with SP1
HDRKYJ1	Microsoft IntelliPoint
HDRKYJ1	Microsoft IntelliType Pro
16BDQ81	Microsoft Office 2003 Basic
16BDQ81	Microsoft Office 2003 PowerPoint
16BDQ81	Microsoft Office 2003 PowerPoint Viewer
14HWY81	Microsoft Office 2003 Professional
HJ4JW61	Microsoft Office 2003 Professional
MXX65005R7 NA680	Microsoft Office 2003 Web Components
14HWY81	Microsoft Office 2007
accounting06	Microsoft Office 2007 Basic
1JQDYD1	Microsoft Office 2007 Basic
3GH0BG1	Microsoft Office 2007 Basic
DMW0CG1	Microsoft Office 2007 Basic
HDH89C1	Microsoft Office 2007 Basic
16BDQ81	Microsoft Office 2007 Basic
14HWY81	Microsoft Office 2007 Professional Hybrid
1JQDYD1	Microsoft Office 2007 Service Pack 3 (SP3)
14HWY81	Microsoft Office 2007 Service Pack 3 (SP3)
3GH0BG1	Microsoft Office 2007 Service Pack 3 (SP3)
DMW0CG1	Microsoft Office 2007 Service Pack 3 (SP3)
HDH89C1	Microsoft Office 2007 Service Pack 3 (SP3)

<u>Serial Number</u>	<u>Installed Applications</u>
16BDQ81	Microsoft Office 2007 Service Pack 3 (SP3)
8Y7SFN1	Microsoft Office 2007 Service Pack 3 (SP3)
8Y7SFN1	Microsoft Office 2007 Visual Web Developer
HDRKYJ1	Microsoft Office 2010 Home and Business
8Y7SFN1	Microsoft Office 2010 Home and Business
HDRKYJ1	Microsoft Office 2010 Service Pack 1 (SP1)
8Y7SFN1	Microsoft Office 2010 Service Pack 1 (SP1)
HDRKYJ1	Microsoft Office 2010 Single Image
8Y7SFN1	Microsoft Office 2010 Single Image
cronus	Microsoft Security Client
cronus	Microsoft Security Essentials
hmfiler01	Microsoft SQL Server
8Y7SFN1	Microsoft SQL Server
MXX65005R7 NA680	Microsoft SQL Server 2005 Analysis Services
MXX65005R7 NA680	Microsoft SQL Server 2005 Backward compatibility
MXX65005R7 NA680	Microsoft SQL Server 2005 Books Online
8Y7SFN1	Microsoft SQL Server 2005 Express Edition
MXX65005R7 NA680	Microsoft SQL Server 2005 Integration Services
8D7Y3H1	Microsoft SQL Server 2005 Mobile Developer Tools
MXX65005R7 NA680	Microsoft SQL Server 2005 Notification Services
MXX65005R7 NA680	Microsoft SQL Server 2005 Performance Dashboard Reports
MXX65005R7 NA680	Microsoft SQL Server 2005 Reporting Services
MXX65005R7 NA680	Microsoft SQL Server 2005 Standard Edition
MXX65005R7 NA680	Microsoft SQL Server 2005 Tools
6KR6G51	Microsoft SQL Server Desktop Engine
MXX65005R7 NA680	Microsoft SQL Server Native Client
8Y7SFN1	Microsoft SQL Server Native Client
MXX65005R7 NA680	Microsoft SQL Server Setup Support Files
8Y7SFN1	Microsoft SQL Server Setup Support Files
MXX65005R7 NA680	Microsoft SQL Server VSS Writer
8Y7SFN1	Microsoft SQL Server VSS Writer

<u>Serial Number</u>	<u>Installed Applications</u>
hmde1	Microsoft Virtual Server 2005
8D7Y3H1	Microsoft Visual Studio 2005 64bit Prerequisites (x64) - ENU
MXX65005R7 NA680	Microsoft Visual Studio 2005 Premier Partner Edition - ENU
8D7Y3H1	Microsoft Visual Studio 2005 Remote Debugger (x64) - ENU
8D7Y3H1	Microsoft Visual Studio 2005 Team Edition for Software Developers - ENU
accounting06	Microsoft Visual Studio 2005 Tools for Office Runtime
8D7Y3H1	Microsoft Visual Studio 2005 Tools for Office Runtime
accounting06	QuickBooks
hmde1	QuickBooks
14HWY81	QuickBooks Premier Edition
hmde1	QuickBooks Premier Edition
accounting06	QuickBooks Premier: Accountant Edition
hmde1	QuickBooks Premier: Accountant Edition
hmde1	QuickBooks Server
HJ4JW61	QuickLink Mobile
8D7Y3H1	SeeFusion
cronus	Sentinel HASP Run-time
hmfiler01	ServerProtect Normal Server
MXX65005R7 NA680	ServiceCapture
hmfiler01	SQL Delta
MXX65005R7 NA680	SQL Delta
8Y7SFN1	SQL Server 2008 R2 SP1 Common Files
8Y7SFN1	SQL Server 2008 R2 SP1 Management Studio
MXX65005R7 NA680	SQLXML4
14HWY81	staticcr
hmde1	Symantec AntiVirus
hmde1	Symantec System Center
accounting06	Tax Forms Helper 2011
accounting06	Tax Forms Helper 2012
MXX65005R7 NA680	Thumbnail Generator
8D7Y3H1	VisualSVN Server
HDRKYJ1	Windows 7 Pro
8Y7SFN1	Windows 7 Pro
hmde1	Windows Server 2003

<u>Serial Number</u>	<u>Installed Applications</u>
6KR6G51	Windows Server 2003
hmfiler01	Windows Server 2003
MXX65005R7 NA680	Windows Server 2003
hmfiler01	Windows Server 2003 Service Pack
hmde1	Windows Server 2003 Service Pack 1 Administration Tools Pack
8D7Y3H1	Windows Server 2003 x64
accounting06	Windows XP Pro
cronus	Windows XP Pro
1JQDYD1	Windows XP Pro
14HWY81	Windows XP Pro
3GH0BG1	Windows XP Pro
DMW0CG1	Windows XP Pro
HDH89C1	Windows XP Pro
HJ4JW61	Windows XP Pro
16BDQ81	Windows XP Pro
1JQDYD1	Windows XP Service Pack 3
14HWY81	Windows XP Service Pack 3
3GH0BG1	Windows XP Service Pack 3
cronus	Zebra Font Downloader
cronus	Zebra Setup Utilities

3. See Schedule 5.17(a), items 2, 3, 4, 5, and 13.

Schedule 5.15(c)

1. Pursuant to the Terms of Service (see Schedule 5.17(a), item 28), HM grants to each customer a “non-exclusive, non-transferable, nonsublicensable, limited right and license to access the Service, including any images, text, graphics, data, files, links and other materials incorporated into the Service (other than your Submissions), solely as made available by us, solely as necessary to access the Service and solely for your own personal, non-commercial, home purposes, provided that you keep intact all copyright and other proprietary notices.”
2. See Schedule 5.17(a), items 3, 5, and 29.

Schedule 5.15(f)

1. HM owns the mark “ScanParty,” registration # 3,474,294, which was registered with the United States Patent and Trademark office on July 22, 2008.

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SCHEDULE 5.17

Contracts

Schedule 5.17(a)

1. Master Services Agreement and Account Request by and between HM and Veracity Networks dated October 5, 2012.
2. IMN Hosted Services Agreement by and between HM and iMakeNews, Inc. dated July 1, 2010 and the corresponding IMN Services Order Form by and between HM and iMakeNews, Inc. dated effective August 1, 2010.
3. Software Rental Agreement by and between HM and iCentris, Inc. dated January 5, 2010.
4. Services Agreement by and between HM and Infotrax Systems, L.C. dated June 30, 2004.
5. Master Services Agreement by and between HM and ZenPrint, LLC dated August 17, 2011 and the corresponding Statement of Work dated August 17, 2011.
6. Lease/Rental Agreement by and between HM and Superior Water and Air, Inc., dated August 28, 2009.
7. Merchant Application and Processing Agreement by and between HM and PowerPay dated August 14, 2006.
8. Agreement by and between HM and Preferred CFO Solutions, L.C. dated January 2011.
9. ISDN PRS, DSS Advanced or UAS Bulk Rated Agreement by and between HM and Qwest Corporation d/b/a CenturyLink QC dated October 12, 2011.
10. Payment Gateway Merchant Service Agreement by and between Patti Gardner and Authorize.Net dated September 14, 2012.
11. Rental Agreement by and between Heritage Makers, Inc. and Hasler dated February 18, 2010.
12. Insurance Policy by and between Heritage Makers, Inc. and Diversified Insurance Group and Sentinel Insurance Company, Limited with expiration of September 18, 2013.
13. Development Agreement by and between HM and Clever Coding LLC dated April 10, 2013.
14. Employer Services Agreement by and between HM and A Plus Benefits, Inc. dated August 8, 2006.

15. Quick Confirmation Agreement by and between HM and MSR Resort Lodging Tenant, LLC d/b/a Arizona Biltmore for events on August 7, 2013 through August 11, 2013.
16. 2013 Partner Agreement by and between HM and Deseret Book Company dated January 14, 2013.
17. American Express Card Acceptance Agreement entered into by HM.
18. Invoice # 802947 and Invoice # 802948 by and between HM and Destinations, Inc., each dated August 16, 2012.
19. Agreement by and between HM and Direct Selling Women's Alliance Inc., dated May 21, 2013.
20. Convertible Promissory Note #2 dated August 17, 2011 issued by ZenPrint, LLC in favor of HM in the original principal amount of \$500,000.
21. Asset Purchase Agreement dated August 17, 2011 by and between ZenPrint, LLC, and HM (the "**ZenPrint Purchase Agreement**").
22. Bill of Sale dated August 2011 by and between ZenPrint, LLC and HM.
23. Pursuant to the ZenPrint Purchase Agreement, HM assigned its agreements with Dell Business Credit, TCF Equipment Finance, Inc. and Xerox Corporation to ZenPrint, LLC. However, such third parties have refused to consent to and recognize such transfers. Therefore, HM is ultimately liable for the obligations under such agreements.
24. HM has a version of Jetpack Mobile Hotspot contract that was moved to Patti Gardner's personal account to save money. Patti is reimbursed the \$40 per month cost. The contract can be cancelled on June 14, 2014, or HM can pay the early termination fee.
25. Each of the independent consultants of the Company is required to agree to HM's Consultant Agreement Terms and Conditions and Heritage Makers Compensation Plan.
26. Each of the employees listed on Schedule 5.20(a), item 1, except Don Vance, has entered into an Agreement Concerning Confidentiality, Intellectual Property Rights and Distributorship.
27. When a customer buys points, it signs an agreement that includes terms and conditions of the purchase of points. Under HM's policy, sales consultants are to obtain a signed agreement from each customer pursuant to which the customer acknowledges the two-year term for all points.
28. Each customer of HM agrees to abide by HM's Terms of Purchase and Terms of Service.

29. Content License Agreement dated August 8, 2006 by and between HM and Scrap Girls, LLC.
30. See Schedule 5.14.
31. See Schedule 5.15(b), items 1 and 2.
32. All of the agreements under which the employee benefits set forth on Schedule 5.19(a), items 1-3 and 5 are provided.

Schedule 5.17(b)

See Schedule 5.4, item 1 (all subparts).

Schedule 5.17(d)

See Schedule 5.4, item 1 (all subparts).

SCHEDULE 5.18

Litigation

In early 2012, one of HM's customers notified HM through customer support that the customer was dissatisfied with the expiration of points on the customer's account. The customer questioned the legality of such expirations and indicated she was considering legal remedies. HM's customer support responded with a reminder of the terms of HM's service contracts, which govern the use of points, and no further communication has occurred since then.

SCHEDULE 5.19Employee BenefitsSchedule 5.19(a)

1. Following a 30-day waiting period, each eligible employee of HM has the opportunity to participate in the following employee benefits:
 - a. Paid time off (“**PTO**”): PTO is a combined paid leave benefit that covers vacation and sick days and may be used for any reason.
 - i. Level 1
 1. Full-time A employees are required to work 40 hours per week to be eligible for PTO. If hours are between 35 and 40 per week, it is optional for an employee to use PTO to make sure such employee has 40 hours each week. PTO hours will automatically be used to bring an employee’s hours to 40 per week if they fall below 35 hours per week. Working less than 30 hours per week will cause a probationary period for all benefits and reevaluation period with no PTO accrual until this period is over.
 2. Full-time B employees scheduled to work less than 40 but more than 30 hours, regular part-time and temporary employees or consultant/interns are not eligible for PTO.
 3. Full-time C employees (new or seasonal) have a 90-day evaluation period from hire date before benefits are determined and offered.
 4. PTO Accrual:

Year	Monthly Accrual (per month)	Days per Year	Maximum Accrual	Max Carry Over
Year 1	5.33 hours	8 days	6 days - 48 hrs.	32 hrs.
Year 2	6.67 hours	10 days	8 days - 64 hrs.	40 hrs.
Year 3	8.00 hours	12 days	10 days - 88 hrs.	48 hrs.
Year 4	9.33 hours	14 days	12 days - 104 hrs.	56 hrs.
Year 5	10.67 hours	16 days	14 days - 120 hrs.	64 hrs.

5. Once an employee reaches the Maximum Accrual days indicated in the table above, PTO stops accruing. The employee will be required to use some of the employee’s PTO time in order to start accruing PTO hours again.

6. Up to 50% of accrued Days Per Year at the end of the current year may be rolled to the next calendar year, but the same restrictions apply for Maximum Accrual.
7. Monthly Accrual amounts will change with payroll after the anniversary of the actual first day of Full-Time A employment.

ii. Level 2

1. Full-time Level 2 employees are required to work 40 hours per week to be eligible for PTO. PTO hours begin accruing immediately at hire date.
2. Regular part-time and temporary employees or consultants are not eligible for PTO.
3. PTO Accrual:

Year	Monthly Accrual (per month)	Days per Year	Maximum Accrual	Max Carry Over
Year 1	6.67 hours	10 days	8 days - 64 hrs.	40 hrs.
Year 2	8.67 hours	13 days	11 days - 88 hrs.	52 hrs.
Year 3	10.67 hours	16 days	14 days - 112 hrs.	64 hrs.
Year 4	12.67 hours	19 days	17 days - 136 hrs.	76 hrs.
Year 5	14.00 hours	21 days	19 days - 152 hrs.	84 hrs.

4. Once an employee reaches the Maximum Accrual days indicated in the table above, PTO will stop accruing. The employee will be required to use some of the employee's PTO time in order to start accruing PTO hours again.
 5. Up to 50% of accrued Days Per Year at the end of the current year may be rolled to the next calendar year, but the same restrictions apply for Maximum Accrual.
 6. Monthly Accrual amounts will change with payroll after the anniversary of the actual first day of Full-Time Level 2 employment.
- b. Holidays: New Year's Day, Civil Rights Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, Christmas Eve (half day) and Christmas (available for all full-time employees working 35 hours or more per week)

- c. Group health, dental, vision, disability, and life insurance, HSA, and FSA: Level 2 employees who choose to waive insurance coverage are offered a \$100 per month stipend in place of what HM would have paid in premiums for their insurance coverage. Contributions by HM to employee health plans are capped at \$500 per month, and all plans require some participation by the employee.
- d. 401(k) retirement plan
2. A special employee discount on HM products is available for all current employees, their spouses, and children living in their homes. In addition, HM employees receive a \$30 credit each month to spend towards personal publishing. Such credit can be redeemed at the employee-pricing rate. Any costs or purchases above the \$30 credit are charged at the employee-pricing rate. Employees are not allowed to carry over points from one month to the next. Special exception has been given to department head employees who may carry points over for up to three months. As part of her benefits package, Patti Gardner does not have to pay for personal publishing.
3. Employees are reimbursed at a rate of \$0.52 per mile for work-related travel.
4. The following employees receive the monthly cell phone and internet reimbursements indicated below:

<u>Name</u>	<u>Cell Phone Reimbursement</u>	<u>Internet Reimbursement</u>
Patti Gardner	\$100	\$40
Brytt Cloward	\$100	\$40
Ryan Harper	\$80	\$40
Don Lenhof	\$40	
Suzy Berg	\$40	
Bryndi Cloward	\$40	

5. Wendy McGee receives a \$750 car allowance each month that she qualifies as a Diamond Executive.
6. See Schedule 5.20(a), items 1 and 2.

SCHEDULE 5.20

Labor and Employment Matters

Schedule 5.20(a)

1. Employee Compensation:

CONFIDENTIAL INFORMATION REDACTED			

The employees listed above may also be eligible to receive an annual bonus based on the achievement of HM's objectives.

2. In general, the HM consultant compensation plan is designed to pay out approximately 45% compensation on sales volume. This includes a 2-3% host reward program and a 3-5% TAC program. Bonuses and commissions alone have been averaging approximately 38% over the last 12 months. The HM consultant compensation plan consists of a primary bonus, secondary bonus, and team building bonus. Secondary bonuses are commission bonuses and are paid bi-monthly. The other bonuses are paid once per month. Additional details are set forth in the HM Compensation Guide for consultants.

3. See Schedule 5.19(a), items 1-4.

SCHEDULE 5.22

Insurance

Business Owners Policy, Sentinel Insurance Company, Limited, policy # 34 SBA
PN1682 SC.

SCHEDULE 5.23

Product Warranty

HM offers the Heirloom Assurance product warranty, which allows any customer the chance to buy a replacement of a damaged product at half the current retail price.

SCHEDULE 5.25

Suppliers and Customers

Substantially all HM product orders are fulfilled by ZenPrint, LLC.

SCHEDULE 5.26

Consultants

Consultants join and leave the Business each month in varying numbers.

SCHEDULE 5.27

Bank Accounts

1. HM has bank accounts at Zions Bank and Bank of American Fork.
2. Chris Lee, Patti Gardner, and Don Vance have access to HM's bank accounts.

SCHEDULE 5.30

Arms-Length Transactions

1. Chris Lee is a board member of ZenPrint, LLC and owns a minor ownership interest in such entity.
2. See Schedule 5.17(a), items 10 and 24.

SCHEDULE 5.31

Solvency

None.

SCHEDULE 7.7(d)

Employees – Paid Time Off

As of August 13, 2013

Employee

CONFIDENTIAL INFORMATION REDACTED

PTO

CONFIDENTIAL INFORMATION REDACTED

EXHIBIT I

1 Peter A. Arhangelsky, Esq. (SBN 291325)
 2 parhangelsky@emord.com
 3 Jonathan W. Emord (pro hac vice)
 4 jemord@emord.com
 5 Eric J. Awerbuch (pro hac vice)
 6 eawerbuch@emord.com
 7 Emord & Associates, P.C.
 8 3210 S. Gilbert Road, Suite 4
 9 Chandler, AZ 85286
 10 Phone: (602) 388-8899
 11 Fax: (602) 393-4361
 12 Attorneys for Plaintiffs

13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 YOUNGVEVITY INTERNATIONAL
 16 CORP. et al.,

17 Plaintiff,

18 v.

19 TODD SMITH, et al.

20 Defendants.

Case No.: 16-CV-704 W (JLB)

**DECLARATION OF RICHARD
 RENTON**

DECLARATION OF RICHARD RENTON

23 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
 24 following is true and correct:

25 1. I, Richard Renton, am over the age of 18 and competent to testify to
 26 the information below. All matters contained herein are of my own personal
 27 knowledge unless stated as based upon information and belief.

28 DECLARATION OF RICHARD RENTON

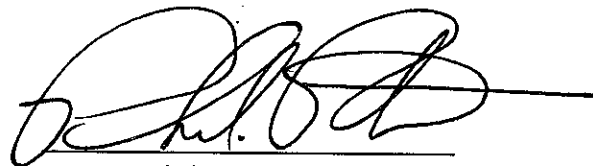
1 2. I work as an Independent Distributor for Youngevity International
2 Corp. ("Youngevity") and serve on Youngevity's Board of Directors.

3 3. I reside at 12692 Washougal River Rd., Washougal, WA 98671.

4 4. I manage the Atom Frames College Fund, which is a Youngevity
5 downline.

6 5. On or about March 26, 2016, I received a post-card from Total
7 Nutrition Team addressed to Atom Frame College Fund at my home address in
8 Washougal River Road. A true and correct copy of that postcard is attached hereto
9 as Attachment 1.

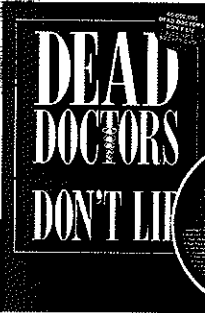
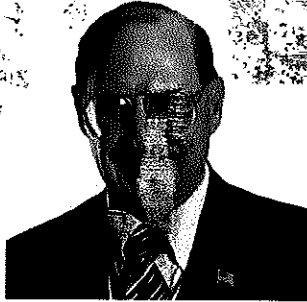
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12 Executed on this 10 day of June, 2016.

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Richard Renton

Attachment 1 to Exh. I

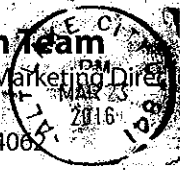
You are important to us!



We are crusaders with Dr. Joel Wallach to spread his powerful message and to help others improve their health. Our team is here to assist you with product questions or orders. If you are interested in becoming a crusader for health, we can help! Call our office anytime, Mon/Wed/Fri 9am-5pm (MST).

Total Nutrition Team 800-925-5224
totalnutritionhealth@gmail.com

Total Nutrition Team
Diamond Chairman, Marketing Director
872 North 2000 West
Pleasant Grove, UT 84062



Download our **FREE Health Survey** under "Resources" on www.wallachonline.com

Just a quick note to let you know that we are having a **special in-house promotion!**

You can receive **30% off** of your **entire order!**

All walk in & will call orders have no shipping!

There will be no QV or BV, however...
mention this post card & receive a FREE CDI

Atom Frames College Fund
12692 Washougal River Rd
WASHOUGAL, WA 98671

EXHIBIT J

1 Peter A. Arhangelsky, Esq. (SBN 291325)
 parhangelsky@emord.com
 2 Jonathan W. Emord (pro hac vice)
 jemord@emord.com
 3 Eric J. Awerbuch (pro hac vice)
 4 eawerbuch@emord.com
 5 Emord & Associates, P.C.
 3210 S. Gilbert Road, Suite 4
 6 Chandler, AZ 85286
 7 Phone: (602) 388-8899
 8 Fax: (602) 393-4361
 Attorneys for Plaintiffs

9
 10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
 12

13 YOUNGEVITY INTERNATIONAL
 14 CORP. et al.,

15 Plaintiff,

16 v.

17 TODD SMITH, et al.

18 Defendants.
 19

Case No.: 16-CV-704 W (JLB)

**DECLARATION OF LEIA
 ANDERSON**

20
 21 **DECLARATION OF LEIA ANDERSON**
 22

23 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
 24 following is true and correct:

25 1. I, Leia Anderson, am over the age of 18 and competent to testify to
 26 the information below. All matters contained herein are of my own personal
 27 knowledge unless stated as based upon information and belief.

28 **DECLARATION OF LEIA ANDERSON**

1 2. I work as a distributor for Youngevity International Corp.
2 (“Youngevity”). I reside in Bluffdale, Utah.

3 3. As a distributor for Youngevity, I frequently attend events with other
4 Youngevity distributors and individuals interested in Youngevity products. For
5 example, Youngevity distributors and employees in Utah hosted Dr. Joel Wallach,
6 Youngevity’s founder, at a Youngevity event in Salt Lake City, Utah in March,
7 2016.

8 4. At the Salt Lake City event, I met Dr. Shane Harada. Dr. Harada is a
9 chiropractor and distributor for Youngevity. Dr. Harada informed me that he
10 would be hosting classes for Youngevity distributors and customers at his new
11 office located at the headquarters of Total Nutrition, Inc. (“TNT”), in Pleasant
12 Grove, Utah to discuss his recommended ketogenic diet and Youngevity products.

13 5. I attended Dr. Harada’s class on May 17th, 2016, at 7:30 P.M. at TNT
14 headquarters in Pleasant Grove, Utah. Wakaya distributor Blake Graham was
15 present at that meeting. During that meeting, Graham promoted Great American
16 Clay products which are sold by Wakaya Perfection, LLC.

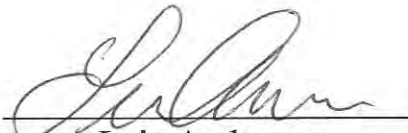
17 6. After Dr. Harada’s class concluded, I saw a poster on the wall with
18 images of certain YTeam Tools. YTeam Tools are media items, such as CDs,
19 flyers, and pamphlets, which TNT sells to Youngevity distributors to help promote
20 Youngevity. Blake Graham then asked me if I was aware of the new tools
21 produced by TNT. I said I was not, and he gave me copies of the new tools.

22 7. Exhibit A is a true and correct image of one of the new tools Blake
23 Graham gave me on May 17, 2016. That tool is a pamphlet entitled “Beyond
24 Cerial Killers.” *See* Exh. A. That back cover of the pamphlet includes Dr.
25 Wallach’s image, name, and a short biography. *Id.* That pamphlet is copyrighted
26 “2016 YTeamTools.com.” *Id.*

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8. Exhibit B is a true and correct image of one of the new tools Blake Graham gave me on May 17, 2017. That tool is a CD entitled "REFINER'S FIRE." *See* Exh. B. That pamphlet is copyrighted "2016 YteamTools.com." *Id.*

Executed on this 10 day of June, 2016.

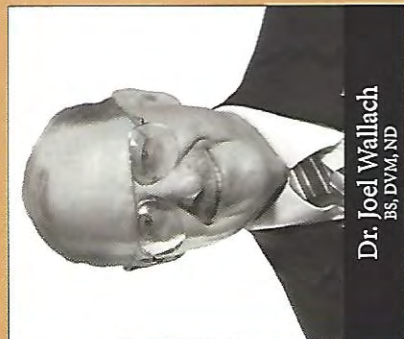


Leia Anderson

Attachment 1 to Exhibit J

(identified in Exhibit J as Exhibit A)

Dr. Joel D. Wallach, a veterinarian and physician was elected as the lead scientist on a 13 year government study comparing the health of animals and people. After 20,000 autopsies, Dr. Wallach learned that the same nutritional deficiencies would cause the same diseases ACROSS SPECIES LINES, and that there are 900 different diseases that are linked to nutritional deficiencies. Dr. Wallach has been published over 70 times in scientific and medical journals. The author of 14 books and the world famous *Dead Doctors Don't Lie* CD which has sold over 200 million copies, Dr. Wallach continues to travel the world over 300 days a year giving free health lectures to help people learn that reversing diseases and obtaining optimal health is possible.



Dr. Joel Wallach
DVM, ND

In this interview, Dr. Wallach explains how digestion works and what damages digestion. Have you ever wondered how it's possible to have multiple diseases or symptoms at the same time that seem unrelated to each other? Or why we are getting sicker and sicker as a nation and would? Dr. Wallach answers these questions and many more including:

- What Causes Heartburn & Acid Reflux?
- Is Vegetarianism Healthy?
- What is the Appendix For?
- Cholesterol & Salt: Dangerous or Essential?
- What is Gluten Intolerance?
- Are Cooking Oils Safe?
- Can Damaged Intestines Heal?
- Are Raw Veggies & Fiber Healthy?
- What about GMOs?

Beyond Cerial Killers

By Dr. Wallach

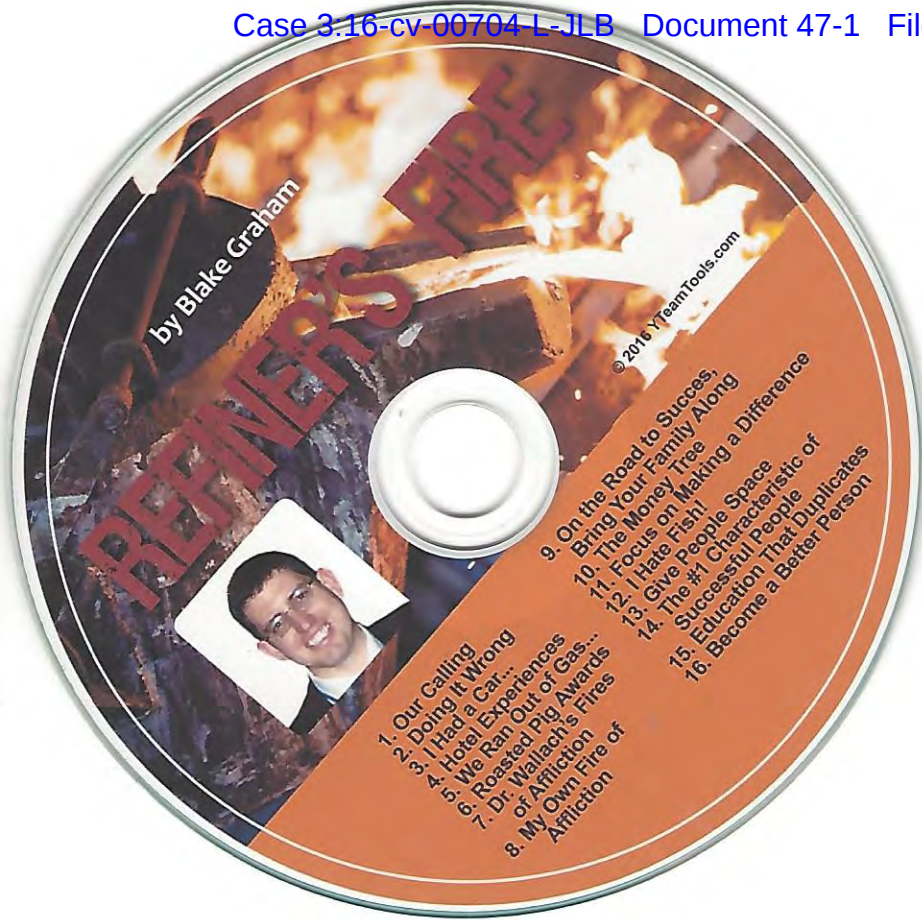


You Are What You Absorb!



Attachment 2 to Exhibit J

(identified in Exhibit J as Exhibit B)



by Blake Graham

REFINER'S FIRE



© 2016 TeamTools.com

1. Our Calling
2. Doing It Wrong
3. I Had a Car...
4. Hotel Experiences
5. We Ran Out of Gas...
6. Dr. Wallach's Fires of Affliction
7. My Own Fire of Affliction
- 8.
9. On the Road to Success, Bring Your Family Along
10. The Money Tree
11. I Hate Fish!
12. Give People Space
13. The #1 Characteristic of Successful People
14. Education That Duplicates
15. Become a Better Person
- 16.

EXHIBIT K

1 Peter A. Arhangelsky, Esq. (SBN 291325)
 parhangelsky@emord.com
 2 Jonathan W. Emord (pro hac vice)
 jemord@emord.com
 3 Eric J. Awerbuch (pro hac vice)
 4 eawerbuch@emord.com
 5 Emord & Associates, P.C.
 3210 S. Gilbert Road, Suite 4
 6 Chandler, AZ 85286
 7 Phone: (602) 388-8899
 Fax: (602) 393-4361
 8 Attorneys for Plaintiffs
 9

10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
 12

13 YOUNGEVITY INTERNATIONAL
 14 CORP. et al.,

15 Plaintiff,

16 v.

17 TODD SMITH, et al.

18 Defendants.
 19
 20

Case No.: 16-CV-704 W (JLB)

**DECLARATION OF JOEL D.
 WALLACH**

21 **DECLARATION OF JOEL D. WALLACH**
 22

23 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
 24 following is true and correct:

25 1. I, Joel D. Wallach, BS, DVM, ND, am over the age of 18 and
 26 competent to testify concerning the matters presented in this declaration. All
 27
 28

1 matters contained herein are of my own personal knowledge unless stated as based
2 upon information and belief.

3 2. I am one of the plaintiffs in the above-captioned action.

4 3. I have been actively involved with biomedical research, comparative
5 pathology, veterinary medicine, and clinical medicine for more than 50 years. My
6 research has resulted in the publication of the book entitled Diseases of Exotic
7 Animals (recommended by the Smithsonian Institute) and more than seventy (70)
8 peer-reviewed and refereed journal articles in diverse fields including veterinary
9 medicine, veterinary pathology, comparative pathology, nutrition, and
10 pharmaceutical research.

11 4. In 1997 I founded American Longevity Corporation, which, in 2006,
12 became Youngevity International Corp. (“Youngevity”), a publicly traded
13 company, the other plaintiff in the above-captioned matter.

14 5. On May 18, 2016, I gave a lecture in Tennessee. After my lecture, an
15 individual approached me and presented me with what appeared to be a bottle of
16 Youngevity Ultimate Daily Tablets. True and correct images of the label of that
17 bottle are attached hereto in Attachment 1. After further inspection, I saw that the
18 label on that Ultimate Daily Tablets contained mostly Japanese content, was not an
19 authorized Youngevity product, and contained TNT’s address: 872 N. 2000 W,
20 Pleasant Grove, UT 84062.

21 6. Youngevity sells Ultimate Daily Tablets. A true and correct copy of
22 an example of the authorized Youngevity Ultimate Daily Tablets label is attached
23 hereto as Attachment 2.


24 7. I understand that the Japanese labeled Ultimate Daily Tablets is an
25 unauthorized version of the Youngevity Ultimate Daily Tablets. I further
26 understand that TNT sells the unauthorized version of the Ultimate Daily Tablets
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DECLARATION OF JOEL D. WALLACH

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to Youngevity consumers when those Youngevity consumers purchase Youngevity Ultimate Daily Tablets from TNT.

Executed on this 11 day of June, 2016.


Joel D. Wallach

DECLARATION OF JOEL D. WALLACH

Attachment 1 to Exh. K



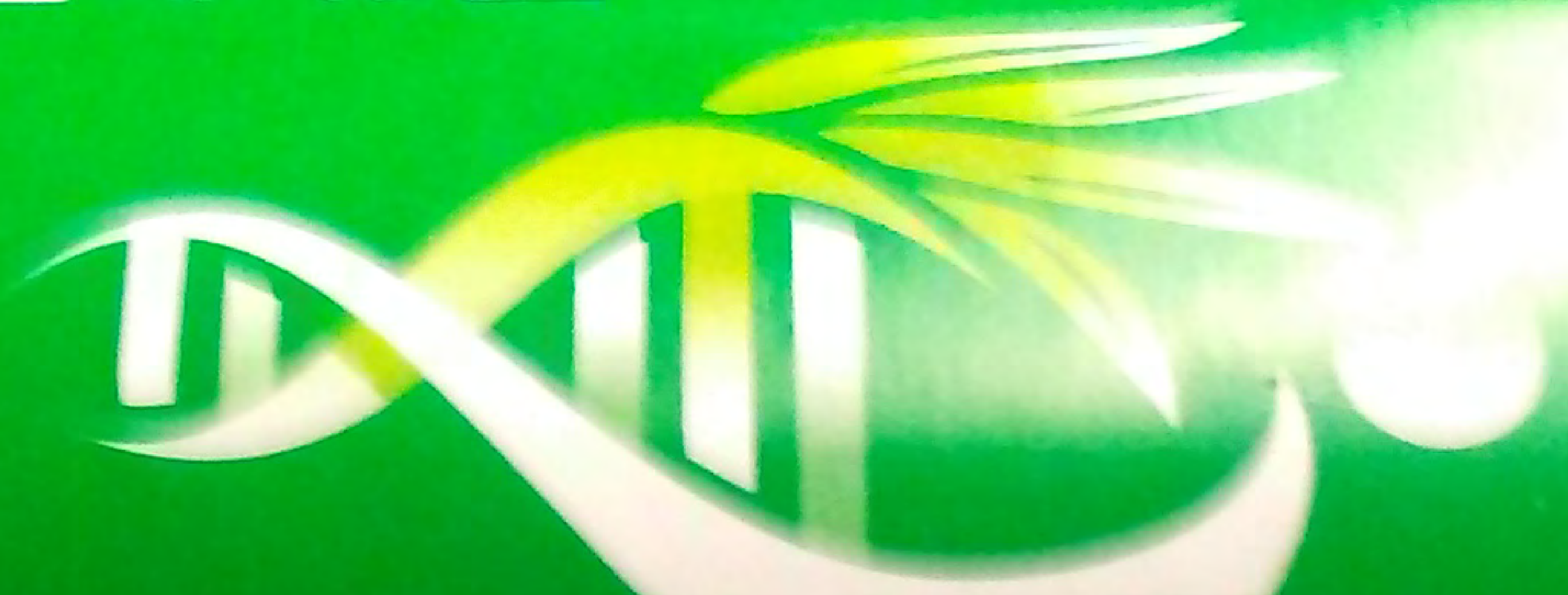
この製品は、特定の疾患を診断、治療、予防するものではありません。

原産国名：米国

輸入者：Engevity USA

872 N 2000 W, Pleasant Grove, UT 84062

栄養補助食品
DIETARY SUPPLEMENT
内容量：240粒



ULTIMATE

DAILY

デイリー

成分表	
成分名	含有量
ビタミンC	100%
ビタミンE	100%
ビタミンB1	100%
ビタミンB2	100%
ビタミンB6	100%
ビタミンB12	100%
ビタミンD	100%
ビタミンK	100%
カルシウム	100%
マグネシウム	100%
亜鉛	100%
セレン	100%
コエンザイムQ10	100%
グルタチオン	100%
リコリン酸	100%
クエン酸	100%
シトルリン	100%
アミノ酸	100%
その他	100%

xville, TN

Bro
a fema

865
2005-06

Attachment 2 to Exh. K



EXHIBIT L

From: Jonny Steele [REDACTED]
Sent: Wednesday, March 30, 2016 1:27 PM
To: Steve Wallach
Cc: Samuel Steele
Subject: Distributor tools

Hello Steve,

As per our conversation, I do hope we can schedule an event in Phoenix. Our group expressed a lot of interest.

We are looking forward to the summit.

I spoke with doc a few times about this next topic. I need your input. Sam and I were and still am in shock about Todd and Blake leaving Youngevity. They have been a good upline until recently. Now, we have a lot of concerns regarding the tools that we and our downline have been using since we started.

yteamtools.com and wallachonline.com with all the tools they sell and webinars that they do, we have been promoting them to our downline and they have become accustomed to utilizing those tools to promote their Youngevity businesses.

We feel like those sites could be either a huge asset to our downline or a huge liability if used in the wrong way. Our number one priority is to promote doc's message to the masses. We feel like the best thing to do with the tools and webinars is to take them over and get Blake and Todd out of the picture completely so they can have no influence over our downline and so that the sites can be used for our purpose only, which is to build Youngevity and Doc's good name. We have met with the developer and partner of the sites and have some ideas to have Todd and Blake agree to sign over the rights to the tools and sites so we can continue to make them available to our downline and cut off all ties to them.

1. If Todd and Blake continue to operate wallachonline and yteamtools, they will have the potential to negatively affect our downline and our livelihood.
2. Those sites put Todd and Blake in constant contact with our and your Youngevity distributors.
3. The damage can be devastating and long term, even if they continue to operate for only a couple more weeks let alone for the next few months or years.
4. If Sam and I can successfully take control over these sites, we can turn this liability into a huge asset for Youngevity.
5. Because of the pending lawsuits and whatever else between Youngevity and Todd/Blake, we do not want to do ANYTHING without your advice.
6. Time is of the essence, and we can make an attempt to settle this matter with the site developer/partner and Todd and Blake rather quickly if we knew that you would let us continue to operate wallachonline and yteamtools to promote doc's lectures and audios and continue to put quality tools in the hands of our distributors.
7. We would cut Todd and Blake off completely and we would remove them from any of the audio or print material existing.

8. I don't understand everything that is going on with the ordeal with Todd and Blake, but we know that they have already been advertising to our downline to get products directly from their office without shipping, etc, and none of the volume is getting posted. Although they claim they have submitted the orders, and Ygy just isn't processing them.

9. Also, Blake is obviously trying to paint the picture that Youngevity is in the wrong and he is being mistreated. This is reaching our downline and already affecting them by making them question Youngevity's integrity. WE MUST STEP UP and paint the true picture that Todd and Blake left us, they chose to leave, and that WE are not going anywhere because Youngevity is our home.

If Sam and I are successful in taking over and controlling wallachonline and yteamtools, and if Blake and Todd are cut off from it completely, will Youngevity support its continued operation?

Thank you,

Jonny Steele

A black rectangular redaction box covering the signature area.