

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

DEFENDANT: MONAVIE LLC, a Delaware limited liability company, MONAVIE
DEMANDADO): liability company, MONAVIE
IGS INTERNATIONAL, LLC, a Utah limited liability
ny, MONAVIE EXPORTING, INC., a Utah corporation,
VIE AS, LLC, a Utah limited liability company,
Does 1-50, Inclusive,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUN 15 2010
ALAN CARLSON, Clerk of the Court
BY: S. HERRERA-WILSON, DEPUTY

YOU ARE BEING SUED BY PLAINTIFF: XOWII, LLC, a
(LO ESTÁ DEMANDANDO EL DEMANDANTE): California limited liability company,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA-COUNTY OF ORANGE
700 CIVIC CENTER DRIVE WEST
700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701

CASE NUMBER: **20381173**
(Número del Caso): **C-10**

Tam Nomoto Schumann

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

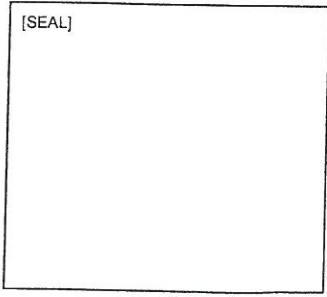
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
SCOTT W. WELLMAN SBN: 82897 (949) 580-3737 (949) 580-3738
DEREK BANDUCCI SBN: 252124

WELLMAN & WARREN LLP
24411 RIDGE ROUTE, SUITE 200, LAGUNA HILLS, CA 92653
DATE: **JUN 15 2010** **ALAN CARLSON** Clerk, by **SONYA HERRERA-WILSON**, Deputy
(Fecha) **JUN 15 2010** (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
SCOTT W. WELLMAN SBN:82897
DEREK BANDUCCI SBN:252124
WELLMAN & WARREN LLP
24411 RIDGE ROUTE, SUITE 200
LAGUNA HILLS, CA 92653
TELEPHONE NO.: (949) 580-3737 FAX NO.: (949) 580-3738
ATTORNEY FOR (Name): PLAINTIFF XOWII, LLC

FOR COURT USE ONLY
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUN 15 2010
ALAN CARLSON, Clerk of the Court
BY: S. HERRERA-WILSON, DEPUTY
30-2010

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 CIVIC CENTER DRIVE WEST
MAILING ADDRESS: 700 CIVIC CENTER DRIVE WEST
CITY AND ZIP CODE: SANTA ANA, CA 92701
BRANCH NAME: CENTRAL JUSTICE CENTER

CASE NAME: XOWII, LLC V. MONAVIE LLC

CASE NUMBER: 00581173
JUDGE: Tam Nomoto Schumann C-10

COPY

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: JUNE 10, 2010
SCOTT W. WELLMAN SBN:82897
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 15 2010

ALAN CARLSON, Clerk of the Court

BY: S. HERRERA-WILSON, DEPUTY

1 Scott W. Wellman, SBN: 82897
2 Derek Banducci, SBN: 252124
3 **WELLMAN & WARREN LLP**
4 24411 Ridge Route, Suite 200
5 Laguna Hills, CA 92653
6 Tel: (949) 580-3737
7 Fax: (949) 580-3738

8 Attorneys for Plaintiff XOWII, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

30-2010
00381173

11 XOWII, LLC, a California limited liability
12 company,

Case No.:

13 Plaintiff,

Judge:

Tam Nomoto Schumann

14 v.

Dept.:

0-10

15 MONAVIE LLC, a Delaware limited liability
16 company, MONAVIE HOLDINGS
17 INTERNATIONAL, LLC, a Utah limited liability
18 company, MONAVIE EXPORTING, INC., a
19 Utah corporation, MONAVIE AS, LLC, a Utah
20 limited liability company, and Does 1-50,
21 Inclusive,

COMPLAINT FOR:

22 Defendants.

- 23 1. INTENTIONAL INTERFERENCE
24 WITH PROSPECTIVE ECONOMIC
25 ADVANTAGE;
- 26 2. NEGLIGENT INTERFERENCE WITH
27 PROSPECTIVE ECONOMIC
28 ADVANTAGE;
3. DEFAMATION;
4. TRADE LIBEL;
5. FALSE ADVERTISING IN
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500;
6. UNFAIR BUSINESS PRACTICES IN
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200

REQUEST FOR JURY TRIAL

29 Plaintiff XOWII, LLC, (hereinafter referred to as "Plaintiff" or "Xowii") hereby states and
30 alleges as follows:

COPY

THE PARTIES

1
2 1. Plaintiff Xowii was and is, at all relevant times herein mentioned, a limited liability
3 company doing business in the County of Orange, State of California.

4 2. Defendant MONAVIE LLC (“Monavie LLC”) was and is, at all relevant times herein
5 mentioned, a company formed under the laws of the state of Delaware, with its corporate headquarters
6 in the state Utah.

7
8 3. Defendant MONAVIE HOLDINGS INTERNATIONAL, LLC (“Monavie Holdings”)
9 was and is, at all relevant times herein mentioned, a limited liability company formed under the laws
10 of the state of Utah and an affiliate of Monavie LLC.

11 4. Defendant MONAVIE EXPORTING, INC. (“Monavie Exporting”) was and is, at all
12 relevant times herein mentioned, a corporation formed under the laws of the state of Utah and an
13 affiliate of Monavie LLC.

14
15 5. Defendant MONAVIE AS, LLC (“Monavie AS”) was and is, at all relevant times
16 herein mentioned, a limited liability company formed under the laws of the state of Utah and an
17 affiliate of Monavie LLC.

18
19 6. Monavie LLC, Monavie Exporting, Monavie Holdings, and Monavie AS are
20 collectively referred to throughout this lawsuit as “Monavie.” It is impossible to distinguish the acts of
21 one Monavie entity from the acts of another Monavie entity because they all share common managers,
22 directors, shareholders, members, and registered agents for service of process. They also all operate
23 out of the same office at 10855 S. River Front Pkwy, Suite 100 in South Jordan, Utah. Each of these
24 entities is vicariously liable for the acts of the other entities under theories of civil conspiracy, alter
25 ego, and respondeat superior.

26
27 7. The true names and capacities of those individuals and entities sued as Does 1 through
28

1 50 are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff
2 will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
3 informed and believes that each of these Defendants is an agent and employee of each of the other
4 Defendants, and proximately caused Plaintiff's damages as herein alleged while acting in such
5 capacity.

6
7 8. Each Defendant is the agent of the other Defendant such that the wrongful acts of each
8 Defendant are imputed to every other Defendant.

9 **JURISDICTION AND VENUE**

10 9. Monavie consented to jurisdiction in California because Monavie LLC is registered
11 with the California Secretary of State as a foreign company doing business in the state of California.

12
13 10. This Court has jurisdiction over Monavie because it is doing a substantial amount of
14 business in the County of Orange, State of California:

- 15 A. Monavie employs independent distributors who live and work in the County of
16 Orange, State of California;
17
18 B. Monavie rented office space in California and continues to rent such space;
19
20 C. Monavie ships and sells product to consumers who live and work in the County of
21 Orange, State of California;
22
23 D. Monavie licenses their products to a company called R3Global that sells Monavie
24 products in California; and
25
26 E. Monavie has a website, monavie.com, that is directed to California residents and
27 which solicits business from California residents.

28 11. Venue is proper in the County of Orange, State of California because most of the
events alleged herein were directed at people who live and work in this venue.

1 12. Venue is proper in the County of Orange, State of California because Xowii is a
2 company that is doing business in the County of Orange, State of California.

3 **XOWII AND MONVIE'S NETWORK MARKETING BUSINESSES**

4 13. Xowii is a startup company that currently sells a line of health beverages which contain
5 the coffee fruit and other fruits and berries.

6 14. Monavie is a well established company that sells health beverages which contain the
7 açai berry and other fruits and berries.

8 15. Plaintiff and Defendant are each commonly referred to as "network marketing" or
9 "multi-level marketing" or "MLM" companies because of the way they sell their products through
10 independent distributors. Other well known multi-level marketing companies include Amway and
11 Herbalife.
12

13 16. As network marketing companies, Xowii and Monavie sell their products through
14 independent distributors who earn commissions based on the volume of product which each
15 independent distributor sells. Xowii and Monavie also pay commissions to their independent
16 distributors based on the volume of product which is sold by each independent distributor's
17 "downline." An independent distributor's "downline" consists of persons who are recruited by that
18 independent distributor, either directly or indirectly, to sell the company's product. Similarly, an
19 independent distributor's "upline" consists of the persons who recruited that independent distributor,
20 either directly or indirectly.
21
22

23 17. Monavie is attempting to destroy Xowii through unfair and deceptive business
24 practices.
25

26 **MONAVIE'S EFFORTS TO DISRUPT XOWII'S BUSINESS**

27 1. Todd Hartog's Deceptive Statements On Behalf Of Monavie

1 18. Todd Hartog (“Hartog”) is a “Black Diamond” distributor for Monavie.

2 19. “Black Diamond” distributors are the highest level of independent distributor at
3 Monavie, meaning they have the biggest downlines, are responsible for selling a tremendous amount
4 of product for Monavie, and allegedly consist of less than two percent (2%) of the total Monavie
5 distributor force, estimated to exceed one million (1,000,000) distributors worldwide.
6

7 20. Black Diamond distributors such as Hartog work very closely with Monavie executives
8 and management, and are assigned personal staff by Monavie. Those personal staff assistants’ salaries
9 are solely paid for by Monavie. Despite being called independent distributors, Black Diamond
10 distributors such as Hartog are, in reality, high ranking executives at Monavie who are authorized by
11 Monavie to act on its behalf.
12

13 21. On November 24, 2009 at 7:25am, Hartog sent an e-mail to Rudy de Leon (“de Leon”),
14 an independent distributor for Xowii, falsely claiming that:

15 Our research team contacted Ball [a Xowii vendor]. They confirmed that
16 Crystalline fructose is from corn syrup! ... I sleep like a baby knowing we have
17 a health products. Can u honestly say the same. Ask any dr. Or Dentist. Call a
18 Oncology Dr he deals with Cancers.
19

20 22. Hartog was acting on Monavie’s behalf when he made this false and misleading
21 statement which implies that Xowii’s products cause cancer. Hartog was intending to disrupt Xowii’s
22 relationships with its independent distributors by making this false and misleading statement.
23 Independent distributors of health beverages are extremely sensitive to false claims such as these. The
24 slightest suggestion that one of Xowii’s products may cause health problems, especially cancer, is
25 extremely damaging to a company such as Xowii.
26

27 23. On December 4, 2009 at 5:40pm, Hartog sent another e-mail to de Leon falsely
28

1 claiming that:

2 [S]tevia(your last ingredient) linked to cancer and cause reproductive problems

3 Thank god for goo product liability insurance.

4 24. Hartog was acting on Monavie's behalf when he made this false and misleading
5 statement, again implying that Xowii's products cause cancer. Hartog was intending to disrupt
6 Xowii's relationships with its independent distributors by making this false and misleading statement.

7
8 25. As a result of these false and misleading statements by Hartog which wrongly imply
9 that Xowii's products cause cancer, Xowii had to reformulate its product because MLM distributors
10 are very sensitive to health claims such as these, even when such claims have absolutely no basis in
11 fact. It cost Xowii more than several hundred thousand dollars to reformulate its products and reassure
12 its distributors that its products do not cause cancer, contrary to Monavie's false allegations.

13
14 26. On March 4, 2010 at 6:17pm, Hartog falsely advertised on Facebook.com that a Black
15 Diamond distributor at Monavie, Kelly Bangert ("Bangert"), "made \$4 million in 30 months building
16 Monavie and you can too."

17
18 27. Hartog was acting on Monavie's behalf when he made this false and misleading
19 income statement. Hartog was intending to recruit independent distributors for Monavie with promises
20 of rich rewards when he made this false and misleading statement. The distributors who Hartog was
21 trying to recruit are the same distributors who Xowii was trying to recruit to sell its competing
22 products.

23 2. Monavie's False Statements To Phil Sack

24
25 28. Up until January 2010, Phil Sack ("Sack") was a Black Diamond distributor for
26 Monavie.

27 29. As of January 2010, as a Black Diamond distributor at Monavie, Sack and his wife

1 were earning more than \$15,000 per week in commissions from Monavie for their sales of Monavie
2 products.

3 30. In late 2009 and early 2010, Xowii and Sack and his wife were in discussions regarding
4 a potential business relationship, whereby Sack and his wife would sell XOWii products.

5 31. Upon learning of the imminent business relationship between XOWii and Sack, on or
6 about January 11, 2010, Henry Marsh (“Marsh”), who is identified in various Monavie marketing
7 materials as a founder, vice president and vice chairman of Monavie, left a voice mail message for
8 Sack, on behalf of Monavie, saying in relevant part as follows:
9

10 Be careful, just be careful, Xowii’s not going to last. I know too much about
11 what’s going on over there and it’ll be your last network marketing experience
12 I’m confident because it’s going to die and when it does you’ll probably be so
13 fed up with network marketing that you won’t do anything else. ... just watch
14 your P’s and Q’s closely.

15 32. Contrary to his false statement, Marsh does not “know too much about what’s going
16 on” at Xowii. In fact, despite his misrepresentations, Marsh does not have any inside information
17 about what is going on at Xowii. Marsh made this misleading statement in an effort to dissuade Sack
18 and his wife from becoming independent distributors for Xowii.

19 33. Later, in a telephone conversation on or about January 27-28, 2010 between Sack and
20 Dallin Larsen (“Larsen”), the CEO of Monavie, Larsen falsely said to Sack that Xowii is “a waste of
21 time” and also that the President and Co-Founder of Xowii, James Christiansen (“Christiansen”), “is
22 an idiot.”

23 3. Monavie’s false statements to Diego Picón

24 34. On February 9, 2010, Danny Licciardi (“Licciardi”), who is a “Blue Diamond
25 Executive” at Monavie, initiated a conversation on Facebook.com with a Xowii distributor, Diego
26 Picón (“Picón”). When he initiated the conversation, Licciardi tried to recruit Picón away from Xowii
27
28

1 by falsely stating that Monavie is a two billion dollar company:

2 **Danny Licciardi** February 9 at 10:33am

3 Hi Diego, I noticed that you are looking in Xowii. Well i am one of the top
4 leaders with MonaVie. We are a 2 Billion \$ company and have already have
5 proven ourselves. If you would really like to partner up with a company that
6 you can really change your life and many more lives you need to look at
7
8 MonaVie.

9 We have great support for you in tampa and you will need support to be
10 successfull.

11 So if you would like to know more, let me know.

12 Thank You,

13
14 Danny Licciardi

15 35. Later in that same conversation, Licciardi falsely stated that Sack and his wife were
16 paid by Xowii to leave Monavie. The relevant part of the conversation went as follows:

17 **Diego Picón** February 9 at 5:08pm

18 hey do you know phil and jenny sack? heard that they were making a \$1 million
19 dollars with MV and they left to come to XOWii. Heard they are very good
20 leaders and all but i think they would be great with XOWii. do you know them?
21
22 wondering

23 **Danny Licciardi** February 9 at 5:20pm

24 yes i know them. they were paid from xowii to go there. Dont really know if
25 they were making a million. I would think if they were they would not have left
26
27 Monavie.

1 36. In that same conversation, Licciardi also falsely stated to Picón that “I know for a fact
2 that the pay for the leaders [at Xowii] has already declined.”

3 4. Monavie’s false statements about Xowii by Sherry Whitaker

4 37. Sherry Whitaker (“Whitaker”) is a high ranking distributor at Monavie who holds the
5 title of “Hawaiian Blue Diamond.”

6 38. On June 14, 2010, Whitaker sent an e-mail to a former Monavie distributor, and current
7 Xowii distributor, falsely stating, in relevant part, as follows:
8

9 [A]s for xowii, they are missing pay periods ... as from corporate about 5
10 minutes ago.

11 39. Whitaker was acting on behalf of Monavie when she made this false statement and,
12 contrary to the false statement, Xowii is not missing pay periods.
13

14 40. Whitaker’s reason for making this false statement was to attempt to induce the former
15 Monavie distributor, and current Xowii distributor, to come back to Monavie to sell Monavie products
16 instead of Xowii products.
17

18 **MONAVIE’S DECEPTIVE “OPEN DOOR CAMPAIGN”**

19 1. Monavie’s “Open Door” Policy

20 41. Monavie is currently engaged in hotly contested litigation with another multi-level
21 marketing company, Quixtar, which is a successor company to certain assets of Amway Corporation.

22 42. Quixtar contends that Monavie unlawfully interfered with its existing contractual
23 relationships by recruiting Quixtar distributors to sell Monavie products.
24

25 43. On or about April 2, 2008, in response to this lawsuit by Quixtar against Monavie,
26 Monavie launched a publicity campaign which it calls the “Open Door Campaign.” Monavie promotes
27 this campaign at the <http://blog.opendoorcampaign.com/> website.
28

1 44. In a press release dated April 2, 2008, Monavie stated, in part, as follows:

2 Monavie LLC (www.Monavie.com), creator of the leading nutritional acai
3 blend beverage, today announced the launch of a worldwide campaign: “The
4 Open Door — Network Marketing for the 21st Century.” The campaign calls on
5 direct sellers and network marketers to end any and all policies and procedures
6 that seek to bind their independent contractors with unfair and abusive non-
7 compete agreements.

8 Punitive lawsuits against distributors who choose to leave network marketing
9 companies have become a common tactic for a few companies within the
10 industry. The goal of these suits is to discourage healthy competition and to
11 impede distributors’ ability to make a living for themselves and their families.
12 Even distributors who have fulfilled demanding non-compete agreements have
13 been sued when they attempt to join another network marketing company years
14 later.

15

16 Monavie’s “The Open Door — Network Marketing for the 21st Century”
17 campaign is built upon the company’s belief that today’s network marketing
18 distributors deserve, as independent contractors, to be liberated from outdated,
19 abusive and generally unenforceable policies and procedures.

20

21 2. Monavie’s Failure To Adhere To Its “Open Door” Policy

22 45. Despite Monavie’s “Open Door Campaign,” it has a policy and practice of threatening
23 distributors if they decide to leave Monavie. Monavie also has a policy and practice of filing punitive
24 lawsuits against distributors who actually leave its company.

25 46. Monavie has filed punitive lawsuits against Christiansen, Rodney Robards, Shaylon
26 Hart, and Jeff Creamer, all of whom left Monavie to help sell products for Xowii.

27 47. Monavie threatened to file a punitive lawsuit against Bangert, who is a Black Diamond
28 distributor for Monavie who had agreed to leave Monavie and become a co-founder of Xowii.

48. Upon making his decision to join Xowii, Bangert sent a resignation letter to Marsh at
Monavie. A copy of this resignation letter is attached hereto as Exhibit “A.”

- 1 A. Larsen’s statements to Sack that “Xowii is a waste of time” and Christiansen “is an
2 idiot” are defamatory as alleged herein;
- 3 B. Marsh’s statement to Sack that “I know too much about what’s going on over [at
4 Xowii] ... [and] it’s going to die” is defamatory as alleged herein;
- 5 C. Whitaker’s statement to a former Monavie distributor and current Xowii distributor
6 that Xowii is “missing pay periods” is defamatory as alleged herein;
- 7
8 D. Monavie’s conduct is a deceptive trade practice in violation of Business and
9 Professions Code § 17200 because it does not follow the policies and practices set
10 forth in its own “Open Door Campaign”;
- 11 E. Monavie’s conduct violates Business and Professions Code § 17500 as alleged
12 herein;
- 13
14 F. Hartog’s claim, on behalf of Monavie, that Bangert “made \$4 million in 30 months
15 building Monavie and you can too” is a violation of 15 U.S.C. 41 *et seq.*;
- 16 G. Monavie’s conduct, as alleged herein, is an unlawful restraint on trade in violation
17 of California public policy;
- 18
19 H. Hartog’s statements on behalf of Monavie that Xowii’s products cause cancer
20 violates Business and Professions Code § 17200 as alleged herein;
- 21 I. Hartog’s statement that Bangert “made \$4 million in 30 months building Monavie
22 and you can too” violates Business and Professions Code § 17200 as alleged herein;
- 23
24 J. Hartog’s statements on behalf of Monavie that Xowii’s products cause cancer is
25 trade libel as alleged herein;
- 26
27 K. Danny Licciardi’s false claim to Diego Picón that Monavie is a \$2 billion company
28 violates Business and Professions Code §§ 17200 and 17500 as alleged herein;

1 L. Danny Licciardi's false statement to Diego Picón that Phil and Jenny Sack were
2 paid by Xowii to leave Monavie is defamatory and violates Business and
3 Professions Code §§ 17200 and 17500 as alleged herein; and

4 M. Danny Licciardi's false claim to Diego Picón that pay for the leaders at Xowii has
5 declined is defamatory and violates Business and Professions Code §§ 17200 and
6 17500 as alleged herein.
7

8 56. As a direct and proximate result of Monavie's wrongful actions, Xowii has been
9 injured in an amount to be determined at trial.

10 57. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
11 is engaged in a civil conspiracy with these distributors to interfere with Xowii's business. Monavie is
12 aware that its distributors are interfering with Xowii's business and it agreed with its distributors and
13 intended for them to interfere with Xowii's business.
14

15 58. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
16 theory of *respondeat superior* because the torts of Monavie's distributors, as alleged herein, are done
17 within the scope of their employment and/or agency relationship with Monavie.
18

19 59. The actions of Defendant were done with oppression, malice, and a complete disregard
20 for Plaintiff. Therefore, in addition to Plaintiff's other damages, Defendants are liable for punitive and
21 exemplary damages pursuant to California Civil Code §3294.
22

23 **SECOND CAUSE OF ACTION**

24 **For Negligent Interference With Prospective Economic Advantage**

25 (By all plaintiffs against all defendants.)

26 60. Plaintiff incorporates herein, by this reference, each and every allegation contained in
27 paragraphs 1 through 59, inclusive, as though fully set forth herein.
28

1 61. Xowii has invested significant time, effort, and money in recruiting independent
2 distributors such as Kelly Bangert, Sack, Rodney Robards, Shaylon Hart, Rudy de Leon, Jeff Creamer,
3 Calvin Becerra, Rick Gutman, and others. Economic relationships existed between Xowii and these
4 persons and there is a probable future economic benefit to Xowii that would have resulted from these
5 relationships if Monavie had not interfered with such relationships.
6

7 62. At all relevant times alleged herein, Monavie knew, or should have known, of the
8 existence of the economic relationships between Xowii and Bangert, Sack, Rodney Robards, Shaylon
9 Hart, de Leon, Jeff Creamer, Calvin Becerra, Rick Gutman and others.

10 63. Monavie wrongfully induced Bangert and others to disrupt their relationship with
11 Xowii and to instead continue their economic relationship with Monavie.
12

13 64. Monavie’s conduct was wrongful, among other reasons, because of the following:

14 A. Larsen’s statements to Sack that “Xowii is a waste of time” and Christiansen “is an
15 idiot” are defamatory as alleged herein;

16 B. Marsh’s statement to Sack that “I know too much about what’s going on over [at
17 Xowii] ... [and] it’s going to die” is defamatory as alleged herein;

18 C. Whitaker’s statement to a former Monavie distributor and current Xowii distributor
19 that Xowii is “missing pay periods” is defamatory as alleged herein;

20 D. Monavie’s conduct is a deceptive trade practice in violation of Business and
21 Professions Code § 17200 because it does not follow the policies and practices set
22 forth in its own “Open Door Campaign”;

23 E. Monavie’s conduct violates Business and Professions Code § 17500 as alleged
24 herein;

25 F. Hartog’s claim, on behalf of Monavie, that Bangert “made \$4 million in 30 months
26
27
28

1 building Monavie and you can too” is a violation of 15 U.S.C. 41 *et seq.*;

2 G. Monavie’s conduct, as alleged herein, is an unlawful restraint on trade in violation
3 of California public policy;

4 H. Hartog’s statements on behalf of Monavie that Xowii’s products cause cancer
5 violates Business and Professions Code § 17200 as alleged herein;

6
7 I. Hartog’s statement that Bangert “made \$4 million in 30 months building Monavie
8 and you can too” violates Business and Professions Code § 17200 as alleged herein;

9 J. Hartog’s statements on behalf of Monavie that Xowii’s products cause cancer is
10 trade libel as alleged herein;

11 K. Danny Licciardi’s false claim to Diego Picón that Monavie is a \$2 billion company
12 violates Business and Professions Code §§ 17200 and 17500 as alleged herein;

13 L. Danny Licciardi’s false statement to Diego Picón that Phil and Jenny Sack were
14 paid by Xowii to leave Monavie is defamatory and violates Business and
15 Professions Code §§ 17200 and 17500 as alleged herein; and

16 M. Danny Licciardi’s false claim to Diego Picón that pay for the leaders at Xowii has
17 declined is defamatory and violates Business and Professions Code §§ 17200 and
18 17500 as alleged herein.
19

20
21 65. As a direct and proximate result of Monavie’s wrongful actions, Xowii has been
22 injured in an amount to be determined at trial.

23 66. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
24 is engaged in a civil conspiracy with these distributors to interfere with Xowii’s business. Monavie is
25 aware that its distributors are interfering with Xowii’s business and it agreed with its distributors and
26 intended for them to interfere with Xowii’s business.
27

1 67. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
2 theory of *respondeat superior* because the torts of Monavie's distributors, as alleged herein, are done
3 within the scope of their employment and/or agency relationship with Monavie.

4 68. The actions of Defendant were done with oppression, malice, and a complete disregard
5 for Plaintiff. Therefore, in addition to Plaintiff's other damages, Defendants are liable for punitive and
6 exemplary damages pursuant to California Civil Code §3294.
7

8 **THIRD CAUSE OF ACTION**

9 **For Defamation**

10 (By all plaintiffs against all defendants.)

11 69. Plaintiff incorporates herein, by this reference, each and every allegation contained in
12 paragraphs 1 through 68, inclusive, as though fully set forth herein.
13

14 70. Monavie published statements disparaging Xowii's reputation and knew or should have
15 known that doing so would likely cause substantial injury to Xowii. The statements that Monavie
16 made were as follows:

17 A. On or about January 11, 2010, Marsh, as the founder and vice chairman of
18 Monavie, left a voice mail message for Sack, on behalf of Monavie, saying in
19 relevant part as follows:
20

21 Be careful, just be careful, Xowii's not going to last. I know too much about
22 what's going on over there and it'll be your last network marketing experience
23 I'm confident because it's going to die and when it does you'll probably be so
24 fed up with network marketing that you won't do anything else. ... just watch
your P's and Q's closely.

25 B. In a telephone conversation on or about January 27-28, 2010 between Larsen, the
26 CEO of Monavie, and Sack, Larsen falsely said to Sack that Xowii is "a waste of
27 time" and also that the President and Co-Founder of Xowii, Christiansen, "is an
28

1 idiot.”

2 C. On February 9, 2010, Danny Licciardi, on behalf of Monavie, falsely stated to
3 Picón, a Xowii distributor, that Sack and his wife were paid by Xowii to leave
4 Monavie;

5 D. On February 9, 2010, Licciardi, on behalf of Monavie, falsely stated to Picón, a
6 Xowii distributor, that pay for the leaders at Xowii has declined; and

7 E. On June 14, 2010, Whitaker, on behalf of Monavie, sent an e-mail to a former
8 Monavie distributor and current Xowii distributor falsely stating that “as for xowii,
9 they are missing pay periods ... as from corporate about 5 minutes ago.”
10

11 71. Monavie made the aforesaid false statements without any reasonable grounds for
12 believing they were true.

13 72. The aforesaid false statements disparage Xowii’s reputation.

14 73. In making the aforesaid false statements, Monavie intended to and/or should have
15 known that such false statements would cause harm to Xowii’ reputation.
16

17 74. As a direct and proximate result of Defendant’s actions, Plaintiff has been injured in an
18 amount to be proven at trial.

19 75. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
20 is engaged in a civil conspiracy with those distributors to defame Xowii. Monavie is aware that its
21 distributors are defaming Xowii and it agreed with its distributors and intended for them to defame
22 Xowii.
23

24 76. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
25 theory of *respondeat superior* because the torts of Monavie’s distributors, as alleged herein, are done
26 within the scope of their employment and/or agency relationship with Monavie.
27

1 81. The aforesaid false statements disparage the quality of Xowii's products.

2 82. In making the aforesaid false statements, Monavie intended to and/or should have
3 known that such false statements would cause harm to Xowii.

4 83. As a direct and proximate result of Defendant's actions, Plaintiff has been injured in an
5 amount to be proven at trial because, among other harms, it had to reformulate its products.
6

7 84. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
8 is engaged in a civil conspiracy with its distributors to defame Xowii's products. Monavie is aware
9 that its distributors are defaming Xowii's products and it agreed with its distributors and intended for
10 them to defame Xowii's products.

11 85. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
12 theory of *respondeat superior* because the torts of Monavie's distributors, as alleged herein, are done
13 within the scope of their employment and/or agency relationship with Monavie.
14

15 86. The actions of Defendant were done with oppression, malice, and a complete disregard
16 for Plaintiff. Therefore, in addition to Plaintiff's other damages, Defendant is liable for punitive and
17 exemplary damages pursuant to California Civil Code §3294.
18

19 **FIFTH CAUSE OF ACTION**

20 For False Advertising In Violation Of *Business & Professions Code* § 17500

21 (By all plaintiffs against all defendants.)

22 87. Plaintiff incorporates herein, by this reference, each and every allegation contained in
23 paragraphs 1 through 86, inclusive, as though fully set forth herein.
24

25 88. Beginning at an exact date unknown to plaintiff but at least since November 24, 2009,
26 Monavie has committed acts of untrue and misleading advertising, as defined by Business and
27 Professions Code § 17500, by engaging in the following acts and practices with intent to induce
28

1 members of the public to sell and consume its products instead of selling and consuming products
2 from Xowii:

3 A. On November 24, 2009 at 7:25am, Hartog, an agent of Monavie, sent an e-mail to
4 de Leon, an independent distributor for Xowii, falsely claiming that:

5 “Our research team contacted Ball [a Xowii vendor]. They confirmed that
6 Crystalline fructose is from corn syrup! ... I sleep like a baby knowing we have
7 a health products. Can u honestly say the same. Ask any dr. Or Dentist. Call a
8 Oncology Dr he deals with Cancers.”

9
10 B. On December 4, 2009 at 5:40pm, Hartog, an agent of Monavie, sent another e-mail
11 to de Leon falsely claiming that:

12 “[S]tevia(your last ingredient) linked to cancer and cause reproductive
13 problems Thank god for goo product liability insurance.”

14
15 C. On March 4, 2010 at 6:17pm, Hartog, an agent of Monavie, falsely advertised on
16 Facebook.com that a Black Diamond distributor at Monavie, Bangert, “made \$4
17 million in 30 months building Monavie and you can too.”

18
19 D. As alleged herein, in a press release dated April 2, 2008, Monavie falsely stated that
20 it has an “Open Door” policy and will not threaten distributors who leave nor will it
21 file punitive lawsuits against distributors who actually leave Monavie.

22 E. As alleged herein, on February 9, 2010 Licciardi falsely stated to Picón that
23 Monavie is a \$2 billion company;

24
25 F. As alleged herein, on February 9, 2010 Licciardi falsely stated to Picón that Sack
26 and his wife were paid by Xowii to leave Monavie;

27 G. As alleged herein, on February 9, 2010 Licciardi falsely stated to Picón that pay for
28

1 the leaders at Xowii has declined; and

2 H. As alleged herein, on June 14, 2010 Whitaker, on behalf of Monavie, sent an e-mail
3 to a former Monavie distributor and current Xowii distributor falsely stating that
4 “as for xowii, they are missing pay periods ... as from corporate about 5 minutes
5 ago.”
6

7 89. The acts of untrue and misleading advertising by Monavie described above present a
8 continuing threat to members of the public in that until and unless enjoined from engaging in these
9 wrongful acts Monavie will continue to advertise using untrue and misleading statements. Xowii has
10 no other adequate remedy of law in that its reputation is being irreparably harmed by these statements
11 and it is being forced to compete against a company that is engaging in false and deceptive trade
12 practices.
13

14 90. Monavie has profited from its false and deceptive trade practices. The exact amount of
15 these profits will be ascertained through appropriate discovery and will be proved at trial.

16 91. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
17 is engaged in a civil conspiracy with its distributors to defame Xowii and its products as well as to
18 interfere with Xowii’s business. Monavie is aware that its distributors are defaming Xowii and its
19 products and interfering with its business and Monavie agreed with its distributors and intended for
20 them to do these acts.
21

22 92. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
23 theory of *respondeat superior* because the torts of Monavie’s distributors, as alleged herein, are done
24 within the scope of their employment and/or agency relationship with Monavie.
25

26 93. Xowii prays for relief as set forth hereinafter.

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SIXTH CAUSE OF ACTION

For Unfair Business Practices In Violation Of *Business & Professions Code* § 17200

(By all plaintiffs against all defendants.)

94. Plaintiff incorporates herein, by this reference, each and every allegation contained in paragraphs 1 through 93, inclusive, as though fully set forth herein.

95. Monavie’s conduct, as alleged herein, constitutes unfair, unlawful, and fraudulent trade practices which violates California *Business and Professions Code* § 17200.

1. Unlawful Prong

96. Monavie’s conduct is unlawful because:

- A. Larsen’s statements to Sack that “Xowii is a waste of time” and Christiansen “is an idiot” are defamatory as alleged herein;
- B. Marsh’s statement to Sack that “I know too much about what’s going on over [at Xowii] ... [and] it’s going to die” is defamatory as alleged herein;
- C. Whitaker’s statement to a former Monavie distributor and current Xowii distributor that Xowii is “missing pay periods” is defamatory as alleged herein;
- D. Monavie’s conduct violates Business and Professions Code § 17500 as alleged herein;
- E. Hartog’s claim, on behalf of Monavie, that Bangert “made \$4 million in 30 months building Monavie and you can too” is a violation of 15 U.S.C. 41 *et seq.*;
- F. Monavie’s conduct, as alleged herein, is an unlawful restraint on trade in violation of California public policy;
- G. Hartog’s statements on behalf of Monavie that Xowii’s products cause cancer is trade libel as alleged herein;

- 1 H. Monavie is tortiously interfering with Xowii's economic relationships with
2 independent distributors as alleged herein;
- 3 I. Licciardi's false claim to Picón, on behalf of Monavie, that Monavie is a \$2 billion
4 company is a violation of Business and Professions Code § 17500 as well as 15
5 U.S.C. 41 *et seq.*;
- 6 J. Licciardi's false claim to Picón, on behalf of Monavie, that Sack and his wife were
7 paid by Xowii to leave Monavie is defamatory and violates Business and
8 Professions Code § 17500 as alleged herein; and
- 9 K. Licciardi's false claim to Picón, on behalf of Monavie, that pay for the leaders at
10 Xowii has declined is defamatory and violates Business and Professions Code §
11 17500 as alleged herein.
12
13

14 97. Xowii has suffered injury-in-fact from these unlawful business practices because it is a
15 competitor of Monavie's that is at an unfair competitive disadvantage and also for all the reasons that
16 are alleged herein.

17 98. Monavie has profited from its unlawful business practices. The exact amount of these
18 profits will be ascertained through appropriate discovery and will be proved at trial.
19

20 2. Unfair Prong

21 99. The harms caused by Monavie's conduct as alleged herein outweigh its utility because
22 California has a strong public policy of favoring free competition and Monavie's conduct is designed
23 to prevent Xowii, as a startup company, from fairly competing against Monavie. Monavie is using its
24 largesse to intimidate independent distributors from selling products for Xowii. The only reason that
25 Monavie is pursuing this policy is to prevent free competition.
26
27
28

1 100. Xowii has suffered injury-in-fact from these unfair business practices because it is a
2 competitor of Monavie's that is at an unfair competitive disadvantage as a result of such practices and
3 also for all other reasons that are alleged herein.

4 101. Monavie has profited from its unfair business practices. The exact amount of these
5 profits will be ascertained through appropriate discovery and will be proved at trial.

6
7 3. Fraudulent Prong

8 102. The following conduct by Monavie is likely to deceive consumers into wrongly
9 believing that Xowii's products cause cancer:

10 A. On November 24, 2009 at 7:25am, Hartog, an agent of Monavie, sent an e-mail to
11 de Leon, an independent distributor for Xowii, falsely claiming that:

12 "Our research team contacted Ball [a Xowii vendor]. They confirmed that
13 Crystalline fructose is from corn syrup! ... I sleep like a baby knowing we have
14 a health products. Can u honestly say the same. Ask any dr. Or Dentist. Call a
15 Oncology Dr he deals with Cancers."

16
17 B. On December 4, 2009 at 5:40pm, Hartog, an agent of Monavie, sent another e-mail
18 to de Leon falsely claiming that:

19 "[S]tevia(your last ingredient) linked to cancer and cause reproductive
20 problems Thank god for goo product liability insurance."

21
22 103. Xowii has suffered injury-in-fact from this fraudulent business practice because it had
23 to reformulate its products to convince its distributors that its products do not cause cancer.

24 104. The following conduct by Monavie is likely to deceive consumers into wrongly
25 believing that they can earn millions of dollars by selling Monavie's products:

26 A. On March 4, 2010 at 6:17pm, Hartog falsely advertised on Facebook.com that a
27
28

1 “Black Diamond” distributor at Monavie, Bangert, “made \$4 million in 30 months
2 building Monavie and you can too.”

3 B. On February 9, 2010, Licciardi falsely stated to Picón, on behalf of Monavie, that
4 Monavie is a \$2 billion company.

5 105. Xowii has suffered injury-in-fact from this fraudulent business practice because it is a
6 competitor of Monavie’s who is at an unfair disadvantage to recruit independent distributors when
7 Monavie is making false income claims.

8 106. The following conduct by Monavie is likely to deceive consumers into wrongly
9 believing that Monavie will not threaten distributors if they decide to leave nor will it file punitive
10 lawsuits against distributors who actually leave its company:

11 A. As alleged herein, in a press release dated April 2, 2008, Monavie falsely stated that
12 it has an “Open Door” policy and will not threaten distributors who leave nor will it
13 file punitive lawsuits against distributors who actually leave Monavie.

14 107. Xowii has suffered injury-in-fact from this fraudulent business practice because it is a
15 competitor of Monavie’s who is at an unfair disadvantage to recruit independent distributors when
16 Monavie is making false claims about its supposed “Open Door” policy.

17 108. The following conduct by Monavie is likely to deceive consumers into wrongly
18 believing that Xowii is fly-by-night startup that will not last:

19 A. On or about January 11, 2010, Marsh, a founder and vice chairman for Monavie,
20 left a voice mail message for Sack, on behalf of Monavie, saying in relevant part as
21 follows:

22 Be careful, just be careful, Xowii’s not going to last. I know too much about
23 what’s going on over there and it’ll be your last network marketing experience
24 I’m confident because it’s going to die and when it does you’ll probably be so
25 fed up with network marketing that you won’t do anything else. ... just watch

1 your P's and Q's closely.

2 B. In a telephone conversation on or about January 27-28, 2010 between Larsen, the
3 CEO of Monavie, and Sack, Larsen falsely said to Sack that Xowii is "a waste of
4 time" and also that the President and Co-Founder of Xowii, Christiansen, "is an
5 idiot";

6 C. On February 9, 2010, Licciardi falsely stated to Picón, on behalf of Monavie, that
7 Sack and his wife were paid by Xowii to leave Monavie;

8 D. On February 9, 2010, Licciardi falsely stated to Picón, on behalf of Monavie, that
9 pay for the leaders at Xowii has declined; and

10 E. On June 14, 2010, Whitaker, on behalf of Monavie, sent an e-mail to a former
11 Monavie distributor and current Xowii distributor falsely stating that "as for xowii,
12 they are missing pay periods ... as from corporate about 5 minutes ago."

13 109. Xowii has suffered injury-in-fact from this fraudulent business practice because it is a
14 competitor of Monavie's whose reputation is being tarnished by these deceptive statements.

15 110. Monavie has profited from these fraudulent business practices. The exact amount of
16 these profits will be ascertained through appropriate discovery and will be proved at trial.

17 111. Monavie is vicariously liable for all acts by its distributors, as alleged herein, because it
18 is engaged in a civil conspiracy with its distributors to defame Xowii and its products as well as to
19 interfere with Xowii's business. Monavie is aware that its distributors are defaming Xowii and its
20 products and interfering with its business and Monavie agreed with its distributors and intended for
21 them to do these acts.

22 112. Monavie is vicariously liable for all acts by its distributors, as alleged herein, on a
23 theory of *respondeat superior* because the torts of Monavie's distributors, as alleged herein, are done
24 by its distributors.

1 within the scope of their employment and/or agency relationship with Monavie.

2 **REQUEST FOR JURY TRIAL**

3 113. Plaintiff requests trial by jury.

4 **PRAYER FOR RELIEF**


5 WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants as follows:

- 6
- 7 1. For compensatory damages in an amount to be proven at trial, but no less than
- 8 fifty million dollars (\$50,000,000);
- 9 2. For temporary and permanent injunction against Monavie, restraining and
- 10 enjoining it from continuing to engage in its fraudulent, unfair and unlawful
- 11 conduct including, but not limited to, further interference in Plaintiff's business
- 12 and its relationships with potential independent distributors;
- 13 3. For disgorgement of ill-gotten gains by Monavie in an amount to be proven at
- 14 trial, but no less than fifty million dollars (\$50,000,000);
- 15 4. For restitution in an amount to be proved at trial;
- 16 5. For attorney's fees and costs of this action;
- 17 6. For exemplary and punitive damages in an amount to be determined at trial; and
- 18 7. For such other and further relief as the Court may deem proper and just.
- 19
- 20

21 Dated: June 15, 2010

WELLMAN & WARREN LLP

22

23 By: 
Scott W. Wellman
Derek Banducci
Attorneys For Plaintiff

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Exhibit “A”

Attn: Henry Marsh

Henry I wanted to let you know that my Wife and I have decided to resign as Monavie Distributors as of today. Monavie has truly blessed our lives and for that we will be forever greatfull. We love the Monavie culture, the Corporate team and most of the Distributors. We sinceraly appologize for any problems we caused you or the Company for looking at another MLM opportunity over the summer. I would like to explain why.

From July of 2008 - January of 2009 my Monavie business fell back around 40%. It stabalized From January through May. In June of this year to current my business has gone backwards consistently every single week an additional 30%. I watched my Blue Diamonds house get Foreclosed on, another Blue Diamonds car was repossessed. No one on my team including me was qualifying rank. At our Hotel events I was calling up all the Blue Diamonds, Hawaiian Blue Diamonds and Black Diamonds and no one was making anywhere close to the income disclosure statement. None of my top leaders could even pay there bills, they gave up everything to work Monavie full time. I do not blame the company or anyone for that matter, the economy has hit us all hard!!!! I knew my team was all going to quit at any time and I paniced and found another opportunity for my team.

When I flew up to Utah and met with you and the other Corporate team members I had made the decision to stay in Monavie and rebuild my business. And I had every intention on doing just that!!! However I had no idea of the ripple affect that was coming my way. I was told that my upline Black Diamond Todd Hartog had contacted several people in my LA, Las Vegas and Canadian teams and told them not to trust me and to keep there people away from me that I was going to leave Monavie. This was confirmed when I emailed 2 leaders in my LA team, my main leader in Las Vegas and my Diamond in Canada who I emailed twice and left a voicemail for and NO response. My Las Vegas leader had my Blue Diamond Mike Rodriguez do a tasting party for him. My Las Vegas leader Dave Oncha told him that he will not let any of his team get on my weekly conference calls or let anyone on his team attend any of my meeting's. My entire team of executive ranks completely cut off all communication with me. I feel like I am on a island by myself.

Then about 3 weeks ago Calvin Becerra told me that Rob Alwin was making disparaging remarks about me and making false acusations against me. Rob had done the same thing against me to Rick Gutman back n September. I was very upset and happened to run into Mr. Alwin at the gym and confronted him, it was not a good conversation to say the least. As a matter a fact it almost turned into a physical altercation. Even at this point I was still wanting to rebuild my business. Then on October 31st at Dream Day in Anaheim Brig Hart made false allegations against me on stage infront of a thousand plus people stating that I had left Monavie and moved on to Xowii. Brig knew I was in Monavie and I had not left, Calvin had a conversation with him telling him I was working my Monavie business. I cant even begin to tell you the back lash I have received from that, 2-3 emails a day and text mcssages saying that Brig said I was a liar and I stole from

the company to I have left Monavie. My reputation and credibility was already damaged, I have none left after that. That just confirmed everything that Todd Hartog was telling people, I find it hard to believe that that wasn't planned out between Todd and Brig!!!

I forgive him and my entire upline. I have humilty in my heart and hold no hard feelings towards anyone, I except responsibility for my own actions!! At this point its not in my heart anymore to rebuild my Monavie business and I just want to move on. Therefore I resign.

Henry I cant thank you and Dallin enough for giving me a second chance. I wished it would have worked out, but I have no more fight left in me. You guys are first class!!!! I will never forget it. I wish you both continued success and I hope that you and I will remain friends!!!!

I TRIED TO SOFTEN THE
BLOW. CALL ME WITH
YOUR THOUGHTS

Exhibit “B”

AGREEMENT

This Agreement is made and entered into as of the 30TH day of September, 2009 (the "Effective Date"), by and between **MonaVie, LLC**, a Delaware limited liability company, with offices at 10855 S. River Front Parkway, South Jordan, Utah 84095 (the "Company"); and **Kelly Bangert** ("Bangert"). The Company and Bangert may be referred to collectively as the Parties. The parties agree that this agreement will exist for a term of one year after which the parties agree to be bound by all Policies and Procedures in place at that time.

WITNESSETH

WHEREAS, the Company is engaged in the business of manufacturing, distributing and selling nutritional juices and other products through multi-level marketing ("MLM") distribution channels (the "Business").

WHEREAS, Bangert has acted as a distributor for the Company and a member of its Distributor Advisory Board for the purpose of building the Business.

WHEREAS, Bangert has:

(a) Been approached by Xowii, a competitor of Mona Vie, with an allegedly lucrative opportunity to serve as a corporate officer and founder of the company and has explored the opportunity with others in the MLM industry;

(b) Bangert has discussed the opportunity with Mona Vie distributors in his downline as well as crosslines in violation of Mona Vie's Policies and Procedures, an act for which he hereby apologizes and for which he agrees to publicly apologize in the future;

(c) Bangert made inaccurate representations about the Company and its sales data, trends, and financial outlook to other distributors of the Company concurrently with his discussions about Xowii, an action for which he hereby apologizes and for which he agrees to publicly apologize in the future; and

WHEREAS, in consideration of Bangert's private and public apologies and the other terms and conditions set forth herein, the Company is willing to forgive Bangert for the actions set forth above and accept him back into its distributor force subject to the conditions set forth herein;

WHEREAS, Bangert desires to continue as a Mona Vie distributor and to aggressively build the Business.

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Recitals. The Recitals are hereby incorporated into this Agreement, as set forth above.

2. Understanding. In consideration for the Company allowing Bangert to retain his distributorship, Bangert agrees to the following:

(a) Bangert will no longer be a member of the Company's Distributor Advisory Board;

(b) Bangert has forfeited his Hawaiian Diamond Destination incentive vacation;

(c) For a period of six months beginning the Effective Date and for the last three commission cycles, the Company will hold one-third of Bangert's commissions earned from the Company to be held in reserve;

(d) Upon execution of this Agreement, the Company will release Bangert's previous commission checks earned by Bangert and held in reserve by the Company less one-third of such commissions which shall remain in reserve;

(e) Nine months after the Effective Date, Bangert's full compensation will be restored and one-half of the commissions held in reserve will be released to Bangert if Bangert has not, as determined by the Company, breached any of the representations, warranties, obligations or terms and conditions set forth in this Agreement;

(f) One year after the Effective Date, the remaining one-half of the commissions held in reserve will be released to Bangert if Bangert has not, as determined by the Company, breached any of the representations, warranties, obligations or terms and conditions set forth in this Agreement.

3. Bangert Representations and Warranties.

(a) Apology. Bangert has issued a formal apology to the Company and its executives which is attached as Exhibit A to this Agreement. In addition to the apology attached hereto, Bangert now apologizes for the following conduct:

i) discussing the Xowii opportunity with Mona Vie distributors in his downline as well as crosslines in violation of Mona Vie's Policies and Procedures; and

ii) making false and inaccurate representations about the Company and its sales data, trends, and financial outlook to other distributors of the Company concurrently with his discussions about Xowii.

(b) Bangert will not directly or indirectly engage in, assist, perform services for, establish or open, or have any interest in any person, firm, corporation, or business entity (whether as an employee, officer, director, agent, creditor, consultant, distributor or otherwise) that engages in any multi-level marketing company or any business which competes with the Company anywhere in the world;

(c) Bangert will not induce or attempt to induce any distributor, customer, supplier, or independent contractor of the Company to reduce the level of business with or to cease or refrain from doing business with the Company, or in any way materially interfere with relationships between the Company, (or its subsidiaries or Affiliates) and any such distributor, customer, supplier, or independent contractor;

(d) Bangert will not interfere with any contracts or business relationships or prospective business relationships between the Company (and its subsidiaries or Affiliates) and any third party, including without limitation, suppliers, and distributors;

(e) Bangert will not make or cause to be made any statements that disparage, are inimical to, or damage the reputation of the Company, its affiliates, subsidiaries, members, managers, employees, officers, directors, executives, distributors, agents or representatives; and

(f) Bangert will not violate the Policies and Procedures of the Company or any law, rule or regulation by the FTC or FDA.

4. Covenants. The parties intend that the covenants contained in Paragraph 3 will be construed as a series of separate covenants, one for each state in the United States of America and each country of the world. Except for geographic coverage, each such separate covenant will be deemed identical in terms to the covenants contained in the preceding paragraphs. If in any judicial proceeding a court refuses to enforce any of the separate covenants deemed included in Paragraph 3, then the unenforceable covenants will be severed and deemed eliminated from these provisions for the purpose of those proceedings to the extent necessary to permit the remaining separate covenants (meaning the remaining states) to be enforced.

4. Breach of Agreement. In the event Bangert breaches any representations, warranties, obligations, terms or conditions set forth in this Agreement, the Company will be entitled to retain all commissions held in escrow and any obligations of the Company under this Agreement shall immediately terminate and the retention of the commissions will constitute complete liquidated damages for any and all injury suffered by the Company unless Bangert's breach of this Agreement is also a breach of the Company's Policies and Procedures and rules associated with the operation of an independent Mona Vie distributorship. In the event Bangert breaches the above-referenced Company's Policies and Procedures or any other rules governing the operation of a Mona Vie distributorship, the Company shall be entitled exercise its rights to the fullest extent allowable by law.

5. Confidential Information. Bangert will not use (except to the extent required in connection with his retention hereunder), disclose, divulge, or communicate to any person or entity, for any purpose or reason whatsoever, any confidential information or trade secrets of the Company (or its subsidiaries or affiliates), including without limitation, compensation plans, product ideas, Company sales and marketing tools, distributor lists and information, designs, plans, secret processes, personnel information, inventions, know-how, supplier lists, patent information, computer programs, data bases, formulas, developmental or experimental work, original works of authorship, business plans, and other technical data ("Confidential Information") which has been specifically designated as Confidential Information, unless such information (a) becomes generally available to the public through no act of Bangert or (b) is not acquired, directly or indirectly, from the Company or other sources under an obligation of confidentiality. The Parties acknowledge the nationwide and international application of technology and trade secrets developed by the Company and therefore agree that the restrictions herein will apply nationwide and throughout the world.

7. Remedies. If any action, suit, or proceeding is brought or taken by either party to enforce its rights and protection under this Agreement because of a breach or threatened breach by the other Party of any provision herein, the breaching party shall reimburse the prevailing party for all costs and expenses arising from such action, suit, or proceeding, including reasonable attorneys fees.

8. Equitable Remedies. Bangert acknowledges that a breach of a covenant or restriction contained in Paragraph 3 of this Agreement will cause irreparable damage to the Business and the Company, the exact amount of which will be difficult to ascertain, and that any remedy at law for any such breach will be inadequate. Accordingly, Bangert agrees that if he breaches or threatens to breach any covenant or restriction contained in Paragraph 3, then the Company will be entitled to injunctive relief, without posting bond or other security, in addition to any and all other remedies available to the Company at law or in equity. No action hereunder by the Company will constitute an election to forego any other remedies available to the Company.

9. Indemnification. Bangert agrees to indemnify, defend, and hold harmless Company, its affiliates, subsidiaries, agents and employees from any and all claims, demands, judgments, damages, losses, liabilities, and costs, including reasonable attorney's fees arising from or in connection with any claims caused by the following: (i) acts or omissions of Bangert; (ii) any action or claim brought by any third party as a result of any misrepresentation or breach of any representation or warranty made by Bangert to the Company; (iii) breach of any agreement with any third party; (iv) any action or claim brought by the FTC or FDA against the Company or the Bangert as a result of Bangert's action or omission; or (v) Bangert's breach of this Agreement. In the event of any future litigation or claim brought against Bangert, Bangert will be solely liable for any and all of its attorney fees and costs associated with the defense of any such claim or lawsuit.

10. Confidentiality of Agreement. The Parties agree to hold this Agreement and its terms in strict confidence. Bangert acknowledges, represents and warrants that

they will keep all terms and conditions of this Agreement, including, without limitation, the amount of compensation paid by the Company, confidential and that such shall not be disclosed by Bangert or Company to any person or entity, except to a court of competent jurisdiction when required by law, to any department, agency, or representative of the United States and/or any other government department, agency or entity, as required by law, and/or any person, entity, company, corporation or organization requiring such information to comply with tax laws or claiming an interest in or lien on the consideration tendered by the Company under this Agreement. Bangert may disclose the terms and conditions of this Agreement to Bangert's attorney and financial advisors. Company may disclose the terms and conditions of this Agreement to the Company's Board of Managers, attorneys, financial advisors, lenders and potential sources of debt or equity financing (together with their advisors, but not the Distributor Advisory Board). Bangert and Company agree to inform these individuals of the confidential nature of this Agreement and instruct those individuals not to discuss this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, United States of America.

12. Severability. If and to the extent that any court of competent jurisdiction holds any provision or any part hereof to be invalid or unenforceable, such holding shall in no way effect the validity of the remainder of this Agreement.

13. No Assignment. This Agreement may not be assigned by Bangert without the written consent of the Company, and any such attempted assignment shall be void and of no effect.

14. Notice. All notices, requests and other communications under this Agreement must be in writing and must be mailed by registered or certified mail, postage prepaid, and return receipt requested, or delivered by hand to the Party to whom such notice is required or permitted to be given.


15. Waiver. No failure by other Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this agreement, or to exercise any right or remedy upon the breach thereof shall constitute a waiver of any breach of this Agreement.

16. Entire Agreement. This Agreement is the final, complete, and exclusive Agreement of the Parties with respect to the subject matter set forth herein. All prior discussions, negotiations, communications and preliminary agreements are merged herein. No modification of, or amendment to this Agreement, nor any waiver of any rights under this Agreement will be effective unless in writing and signed by the Parties to be charged. The terms of this Agreement, the Compensation Plan and the Company's Policies and Procedures will govern the relationship of the Parties. In the event that there is a conflict or inconsistency between this Agreement and the Policies and Procedures or a conflict or inconsistency between this Agreement and the Compensation Plan, this Agreement shall take precedence.

IN WITNESS WHEREOF, the Parties sign this Agreement.

MonaVie, LLC

By: _____
Its: _____



Kelly Bangert *KELLY BANGERT*
KRB