

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

**ROBERT JEAN, KENNY HANKINS, GLENN PERKINSON, MICHAEL BROWN AND CURTIS FREYERMUTH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,**

**AND**

**ROB LOVE, MICHAEL GODWIN, JOE ZOLO, ANTHONY GAVALYAS, BILL FLATEN, BILL MITCHELL, BILL STEWARD, BLAKE ROBINSON, BRAD BARNES, BRAD STRIFF, BRAD TRIMBLE, BRIAN BUTTERFOSS, BRYAN SCAHUPP, CARRIE PERRY, CHARLES AND GABRIEL PADILLA, INDIVIDUALLY AND ON BEHALF OF C&G DISTRIBUTING PARTNERSHIP, CHARLES MCKINNIE, CHRIS SHELTON, CHUCK HOOK, CURTIS GAYLE MCARTHUR, CURTIS ROBINS, DAN FLANAGAN, DANNY DEEMER, DANNY WINDINGS, DAVID MCGILL, DAVID PIPER, DAVID WECKER INDIVIDUALLY AND ON BEHALF OF WECKER DISTRIBUTING, INC., DON GODDARD, FIDEL (PEPE) TALLET, FRANKLIN THURMAN, GARY COX, GARY TUCK, GARY ZUCKERMAN, GEORGE MAYES , GREG HAIG, HARLAN GRANTHAM, JAMES**

CASE NO. 1:04 CV 1904

JUDGE KATHLEEN O'MALLEY

**CLASS ACTION**

**COMPLEX LITIGATION**

**DOUGLAS CLEMENS, JR., JAMES  
POEHAILOS, JAMES SKIFF, JAMES  
STANEK, JERRY FELD, JERRY MEAD,  
JOHN CLARK, JOHN CONTURSI, JOHN  
FORAN, JOHN JOHNSON, KELLY  
THOMPSON, KEN SCHMIDT, KENT  
HADLEY, KEVIN BRACK, LANCE REED,  
LANE THOMAS, LARRY BOWEN, MARIO  
MACCARONE, MARK POWELL, MARK  
VINCENT, MICHAEL B. STANSEL, MIKE  
KELLER, PAT O'CONNELL, PERRY PRICE,  
PHIL CAGLE, RAY GANDY, RAY SILVER,  
REUBEN MYERS, RICHARD CHAVEZ,  
RICHARD HENDRICKS, RICK WILLIAMS,  
ROBERT McELHANEY, ROBERT  
PELTIERRE, RUSTY PARKER, RYAN  
BARNHART, SCOTT CARPENTER, SCOTT  
FREELAND, SCOTT SUNFORD, SEAN  
PHILLIPS, SHELLI FRANZ, STAN  
SCHWARTZ, STEVE HARDAWAY, TERRY  
KONSELA, THOMAS MICHAEL REEDER,  
TIM BLACKWELL, TIM HOEFS, TIM  
PERRY, TIMOTHY SUTTER, TODD CLARK,  
TODD FRANZ, TRACY GUNTER, VINCE  
BAINTER, WALTER BRZECZKO, WAYNE  
VALENTINE, WILLIAM PETERSON, JASON  
OLSON, JOHN CURTIS, CHARLES  
MONTOYA, VICTOR WENZEL, GUILFORD  
YATES, DAVID HICKOX, DALE GLIME,  
AND ROBERT DESPAIN,**

**PLAINTIFFS,  
VERSUS**

**THE STANLEY WORKS, A  
CONNECTICUT  
CORPORATION, AND KEY BANK  
NATIONAL ASSOCIATION, AN OHIO  
CORPORATION AND ITS BUSINESS UNIT OR  
WHOLLY OWNED-SUBSIDIARY, AND  
AMERICAN EXPRESS BUSINESS  
FINANCE CORPORATION WHICH  
MAY HAVE BEEN RENAMED KEY  
EQUIPMENT FINANCE,**

**DEFENDANTS.**

**CLASS ACTION**

**COMPLEX LITIGATION**

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**FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND FOR  
DECLARATORY AND INJUNCTIVE RELIEF  
AND  
JOINED INDIVIDUAL PLAINTIFFS' COMPLAINT FOR DECLARATORY  
RELIEF AND DAMAGES  
WITH JURY DEMAND**

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Plaintiffs, Rob Love, Michael Godwin, Anthony Gavalyas, Bill Flaten, Bill Mitchell, Bill Steward, Blake Robinson, Brad Barnes, Brad Striff, Brad Trimble, Brian Butterfoss, Bryan Scahupp, Carrie Perry, Charles and Gabriel Padilla, individually and on behalf C&G Distributing Partnership, Charles McKinnie, Chris Shelton, Chuck Hook, Curtis Gayle McArthur, Curtis Robins, Dan Flanagan, Danny Deemer, Danny Windings, David McGill, David Piper, David Wecker individually and on behalf of Wecker Distributing, Inc., Don Goddard, Fidel (Pepe) Tallet, Franklin Thurman, Gary Cox, Gary Tuck, Gary Zuckerman, George Mayes, Greg Haig, Harlan Grantham, James Douglas Clemens, Jr., James Poehailos, James Skiff, James Stanek, Jerry Feld, Jerry Mead, John Clark, John Contursi, John Foran, John Johnson, Kelly Thompson, Ken Schmidt, Kent Hadley, Kevin Brack, Lance Reed, Lane Thomas, Larry Bowen, Mario Maccarone, Mark Powell, Mark Vincent, Michael B. Stansel, Mike Keller, Pat O'Connell, Perry Price, Phil Cagle, Ray Gandy, Ray Silver, Reuben Myers, Richard Chavez, Richard Hendricks, Rick Williams, Robert McElhaney, Robert Peltierre, Rusty Parker, Ryan Barnhart, Scott Carpenter, Scott Freeland, Scott Sunford, Sean Phillips, Shelli Franz, Stan Schwartz, Steve Hardaway, Terry Konsela, Thomas Michael Reeder, Tim Blackwell, Tim Hoefs, Tim Perry, Timothy Sutter, Todd Clark, Todd Franz, Tracy Gunter, Vince Bainter, Walter Brzeczko, Wayne Valentine, William Peterson, Jason Olson, John Curtis, Joe Zolo, Charles Montoya, Victor Wenzel, Guilford Yates, David Hickox, Dale Glime, and

Robert DeSpain, (hereinafter, collectively, “Individual Plaintiffs”) who, based on personal knowledge as to each of their own acts, a review of documents, and their attorneys’ investigation, bring and allege individualized, non-class claims detailed below.

Robert Jean, Kenny Hankins, Glenn Perkinson, Michael Brown, and Curtis Freyermuth (hereinafter, collectively, “Class Representatives,”) individually, and on behalf of all others similarly situated, who based on personal knowledge as to each of their own acts, a review of documents, and their attorneys’ investigation, bring and allege the Class Action claims detailed below.

### **THE PARTIES**

1. Defendant The Stanley Works (“Stanley”) is a Connecticut corporation with its principal place of business at 1000 Stanley Drive, New Britain, Connecticut 06053. Mac Tools Division (“Mac”) is now a division of Stanley, with its results reported as part of Stanley’s Industrial Tools business segment.

2. In or about September 2003, Mac assigned to defendant American Express Business Finance Corporation (“Amex”) certain obligations of Plaintiffs, Class Representatives and the absent class members. Plaintiffs are informed and believe that Amex was acquired by Key Equipment Finance, headquartered in Boulder, Colorado.

3. Defendant KeyBank National Association (“KBNA”) is a full-service, FDIC-insured national bank subsidiary of Key Corp, an Ohio corporation with its principal place of business at 127 Public Square, Cleveland, Ohio 44114-1306. On information and belief, KBNA, as of December 1, 2004, acting through Key Equipment Finance, acquired defendant American Express Business Finance Corporation from former defendant American Express Company. (Former defendant American Express

Company is being dismissed voluntarily by the Plaintiffs.)

4. Plaintiff is informed and believes that Key Equipment Finance is not an independent corporation, but is instead a unit of KBNA. Because American Express Business Finance Corporation may still have a separate corporate entity, it is named a defendant as well. Plaintiff reserves the right to name the proper corporate entity as a defendant following discovery of this matter.

5. Individual Plaintiffs are:

a. Mario Maccarone is a natural person domiciled in the state of Alaska, who became a Mac mobile tool distributor in November 2001.

b. Michael Godwin is a natural person domiciled in the state of Alabama, who became a Mac mobile tool distributor in October 1998.

c. Kelly Thompson is a natural person domiciled in the state of Alaska, who became a Mac mobile tool distributor in November 2001.

d. Vince Bainter is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in March 1990.

e. Phil Cagle is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in November 1999.

f. Jerry Mead is a natural person domiciled in the state of Michigan, who became a Mac mobile tool distributor in January 1991.

g. Larry Bowen is a natural person domiciled in the state of Montana, who became a Mac mobile tool distributor in November 1993.

h. Charles and Gabriel Padilla, individually and on behalf of C&G Distributing Partnership, are natural persons domiciled in the state of New Mexico, who

became a Mac mobile tool distributor in August 2002.

i. Robert Peltierre is a natural person domiciled in the state of Massachusetts, who became a Mac mobile tool distributor in August 2003.

j. Ray Gandy is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in December 2001.

k. David Piper is a natural person domiciled in the state of North Carolina, who became a Mac mobile tool distributor in December 2001.

l. Chuck Hook is a natural person domiciled in the state of Pennsylvania, who became a Mac mobile tool distributor in Apr 2003.

m. Greg Haig is a natural person domiciled in the state of S. Carolina, who became a Mac mobile tool distributor in June 2001.

n. Michael B. Stansel is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in October 2001.

o. Robert McElhaney is a natural person domiciled in the state of Georgia, who became a Mac mobile tool distributor in October 2002.

p. Steve Hardaway is a natural person domiciled in the state of Tennessee, who became a Mac mobile tool distributor in September 2002.

q. Gary Tuck is a natural person domiciled in the state of Tennessee, who became a Mac mobile tool distributor in May 2001.

r. Harlan Grantham is a natural person domiciled in the state of Texas, who became a Mac mobile tool distributor in February 1980.

s. Gary Cox is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in February 1996.

t. Don Goddard is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in October 2001.

u. Ken Schmidt is a natural person domiciled in the state of Washington, who became a Mac mobile tool distributor in July 2000.

v. Richard Chavez is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in March 2003.

w. Kent Hadley is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in December 2001.

x. Lance Reed is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in December 2002.

y. Lane Thomas is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in July 2000.

z. Bill Flaten is a natural person domiciled in the state of Wisconsin, who became a Mac mobile tool distributor in January 2002.

aa. Tim Hoefs is a natural person domiciled in the state of Wisconsin, who became a Mac mobile tool distributor in January 1999.

bb. Terry Konsela is a natural person domiciled in the state of Wisconsin, who became a Mac mobile tool distributor in November 1998.

cc. Mark Vincent is a natural person domiciled in the state of Wisconsin, who became a Mac mobile tool distributor in October 1998.

dd. Brad Barnes is a natural person domiciled in the state of Pennsylvania, who became a Mac mobile tool distributor in February 2003.

ee. Danny Deemer is a natural person domiciled in the state of

Pennsylvania, who became a Mac mobile tool distributor in March 2002.

ff. Dan Flanagan is a natural person domiciled in the state of Washington, who became a Mac mobile tool distributor in June 1997.

gg. Franklin Thurman is a natural person domiciled in the state of Washington, who became a Mac mobile tool distributor in February 2000.

hh. Ray Silver is a natural person domiciled in the state of Tennessee, who became a Mac mobile tool distributor in April 2003.

ii. Sean Phillips is a natural person domiciled in the state of Tennessee, who became a Mac mobile tool distributor in June 2003.

jj. Scott Carpenter is a natural person domiciled in the state of Wisconsin, who became a Mac mobile tool distributor in May 2002.

kk. Rusty Parker is a natural person domiciled in the state of North Carolina, who became a Mac mobile tool distributor in November 2002.

ll. Shelli Franz is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in March 2001.

mm. Tim Perry is a natural person domiciled in the state of North Carolina, who became a Mac mobile tool distributor in August 2002.

nn. Tim Blackwell is a natural person domiciled in the state of Minnesota, who became a Mac mobile tool distributor in June 2002.

oo. Scott Freeland is a natural person domiciled in the state of North Carolina, who became a Mac mobile tool distributor in May 2002.

pp. John Contursi is a natural person domiciled in the state of New Jersey, who became a Mac mobile tool distributor in June 2003.

qq. John Johnson is a natural person domiciled in the state of Georgia, who became a Mac mobile tool distributor in July 2002.

rr. Bryan Scahupp is a natural person domiciled in the state of Minnesota, who became a Mac mobile tool distributor in October 2001.

ss. Anthony Gavalyas is a natural person domiciled in the state of New Jersey, who became a Mac mobile tool distributor in July 2003.

tt. Tracy Gunter is a natural person domiciled in the state of NORTH Carolina, who became a Mac mobile tool distributor in November 2002.

uu. Walter Brzezcko is a natural person domiciled in the state of Maryland, who became a Mac mobile tool distributor in April 2002.

vv. William Peterson is a natural person domiciled in the state of Colorado, who became a Mac mobile tool distributor in November 2002.

ww. Curtis Robins is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in May 2001.

xx. Rick Williams is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in March 1983.

yy. Gary Zuckerman is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in May 1998.

zz. Todd Clark is a natural person domiciled in the state of Colorado, who became a Mac mobile tool distributor in April 2003.

aaa. James Poehailos is a natural person domiciled in the state of Maryland, who became a Mac mobile tool distributor in April 2002.

bbb. Mike Keller is a natural person domiciled in the state of Utah, who

became a Mac mobile tool distributor May 2002.

ccc. Timothy Sutter is a natural person domiciled in the state of Colorado, who became a Mac mobile tool distributor in November 1999.

ddd. Todd Franz is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in November 2000.

eee. David McGill is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in October 2002.

fff. Bill Mitchell is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in May 1997.

ggg. Stan Schwartz is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in October 1990.

hhh. Bill Steward is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in March 1996.

iii. Brad Striff is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in December 1998.

jjj. Fidel (Pepe) Tallet is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in November 1992.

kkk. Wayne Valentine is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in September 1999.

lll. David Wecker, individually and on behalf of Wecker Distributing, Inc., is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in January 1998.

mmm. Perry Price is a natural person domiciled in the state of Georgia,

who became a Mac mobile tool distributor in November 1993.

nnn. Scott Sunford is a natural person domiciled in the state of Washington, who became a Mac mobile tool distributor in November 2001.

ooo. Richard Hendricks is a natural person domiciled in the state of Pennsylvania, who became a Mac mobile tool distributor in March 2003.

ppp. Chris Shelton is a natural person domiciled in the state of Michigan, who became a Mac mobile tool distributor in April 2003.

qqq. James Stanek is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in October 2001.

rrr. Carrie Perry is a natural person domiciled in the state of North Carolina, who became a Mac mobile tool distributor in August 2002.

sss. John Foran is a natural person domiciled in the state of Illinois, who became a Mac mobile tool distributor in July 1999.

ttt. Danny Windings is a natural person domiciled in the state of Illinois, who became a Mac mobile tool distributor in January 1998.

uuu. John Clark is a natural person domiciled in the state of Michigan, who became a Mac mobile tool distributor in January 1999.

vvv. Jerry Feld is a natural person domiciled in the state of Michigan, who became a Mac mobile tool distributor in August 2000.

www. Rob Love is a natural person domiciled in the state of Michigan, who became a Mac mobile tool distributor in October 1988.

xxx. Pat O'Connell is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in February 1998.

yyy. Charles McKinnie is a natural person domiciled in the state of California, who became a Mac mobile tool distributor October 2002.

zzz. Kevin Brack is a natural person domiciled in the state of Maryland, who became a Mac mobile tool distributor in April 2001.

aaaa. Brad Trimble is a natural person domiciled in the state of Oklahoma, who became a Mac mobile tool distributor 2003.

bbbb. James Skiff is a natural person domiciled in the state of Washington, who became a Mac mobile tool distributor in February 2002.

cccc. Curtis Gayle McArthur is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in March 2001.

dddd. Ryan Barnhart, resident of Arizona, distributor in October 2002;

eeee. Thomas Michael Reeder, resident of Alabama, who became a Mac mobile tool distributor in September 2002.

ffff. George Mayes, resident of Florida who became a Mac mobile tool distributor in October 2003.

gggg. James Douglas Clemens, Jr., resident of Georgia who became a Mac mobile tool distributor in August 2000.

hhhh. Brian Butterfoss, resident of New Jersey who became a Mac mobile tool distributor in March 2003.

iiii. Reuben Myers, resident of Florida, who became a Mac mobile tool distributor in 1999

jjjj. Mark Powell is a natural person domiciled in the state of Mississippi, who became a Mac mobile tool distributor in July 2003.

kkkk. Blake Robinson individually and as Class Representative, is a natural person domiciled in the state Utah, who became a Mac mobile tool distributor July 1993.

llll. Jason Olson is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in July 2003.

mmmm. John Curtis is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in October 2002.

nnnn. Robert DeSpain is a natural person domiciled in the state of Utah, who became a Mac mobile tool distributor in April 1997.

oooo. Joe Zolo is a natural person domiciled in the state of Florida, who became a Mac mobile tool distributor in 1992.

pppp. Charles Montoya is a natural person domiciled in the State of New Mexico, who has been a Mac mobile tool distributor since March 1998.

qqqq. Victor Wenzel is a natural person domiciled in the state of Texas, who has been a Mac mobile tool distributor since June 2003.

rrrr. Guilford Yates is a natural person domiciled in the state of California, who became a Mac mobile tool distributor in August 2002.

ssss. David Hickox is a natural person domiciled in the state of California, who became a Mac mobile tool dealer in June 2003.

tttt. Dale Glime is a natural person domiciled in the state of Ohio, who became a Mac mobile tool dealer in March 2003.

6. Class Representatives are:

a. Robert Jean individually and as Class Representative, is a natural

person domiciled in the state of Michigan, who became a Mac mobile tool distributor in April 1984;

b. Kenny Hankins, individually and as Class Representative, is a natural person domiciled in the state of Mississippi, who became a Mac mobile tool distributor in 1974;

c. Glenn Perkinson individually and as Class Representative, is a natural person domiciled in the state of Virginia, who became a Mac mobile tool distributor in May 1999;

d. Michael Brown individually and as Class Representative, is a natural person domiciled in the state of Alaska, who became a Mac mobile tool distributor in April 2001; and

e. Curtis Freyermuth individually and as Class Representative, is a natural person domiciled in the state of Georgia, who became a Mac mobile tool distributor in July 1995.

7. Class Representatives and Individual Plaintiffs are sometimes hereinafter, collectively, “Plaintiffs.”

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and §1332.

9. There is federal question jurisdiction. The arbitration clauses in the Distributor Agreements that are the subject of Declaratory Judgment Plaintiffs’<sup>1</sup> action for Declaratory Relief state that they are governed by the Federal Arbitration Act, “9 U.S.C. § 1, *et. seq.*, and the federal common law of arbitration as interpreted by the

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<sup>1</sup> Declaratory Judgment Plaintiffs more specifically identified on pages 41 and 42 below.

federal district court of the Southern District of Ohio.” This would include *Morrison v. Circuit City Stores*.<sup>2</sup> Accordingly, in order to rule on Declaratory Judgment Plaintiffs’ First Claim for Relief, this Court must determine issues of federal law.

10. Moreover, there is complete diversity of citizenship between the named Plaintiffs and all defendants. Currently, Stanley is a citizen of Connecticut for purposes of diversity jurisdiction, and Amex is a citizen of New York. Plaintiffs are citizens of other states, as set forth above. The amount in controversy exceeds \$75,000 for each plaintiff, exclusive of interest and costs. Declaratory Judgment Plaintiffs have undivided interests in declaratory, disgorgement and equitable remedies sought herein, each of which exceeds \$75,000.

11. Alternatively, this Court has jurisdiction over the claims of absent class members pursuant to 28 U.S.C. §1367(a), pendant party jurisdiction.

12. Venue is appropriate in this District because: (1) defendants reside in this District in that they are subject to personal jurisdiction in the District; (2) the wrongs complained of herein occurred in substantial part in this District; and/or (3) Mac has consented to venue in this District pursuant to agreements with certain Plaintiffs. 28 U.S.C. § 1391(b) & (c).

#### **FACTS GIVING RISE TO CLAIMS FOR RELIEF**

13. Mac has had a long, sad history of dealings with its distributors.

14. Plaintiffs are contract distributors and/or employees of Mac. They bring claims, individually and on behalf of a class of similarly-situated contract distributors and/or employees, seeking declaratory relief, an accounting, and damages for breach of contract, conversion, unjust enrichment, tortious interference with business relations,

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<sup>2</sup> *Morrison v. Circuit City Stores*, 317 F. 3d 646, 2003 U.S. App. LEXIS 1456 (6<sup>th</sup> Cir. 2003).

actual fraud, legal and/or constructive fraud, breach of duties arising from special confidential and fiduciary relationships, defamation, false arrest and imprisonment, and breach of constructive trust. Mac has further engaged in practices set forth below that amount to breach of contract and the implied covenant of good faith and fair dealing. These acts have damaged Plaintiffs.

15. Because Mac's unconscionable contract of adhesion at some point included a legally unenforceable alternative dispute resolution clause, the Declaratory Judgment Plaintiffs also seek a declaration that the contract, or at least that clause, is void, and Mac is therefore precluded from enforcing it, so that these certain Plaintiffs may proceed in this Court with their claims.

16. Plaintiffs and absent class members also bring suit for an accounting against Defendants Amex and Mac, based on Mac's assignment of alleged debt obligations to Amex.

17. Plaintiffs are the hard-working men and women who drive Mac tool trucks to local commercial purchasers and users of tools, their customers. Primarily, Plaintiffs sell to mechanics in the automotive after-market, service stations, independent garages, and car and truck dealerships. Plaintiffs' customers may also include non-automotive accounts, such as cycle shops, lawn mower shops, airports, marinas, machine shops, factories, farm implement dealers or repairers, and commercial agricultural users, among others.

18. Mechanics, Plaintiffs' customers, are generally responsible for buying their own tools.

19. Plaintiffs buy the tools from Mac, at a price that approximates retail, and

then sell them to mechanics at a markup, typically 25% to 35%.

20. Only a small portion of Plaintiffs' sales result in Plaintiffs' receipt of the full sales price in cash. The great majority of tools are sold as Time Payment ("TP") sales, where the mechanic pays the distributor the full price over the course of time (typically ten weeks), without interest, as required by Mac.

21. A substantial portion of sales are of big ticket items, like tool boxes, that are sold to mechanics using the Mac Advantage Credit program, which resembles a typical consumer credit transaction, with Mac acting as the bank.

22. Mac recruits new distributors, even though they are doomed to failure from the beginning. Mac does so because it realizes more profits when its distributors fail, so long as Mac can replace failed distributor with a new one.

#### **THE GLOBAL SETTLEMENT AND THE DFEF**

23. In January 1994, over ten years ago, Mac settled over 130 suits against it. The suits, and the jury verdicts already rendered – ranging from over \$500,000 to over \$2,300,000 -- were largely based upon the fraud-in-the-inducement incipient in Mac's business model, and the financial evaluations and projections used to convince those plaintiffs of the economic viability of the tool distributor businesses when those plaintiffs were contemplating the investment. The document Mac used then, and continues to use, although in a somewhat different manner, was called the Distributor Financial Evaluation Form ("DFEF").

24. At the time Mac settled those cases, a CPA, Don Phillips, provided Mac a detailed computer program by which Mac could accurately, and without artifice to existing and potential distributors, determine the true economic viability of any given

distributor prospect before the contracts were signed and the relationships begun. Mac ignored this expert analysis and continued to use the DFEF as it always had used it, never informing a recruit or the existing distributors that the DFEF was not based on reasonable numbers.

25. Distributors continued to fail at an alarming rate, yet Mac's business grew more profitable. Mac just paid failed distributors a paltry portion of their losses, but of course, only to the minority who made claims.

26. In 1993, as a direct response to the large number of claims Mac had been receiving, Mac revised its Distributor Agreements attempting to limit Mac's liability under the earlier fraud-in-the-inducement litigation, and to add Alternative Dispute Resolution ("ADR") provisions that limit distributors' rights and remedies, in derogation of the law regarding enforcement of arbitration agreements.

27. The fraud of the DFEF, coupled with the new ADR procedures, resulted in a highly profitable environment to Mac, encouraging Mac to continue the process of ruining the lives of thousands of hardworking families.

28. Only recently has Mac modified its ruinous use of the DFEF — and it has only exacerbated the fraud. Mac now has the new distributor fill out the first page containing personal expense and income information. Then Mac, without distributor input or knowledge, fills out the business expense and income page with false, unfounded, or otherwise fictitious numbers. According to former Mac Credit Department employees, expense and income numbers are intentionally manipulated until distributors' DFEF's give the appearance of commercial viability. Distributors are NEVER told that the DFEF is a total sham. This process is, bluntly put, an intentional, planned, and

malicious concealment of the most material fact for any business.

29. How can Mac make money by its revolving-door business model: putting distributors into business with specious DFEF's knowing that they will eventually fail? The answer is deceptively simple: the cost of Mac's dollar and Mac's accounting and repossession tactics used in its termination process.

30. To illustrate, assume that Mac contracts with a distributor, knowing that he/she is undercapitalized, and will be out of business within 18 months. During that time, Mac can expect to sell to that distributor about \$300,000 worth of tools that cost Mac only \$75,000 to produce and deliver (assuming an average tool cost of 25%), and Mac pockets the remaining \$225,000 as earnings. At termination, Mac takes back the remaining inventory (assume \$30,000), paying the distributor, on average, about 20% of value, or \$6,000, which is inserted as a credit against the amount Mac claims the distributor owes Mac (assume \$50,000). The inventory is generally resold, reducing the "loss" to Mac. Add together the credit and value of the inventory, and Mac's "losses" are now down to about \$25,000. Deduct that from the \$225,000 it made off a distributor it knew would fail, and the process is profitable indeed! Therefore, under this example, Mac makes \$200,000 in profit, not counting the tax breaks it enjoys. The profits are obviously much higher when a distributor is financed by an outside lender because Mac does not have to write off any of the financed amounts.

### **AES AND THE DOOMSDAY SCENARIO**

31. Concurrently with the global settlement discussed above, in 1993, Stanley commissioned an in-house study of the Mac business model. The study disclosed to upper levels of Stanley and Mac management that the business was mature, and that only

the implementation of the Automotive Equipment Specialist (“AES”) program would save the business.

32. Mac’s AES employees were specially-trained to operate and demonstrate sophisticated, technical diagnostic computer equipment, and the like. This equipment would often sell for as much as \$40,000 per unit. Under Mac’s AES program, when an AES employee was called in by the distributor, and a sale resulted, the distributor earned a commission.

33. Contained within Stanley’s study of the Mac business model was a section called the “Doomsday Scenario,” which concluded that the distributor business would no longer be viable in the event the AES program failed. The AES program was indeed developed, and for a while was successful, but the program was inadequately supported by Mac and Stanley and, ultimately, it failed.

34. However, the demise of mobile tool distributors, predicted by the “Doomsday Scenario” has taken place, resulting in the ruination of thousands of distributors.

35. Mac never informed its distributor force of the conclusions of its study — that the business was mature, failing, and was no longer a viable business model. Stanley and Mac continued to recruit thousands of new distributors while concealing negative material facts about the viability of the businesses. So, due in large part to failed distributors bringing massive numbers of claims, Stanley decided to convert Mac’s traditional distributor model to an employee-based system.

#### **TRANSITION TO EMPLOYEE DISTRIBUTORSHIPS**

36. In approximately 1996, Mac hired its first employee distributors.

37. Mac's woefully inadequate software was incapable of tracking inventory, debt, Mac Advantage credit sales, back orders of tools and merchandise, and every other detail of the mobile tool business (discussed further below). Mac also began and continued this transition without adequate managerial, administrative or technical support.

38. After several permutations, in or about July 1997, the Mac employee distributorship program evolved into the Mac Direct Sales Representative ("MDSR") program. Mac instituted an active MDSR recruitment program. Coupled with the historically high failure rate of traditional distributors, Mac intended to transition to an all-employee distributor system. Eventually, Mac developed an employee based sales force of over 1000 MDSR's.

39. In its zeal to make the transition to an employee-based distributorship and rid itself of traditional distributors, Mac abused the traditional distributors by rigidly enforcing its "80% rule." That rule declared that traditional distributors who did not meet or exceed the 80% National Distributor Average would be terminated. The National Distributor Average was an artificially contrived number, and even the name is misleading, as it more correctly is a National Purchase Average – namely purchases by the distributors from Mac (as opposed to the average distributor's sales to mechanics).

40. The National Distributor Average was also manipulated by Mac to the detriment of the distributors, because it included not only sales made by Mac to distributors, but also commercial sales, school sales, government sales, third party vendor sales, insurance sales, etc., *all of which were made directly by Mac exclusive of its distributors*. Accordingly, the traditional distributors were misled into thinking that they

were in the lowest quintile of the sales force as the basis for the business failing, when in fact, distributors with average or even above average sales were doomed to fail.

41. Further misleading was Mac's inclusion in the National Distributor Average of new distributor start-up inventories, which are not purchases at all. As a result, the purported National Distributor Average was significantly higher than it should have been. The result of the misapplication of the "80% rule" was to force many traditional distributors and employee-distributors from the business.

42. In a normally managed business, sales personnel (distributors or employees) would be compared to one another based upon actual sales to their customers. Indeed, accurate national sales average data would be a crucial element in constructing a credible DFEF.

43. The irony of the employee-based programs was that Mac was required to assume the traditional distributorship business model in-house, but on a much larger scale. Mac assumed liability for the trucks, the inventory, the Time Payments ("TP"), Mac Advantage accounts, and, purportedly, certain employee expenses. A detailed analysis of Mac's unique business model for traditional distributorships is set forth below; and that flawed business model is an inherent cause of failure for thousands of distributorships. Not surprisingly, therefore, Mac did not stick with its own model through its employee-based distributors for long.

44. By the end of 2000, new Mac management decided to end the MDSR/employee program and return to a traditional distributorship business model. The goal was to convert as many MDSR's to traditional distributors as quickly as possible. Former Stanley CEO John Trani observed, in a 2003 first quarter conference call, that the

transition of the Mac Tools business to direct sales by MDSR/employees was “the poorest decision in my business career.”

**THE EFFECT OF THE MDSR PROGRAM  
ON TRADITIONAL DISTRIBUTORS**

45. The MDSR’s had no personal debt service, did not have to buy and replace inventory, and did not have liability for the truck he/she drove to service his/her route – he/she was simply an employee. And his/her employer, Mac had the deepest of pockets, so the MDSR could overstock the truck with only the best selling items. When Mac ran an advertised special, MDSR’s loaded up their trucks with the advertised items, and, because they were employees, the MDSR’s could request and receive as much as they wanted.

46. The traditional distributor, on the other hand, was undercapitalized, low on cash, high in debt, often on some kind of credit hold with Mac, with liability for a truck, and *could only buy what he could pay for*. When he *could* purchase inventory, the inventory was likely on back order, often because popular items were on MDSR trucks. Sales flyers produced a feeding frenzy – there was never enough product, and, because the MDSR was not encumbered by the necessity of having to pay for orders, MDSR’s usually got most of the product because they could order immediately.

47. In addition, the traditional distributor was frequently placed on Mac Advantage credit hold because of non-paying Mac Advantage accounts he/she did not originate. Accordingly, these traditional distributors could not use Mac Advantage for big ticket items (which make up 25% of sales). MDSR’s were not affected. The traditional distributor was forever encumbered by Mac’s balance forward program; the MDSR was not.

48. During the latter part of 2000, Mac began a reduction of its seasoned field management (District Sales Managers and Regional Sales Managers), eventually reducing the sales management force by about half. Mac implemented a major change in its business, and attempted to execute those changes with fewer and less experienced managers than were necessary.

### **THE MDSR CONVERSION SCHEME**

49. In June 2000, top Mac leadership changed. New Mac President John Aden was hired from Frito Lay, a division of Pepsico. By late 2000, all but one of Mac's Regional Managers had been replaced.

50. Mr. Aden called his plan for converting the ranks of MDSR's to distributors "Thin and Purge." As one means of thinning and purging the ranks, another new pay plan was set forth and put into effect (again without notice to the employees) just before Christmas, 2000. The plan was to insure that, as in the potato chip business, "no employee was entitled to more than \$39,000 per year." This pay plan was carefully crafted to deprive, and did deprive, most employees of any income whatsoever just before Christmas. Regional Managers and District Managers were told to tell their employees that they had two choices – convert to a traditional distributorship, or quit. In any event, few if any employees could live on the now drastically reduced pay plan.

51. Hundreds of pages have been written about the fraud of Mac's "Break-even" cash-flow analysis, and jury verdicts adverse to Mac have been rendered based upon it. Nevertheless, Mac went to great lengths to "qualify" MDSR's as potential distributors under its bogus DFEF system. In order to carry out Mr. Aden's "Thin and Purge" plan, Mac credit department management intentionally falsified income and debt

data to further stretch the analysis to “qualify” MDSR’s as new traditional distributors.

52. Employee distributors who converted had no choice but to convert. Mac had so cut their compensation program as to make continued employment financially untenable. Further, Mac’s bookkeeping procedures explained below exacerbated the situation because distributors had not been paid what they had earned under the prior compensation plans.

53. Conversion candidates were promised low interest financing from GE Credit Corp. Upon GE review of their applications, most of them were turned down as not being creditworthy.

54. Mac then promised to finance them at higher interest rates. Substantially all of the MDSR conversion candidates could not qualify under the credit guidelines in Mac’s MDSR conversion manual, unless management at Mac headquarters falsified the financial data. Mac in fact did falsify the financial data, without notice to the applicant, to ensure that they qualified. This was routinely done. Mac’s DFEF scheme was amplified to achieve “qualification.”

55. At closing for converting distributors, and without notice to the former MDSR, Mac rolled its own bad debt into the note. Mac’s specious bookkeeping procedures were manipulated to maximize the amount of “assets” unconscionably transferred to the converting distributor, and to maximize the amount of the loan the converted dealer would then owe to Mac.

56. Mac “sold” their new distributor all of the TP without allowing the new distributor to accept or reject individual accounts. Mac even went so far as to add in arbitrary amounts to the conversion loans – such as inventory adjustments, truck repairs,

adulterated/bogus TP receivables and Mac Advantage bad debts – without notice to the distributor. Mac was thus able to rid itself of tens of millions of dollars of bad, stale, uncollectible, unverifiable, fabricated, and falsified debts and expenses by dumping them on their unsuspecting newly-converted distributors.

57. Because Mac transferred responsibility for bad, stale, uncollectible, unverified and falsified Mac Advantage accounts to these newly-converted distributors, these distributors were quickly placed on Mac Advantage credit hold. All of this Mac Advantage debt was originated by Mac under the MDSR program, not by these converted distributors. Mac Advantage sales account for approximately 25% of all sales for an average distributor. While on Mac Advantage hold, a distributor cannot sell big ticket items such as tool boxes. Big ticket item sales are integral to the business.

58. Mac further loaded the note with costs of truck repairs which had been completed months before and were improperly passed along to the purchaser. Most distributors were forced to purchase worn out trucks. Since the trucks could not pass DOT inspections, few inspections were done.

59. Mac required the converted distributor to purchase inventory which should never have been placed on the truck because it was obsolete, discontinued, truck worn, and unpopular with mechanics. This “starter inventory,” from day one, would be worthless under Mac’s tool return policies.

60. Further, the starter inventory “sold” to the converted distributor, and financed by Mac, was not on the truck or otherwise delivered to, or received by, the converted distributor. When these distributors inventoried their trucks, noticed the missing tools, and informed Mac, Mac refused to deliver the inventory bought or make

appropriate credit adjustments to their trade accounts. Mac's bad faith behavior is patently unfair and unconscionable.

61. District Managers were not usually present for assistance; when they were present, they did not know what they were looking at anyway; when they tried to help, they did not know how to help; when they contacted Mac headquarters, they got nowhere because there was no one at headquarters willing or able to help. And had any manager been willing and able to help, there were no accurate records from which to do so.

62. Mac's conversion program was crafted to ensure that, as a result of the delay before closing, the distributor had no choice but to sign any paper Mac put in front of him/her. Distributors were forced to resign as employees as a condition precedent to *applying* for conversion. In the months between resignation and closing, these distributors continued to operate their trucks and expected continued income (on some level) and a smooth transition through closing.

63. Mac provided its managers with a written "conversion packet." Mac managers were instructed that Mac would not require the converted distributors to encumber their homes, or any other personal assets, not included in the transaction. Contrary to Mac's written instructions, at closing, many distributors were first informed that they would be required to mortgage their homes to Mac. Objectors were told, "Sign it or leave." All were coerced into signing the loan documents and mortgaging their homes.

64. Converted MDSR's were promised, contractually, two weeks of training. Operating as an MDSR is as different from operating as a traditional distributor as football is from ice hockey. No one received the contractually promised training.

65. As a result of the foregoing, no converted distributor was prepared, trained, equipped, or adequately financed to succeed. Hundreds have already failed and hundreds more linger on the brink of failure.

**MAC'S CHANGES IN TOP MANAGEMENT  
EXACERBATED THE FESTERING PROBLEMS**

66. In June 2000, as previously noted, Mr. Aden was hired from Frito Lay, and by late 2000, all but one of Mac's Regional Sales Managers had been replaced. None of the replacement managers came out of the tool industry or any other industry similar to either Stanley's or Mac's core business – *i.e.*, tools. One came from a transportation industry; the other six, as had Mr. Aden, came from the junk food industry.

67. These managers quickly began replacing the remaining seasoned field management with men from other industries (primarily cronies from the same industry). Within just a few months, Mac's leadership was bereft of people with any historical basis, knowledge or understanding of the mobile tool business. Neither Regional Managers nor District Managers could answer the most basic of tool industry questions; they could not fix problems they did not understand.

68. The software that Mac required every distributor to utilize in reporting sales, making payments, tracking inventory, processing warranty claims, and all other essential elements of the tool distributors' business, remained a glaring issue in that none of the business records could be trusted for accuracy. The software simply did not work, or worse, generated false reports, which Mac then used to its sole benefit at the expense of the distributors. The distributors, whether traditional or MDSR, were left to fend for themselves.

69. Mac's new leadership, along with Stanley, continued to ignore the

Doomsday Scenario, the fraudulent DFEF, and other proven failures in the business model for Mac tool distributors and began to realize it had believed its own marketing propaganda. Mac's debt load attributable to each MDSR distributor was high; Mac's maintenance costs were high; and Mac's cash flow requirements were substantial.

70. Accurate accounting was virtually non-existent because of the lack of knowledgeable management, software failures, and inadequate administrative and technical support. In fact, Mac was required to book a loss of over \$50,000,000 in inventory which could not be accounted for.

71. In order to cut costs, Mac began changing the employee compensation programs to cut compensation to MDSR's. Mac began to couple employee income with a complicated matrix formula. Mac could not figure out how to accurately implement the matrix, and Mac's MARS software, that the distributors were required to use, was woefully inadequate to handle the formula.

72. When this compensation plan did not work (the software could not track it and the people could not administer it), the plan changed. The compensation plans were subsequently changed so often, and Mac management, software and bookkeeping was so inept and inapt, neither the employees, nor their District Managers, could accurately determine the appropriate amount each employee was to receive from paycheck to paycheck.

73. Inevitably, most MDSR's did not receive the commissions they earned; District Managers did not care, were not available, or could do nothing to help. District Managers, Regional Managers, and Mac headquarters were flooded with e-mails and letters detailing these recurring issues and mounting frustrations. Even Mac management

recognized the compensation nightmare it had created. Mr. Aden declared to the company in December 2000, “The new commission matrix did not work.” He was referring to the fact that neither management nor the MDSR’s could determine what MDSR pay should be under the matrix.

74. During the period of late 2001 to early 2002, Mac introduced alternative distribution sales through retailers and the internet. Frequently, Mac offered Mac-labeled goods to end users for less than the cost to the traditional distributor for the same items. Mac, in its plan to transition to an all-employee sales force, utilized predatory and anti-competitive conduct and unfairly competed with its own traditional distributors through predatory pricing, manipulating availability of product, and limitation of warranty.

75. In the case of distributors who signed after the agreements allowed Mac to engage in alternative distribution sales, such conduct amounts to unconscionable bad faith and unfair dealing.

76. In the case of traditional distributors who signed agreements preventing Mac from making sales to customers on their routes, this conduct violated the express terms of their agreements.

77. When traditional distributors sought relief from these practices by buying from third party vendors, they were punished or terminated as violating the Distributor Agreement. When traditional distributors could not get product for their territories from Mac, District Sales Managers sent MDSR’s into traditional distributors’ territories to make sales. Mac did have a policy whereby a traditional distributor could obtain product from an MDSR, but the software and support was so inadequate that the traditional distributor’s trade account was usually charged for product he did not receive, and not

credited for payments he made on product he did receive.

78. The changes Mac management attempted failed to alleviate the uncertainty as to what was owed, to whom, and when. As late as June 25, 2002, one District Manager complained to his Regional Manager that:

“the MDSRs are going to be paid commissions this week and we still have no idea how they are going to be paid or have any report to tell either them (the sales person) or the district manger [sic] what to expect. In other words, there is no weekly report that reflects the correct information. . . .We need to have the correct information prior to the MDSRs receiving their checks. We cannot continue to leave a salesperson, which makes his/her living on commissions guessing what they will be paid or for that matter leaving the district manager in the dark also.”

79. Mac Advantage – the credit program administered by Mac to facilitate sales of large-dollar product – was a separate nightmare. Mac Advantage credit holds – refusals to extend credit-- were placed on distributors for accounts that these particular distributors did not originate, but merely inherited from the prior distributor.

80. When Mac management repossessed tools from a delinquent customer, the individual customer’s debt was not negated accordingly, or the paperwork got lost, or Mac manipulated the fair market value of the seized tools unfairly creating a residual balance to be foisted on the back of the tool distributors. Consequently, the tool distributors’ ability to earn a living by large-dollar sales using Mac Advantage was destroyed. Mac often used these types of Mac Advantage holds to deny the distributors’ ability to restock his/her truck and accelerated his/her realization of his/her insolvency.

81. In one particularly egregious example, Mac falsely included over \$1 billion worth of ONE type of socket in the inventory of one MDSR. Despite the obvious error (so many tools would fill an entire warehouse), it took Mac months to get the false entry corrected, and this MDSR was never properly paid what she had earned during this

time.

82. When Mac Advantage customers would call Mac and check their account, they were often told that Mac had not received payments for months, and that the distributor must be “pocketing” the money. In fact, Mac had been paid; the problem was that Mac had lost control of its ability to properly account for payments.

83. The credit and bookkeeping departments were in such disarray that Mac management self-servingly leaped to the conclusion that Mac was being victimized by massive fraud and launched an investigation in approximately June of 2002. In October 2002, one former internal fraud investigator reported to Stanley’s Board of Directors that there was inconsequential fraud, but substantially all of the “lost inventory” and “lost money” was not the result of distributors’ fraud at all – but a product of faulty software, poor accounting, and mismanagement of the Mac credit department.

84. Another problem was that the software would change entries overnight, with no apparent input from anyone. One day a customer balance might be zero, the next day the balance might be \$25,000, with no actual activity. Not only did this devastate the distributors’ reputation and integrity with their customers, the software made it impossible for the distributors to ever get a valid handle on what his customer owed, what he was owed, what he owed, or what his inventory showed versus what was really on his truck as inventory. Mac required distributors to use online transmissions to Mac’s computer, using Mac’s mandatory electronic accounting program, as the primary source of the distributors’ bookkeeping information.

85. This bookkeeping disaster has tainted the amounts Amex claims are owed by plaintiffs on loans Mac assigned to Amex. Because neither Mac nor Amex can

validate the amounts they claim are owed by the distributors, Plaintiffs are bringing a claim for an accounting.

### **MAC'S BUSINESS MODEL FOR TRADITIONAL DISTRIBUTORS**

86. The Mac Tools business model for its distributors is a formula for failure. All generally-accepted business models contemplate a “ramp-up” period toward profitability. During this “ramp-up” period, the business owner must pay debt incurred on the initial startup capital, and must have sufficient funds to sustain his/her ordinary lifestyle until the business becomes profitable.

87. The generally accepted models assume that *no* business will be profitable on its first day. The accepted models contemplate that *all* businesses will undergo a variable time-table in which it will be unprofitable for a time (generally one to three years) until the business has matured and grown sufficiently to sustain itself. Consequently, all business models provide adequate capital for sustenance until the “ramp-up” period has been successfully accomplished.

88. Mac's business model starts with erroneous numbers in the DFEF. Then, the model's success requires profitability from the first day. Though Mac provides for some “working capital” through its specious DFEF, the working capital is usually, and on average, only 5-15% of what is actually needed for ramp-up. And standard practice for District Managers, riding with new distributors, is to deplete the already deficient “ramp up” capital in the very first week, often on the very first day, by encouraging the new distributor to “invest” all of the distributor's capital in tools, and place those tools “on the street” as TP sales.

89. It is standard knowledge in the industry that 70% of a distributor's sales

are TP sales that he must finance out of his own capital; 25% of his sales will come through Mac Advantage which Mac finances; 5% of his sales volume will come through cash sales which will be applied towards expenses, replacement of inventory, and any salary he pays himself.

90. To illustrate, if his/her DFEF states that, to break even, he/she must sell \$5,000 per week, then he/she will sell and finance \$3,500 as TP, \$1,250 as Mac Advantage, and \$250 in cash each week. In order to collect \$3,500 from TP, he/she must have \$35,000 tools “on the street.” Assuming his/her DFEF is accurate as to his/her break-even point, the distributor will need capital of at least \$22,750 (assuming a 35% profit margin, which would be the maximum) in order to pay the trade account balance to Mac for those tools to finance a standard 10 week TP turn.

91. Further, additional capital will be required to replace the amount of profit Mac takes from the distributor as part of the Mac Advantage program.

92. Even more capital is required to sustain normal operating business expenses, such as gas, cell phone, insurance, advertising, and the like over that 10 week turn.

93. During this time, the distributor has living expenses and personal needs which also require capital.

94. Rather than attempt to establish a viable amount of ramp-up capital (probably \$100,000 or more), this illustration establishes that if a distributor had to borrow the ramp-up capital, **the distributor is not, and cannot be, profitable from the first day**, as the Mac business model requires him to be. Thus, every business transaction from the first one onward is an exercise in futility, as complete liquidation of

the business is inevitable.

95. Mac Advantage transactions further worsen the financial stability of distributors due to limitations on cash flow and the need for increased access to non-existent “ramp-up” working capital. Additional infusions of cash are structured to prolong the liquidation process to maximize Mac’s profitability at the distributor’s expense.

96. This process is simple to chart. Inevitably, and without exception, the undercapitalized distributor shows a steady decline in business assets while the business is liquidated. The amount of time it takes to achieve liquidation is largely a product of the amount of additional capital invested (too little, too late) to prolong the downward spiral of liquidation.

97. Interviews and statements from over 100 long-term Mac distributors indicate, without exception, that they ignored the Mac business model and ascribed to accepted business models to provide for adequate “ramp-up” capital. However, the vast majority of Mac recruits have neither the background nor the business experience to ignore the Mac model to failure.

### **THE NEW TRADITIONAL DISTRIBUTOR**

98. Over the last few years Mac’s bad faith conduct hit record lows in order to keep the numbers of unsuspecting recruits flowing. Recruits no longer have input, or even see the business income and expense side of the DFEF. Mac is unrestrained in making false, even ridiculous entries. Mac employees altered and manipulated forms Mac created just to get a distributor “qualified.” The process of getting recruits – fresh checkbooks – in the door, whether substandard or not, becomes even more profitable

when Mac can convince the distributor to obtain third-party financing after the distributor's funds are depleted.

99. Mac's software, accounting and support issues have further deteriorated, not improved, despite Mac's knowledge that thousands of distributors had previously become insolvent following Mac's model.

100. In early April 2003, Mac turned over thousands of "delinquent" TP accounts to a private collection agency. These TP accounts were the distributors' accounts with their customers. The distributors already bought the tools, associated with these accounts, from Mac. Because of Mac's inaccurate business records, many of the accounts were not delinquent; in fact, Mac had received payment in full on thousands of the accounts that Mac turned over to collection. Nevertheless, approximately 100,000 collection letters were sent to customers of distributors (*not* customers of Mac).

101. Each letter received by a distributor's customer that owed Mac nothing cost that distributor substantial good will, trust, and credibility with his customer. Thousands of distributors' customers were lost.

102. For several years now Mac has been causing distributors to subsidize the costs of its warranty program. Warranty returns should be an issue solely between the manufacturer and the end user – the mechanic. Caught in the middle is the distributor. The customer's warranty claims should cost the distributor nothing. The distributor, who gives the customer a new tool to replace the broken tool, must now replace that tool in his inventory. Mac should credit his account for the same amount as the cost of the new replacement tool. However, Mac does not do that. Through a web of paperwork, Mac obfuscates the trail and actually charges the distributor the cost of the new tool, but only

credits his account for the returned tool what the distributor paid for it. In other words, Mac forces the distributor to share the costs of its warranty program with the customer.

103. Mac's latest gimmick is to limit a distributor to returning broken tools for warranty repair worth up to 10% of his/her previous annual sales. This limitation places all warranty claims above the 10% limit on to the back of the distributor. So, when Mac ships hundreds of thousands of dollars of the same shoddy item, it accelerates the distributor's certain insolvency.

104. This problem has been exacerbated by the sales of "Distributed Products," defined in the Distributor Agreement as products manufactured by others (than Stanley or Mac) and distributed by Mac. These products fail more often than products made by Stanley or Mac. For example, the (non-Mac) air-impact wrench –used by every mechanic to remove nuts from wheels-- often breaks upon first use. Moreover, due to delays by Mac in recognizing warranty claims, distributors –in order to placate irate customers—often purchase a replacement from a third party or repair warranted items at the distributors' own expense.

105. Many plaintiffs were enticed by Mac's ice-cream truck analogy. In its recruitment brochures (complete with a picture of a child in front of an ice-cream truck) Mac states: "Remember how the sound of the ice cream truck bell affected you as a child? That is what it is like when a Mac Tools mobile store pulls into the parking lot of a customer. Customers come running."

106. Once on the route, the distributor finds that Mac is universally hated by most customers because of the shoddy tools, ever changing warranties, or for being wrongly accused by Mac of not paying their bills.

107. Mac's District Managers convince the distributor to begin to repair the damage by putting out massive amounts of product on TP, even to customers whose ability to pay is highly questionable.

108. With no real working capital, the brand new distributor orders more inventory on credit from Mac, only to have to repeat the process over and over again until his credit limit is depleted, his cash is gone, and he must borrow again just to prolong the business dissolution.

109. With regard to all of the foregoing allegations, Mac and its officers, employees and agents, engaged in fraud, aggravated by the existence of malice, ill will, oppression and/or insult, and/or engaged in wrongdoing that is particularly gross or egregious. Mac's conduct is wanton, reckless, malicious and/or oppressive. Mac's conduct is characterized by hatred, ill will or a spirit of revenge, and/or a conscious disregard for the rights of other persons – namely Plaintiffs and Class members – that has a great probability of causing substantial harm.

### **THE CLASS ACTION ALLEGATIONS**

110. All Class Representatives bring a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class of similarly situated distributors, defined as follows: all present and former Mac mobile tool distributors in the United States who were engaged in such activities during the period of September 18, 1989 to the present (the "Class").

111. Class Representatives Michael Brown and Glenn Perkinson bring a class action pursuant to Rule 23(b)(2) and (b)(3) on behalf of a subclass consisting of all present and former Distributors in the United States whose alleged debt to Mac was

assigned by Mac to Amex (the “Amex Debt Subclass”).

112. Excluded from the Class and the Amex Debt Subclass are any current employees, officers and directors of the defendant, and any federal judicial officers or employees and their families in the District and Division in which this case is pending, if any.

113. Class Representatives may move to certify the above Class and Amex Debt Subclass, or other distinct classes or further subclasses thereof. The exact definition of the distinct classes and subclasses that will be the subject of a class certification motion will depend upon the Court’s ruling on the Declaratory Relief sought; and will be specifically crafted based upon an application of Fed. R. Civ. Proc. Rule 23 to the facts learned in pre-certification discovery. Class Representatives therefore reserve the right to specifically redefine narrower classes and/or subclasses upon which they will move for certification.

114. All Class Representatives are members of the Class they seek to represent. The members of the Class are geographically dispersed in every state and number at least five thousand.

115. On information and belief, the members of the Amex Debt Subclass are geographically dispersed and number at least four hundred.

116. The members of both the Class and the Amex Debt Subclass are so numerous that joinder of all of them is impractical.

117. There are questions of law and fact common to the Class as required by Fed. R. Civ. P. 23(a)(2), including, but not limited to:

- a. whether defendant Mac breached its fiduciary duty to the Class

members in failing to properly account for and apply moneys received from the Class members and held by Mac in trust;

b. whether defendant Mac failed to disclose its knowledge to Class members concerning the lack of economic viability of distributorships;

c. whether members of the Class are entitled to refunds for the amounts they invested in their tool business;

d. whether Mac's conduct constituted an unfair, deceptive and/or unconscionable practice;

e. whether Mac's conduct constituted legal or constructive fraud;

f. whether Class members suffered ascertainable losses and/or damages;

g. whether the Class is entitled to an accounting as to the validity of the debt assigned by Mac to Amex;

h. whether Mac's conduct towards its distributors constituted a breach of contract, breach of the implied covenant of good faith and fair dealing or a bad faith breach of contract;

i. whether Mac was unjustly enriched;

j. whether the contracts signed by the distributors are unconscionable; and

k. whether Ohio law, pursuant to identical choice of law provisions in the thousands of similar contracts executed by Class members and defendant Mac, will apply to all substantive legal issues arising from the claims raised by the Class Representatives on behalf of the Class.

118. The claims of Class Representatives are typical of the claims of the Class members and the Amex Debt Subclass members, because all class members were subjected to systemic practices.

119. Class Representatives will fairly and adequately represent and protect the interests of the members of the Class and the Amex Debt Subclass. Class Representatives have no interests which are adverse to the interests of the members of the Class and the Amex Debt Subclass. Class Representatives have retained counsel competent and experienced in both complex class actions, and counsel who have handled hundreds of matters regarding this industry and Mac.

120. With regard to the requirements of Rule 23(b)(2) for the Amex Debt Subclass, defendants Amex and KBNA have acted toward the members of the proposed Amex Debt Subclass on grounds generally applicable to each of the members of that subclass, thereby making appropriate injunctive or declaratory relief applicable to the class as a whole. In this case, it is appropriate to determine whether Amex and KBNA stand in Stanley's shoes with regard to enforcing obligations against the subclass, and whether to enjoin such collection efforts.

121. With regard to the requirements of Rule 23(b)(3), a class action is superior to any other available method for the fair and efficient method for the adjudication of this dispute because common questions of law and fact overwhelmingly predominate over any questions that may affect only individual class members, and there would be enormous economies to the court and the parties in litigating the common issues on a class-wide instead of repetitive, individual basis.

122. Handling these claims in the class action context alleviates the risk of

inconsistent adjudications regarding common issues of law applied to common facts. This is action will be manageable because: (1) Ohio law applies to the entire case; (2) Class Representatives intend to move to bifurcate and stay discovery of individual claims and issues until after certification and trial of the putative class action; (3) aggregate damages for the Class and the Amex Debt Subclass can be determined by a formula; and (4) FRCP Rule 23 (c) (4) (A) provides: “an action may be brought or maintained as a class action with respect to particular issues.”

**FIRST CLAIM FOR RELIEF**  
**DECLARATORY RELIEF AGAINST DEFENDANT STANLEY**

123. Plaintiffs Michael Godwin, Anthony Gavalyas, Bill Flaten, Bill Mitchell, Bill Steward, Blake Robinson, Brad Barnes, Brad Striff, Brad Trimble, Brian Butterfoss, Bryan Scahupp, Carrie Perry, Charles and Gabriel Padilla, individually and on behalf C&G Distributing Partnership, Charles McKinnie, Chris Shelton, Chuck Hook, Curtis Gayle McArthur, Curtis Robins, Dan Flanagan, Danny Deemer, Danny Windings, David McGill, David Piper, David Wecker individually and on behalf of Wecker Distributing, Inc., Don Goddard, Franklin Thurman, Gary Cox, Gary Tuck, Gary Zuckerman, George Mayes , Greg Haig, James Douglas Clemens, Jr., James Poehailos, James Skiff, James Stanek, Jerry Feld, John Clark, John Contursi, John Foran, John Johnson, Kelly Thompson, Ken Schmidt, Kent Hadley, Kevin Brack, Lance Reed, Lane Thomas, Larry Bowen, Mario Maccarone, Mark Powell, Mark Vincent, Michael B. Stansel, Mike Keller, Pat O'Connell, Perry Price, Phil Cagle, Ray Gandy, Ray Silver, Reuben Myers, Richard Chavez, Richard Hendricks, Robert McElhaney, Robert Peltierre, Rusty Parker, Ryan Barnhart, Scott Carpenter, Scott Freeland, Scott Sunford, Sean Phillips, Shelli

Franz, Steve Hardaway, Terry Konsela, Thomas Michael Reeder, Tim Blackwell, Tim Hoefs, Tim Perry, Timothy Sutter, Todd Clark, Todd Franz, Tracy Gunter, Walter Brzeczko, Wayne Valentine, William Peterson, Jason Olson, John Curtis, Charles Montoya, Victor Wenzel, Guilford Yates, Robert DeSpain, Glenn Perkinson, Michael Brown, David Hickox, Dale Glime, and Curtis Freyermuth, (hereinafter collectively referred to as “Declaratory Judgment Plaintiffs”) repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

124. Each of the contracts executed by Declaratory Judgment Plaintiffs and Mac contain onerous, lengthy and overreaching provisions for the resolution of disputes by way of an elaborate ADR process. First, issues are to be negotiated, then, if unsuccessful, mediated and, finally, resolved by binding arbitration.

125. The Declaratory Judgment Plaintiffs are signatories to Mac distributorship agreements that purportedly require Declaratory Judgment Plaintiffs to: A) waive punitive damages, their rights to recover attorneys’ fees, consequential damages, and other remedies otherwise available under Ohio law (*e.g.*, ORC § 2315.21), B) exclusively use the services of J.A.M.S./Endispute (“JAMS”) for both mediation and arbitration, and C) pre-pay fees to JAMS well in excess of the costs associated with a court filing.

126. Mac is, and has been since at least 1996, a “repeat player” using the services of JAMS. JAMS cites work with Mac in its promotional materials on the internet, highlighting the substantial contribution of Mac money to JAMS. Plaintiffs do not view JAMS as a truly neutral decision maker under these circumstances. Consequently, the allegedly agreed choice of JAMS arbitration service, exclusively, is unenforceable.

127. Under the Agreements, “The arbitrator is not empowered to and shall not award punitive, exemplary, indirect, special, consequential or incidental damages or any other damages in excess of actual direct damages or in excess of any limit on direct damages set forth in this Agreement, whichever is lower.” Enforcement of this provision would deprive Declaratory Judgment Plaintiffs, and all other Mac distributors with similar clauses, of substantive remedies provided by statute, and thus it is unenforceable.

128. The cost-splitting provisions are contained in the JAMS Rules and Procedures referenced in the agreements. Those rules are published on the internet at: <http://www.jamsadr.com/rules/comprehensive.asp>. Declaratory Judgment Plaintiffs, who have faced financial ruin from their association with Mac, do not have the ability to pre-pay arbitration costs and fees. The difference between the expected cost of arbitration and the expected costs of a judicial forum are great. If this action is certified as a class action, the costs per class member would be quite low. Arbitrator rates at JAMS vary by arbitrator, but are approximately \$800 per hour for commercial disputes, and each party is required to pay half. These costs total thousands of dollars. The difference in cost between arbitration and this case is so substantial as to deter the bringing of claims. Moreover, the cost-splitting provision would deter a substantial number of similarly situated potential litigants. There are thousands of Mac distributors who signed substantially similar arbitration clauses.

129. The Declaratory Judgment Plaintiffs have given Mac written notice of their claims, and Mac has refused to proceed with the ADR process under the Agreements. However, Mac also asserts that all of the infirm provisions of the ADR clauses are binding and enforceable on the Declaratory Judgment Plaintiffs.

Accordingly, an actual controversy exists between the Declaratory Judgment Plaintiffs and Mac.

130. The Declaratory Judgment Plaintiffs invoke the Court's powers pursuant to 28 U.S.C. § 2201(a) to declare "the rights and other legal relations of any interested party seeking such declaration" with respect to ADR provisions unenforceable and void.

**SECOND CLAIM FOR RELIEF**  
**DECLARATORY RELIEF AGAINST DEFENDANTS AMEX AND KBNA**

131. Class Representatives Michael Brown and Glenn Perkinson, individually, and on behalf of the Amex Debt Subclass, repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

132. Class Representatives Michael Brown and Glenn Perkinson, individually, and on behalf of the Amex Debt Subclass are informed and believed that defendant Amex performed due diligence on the assignment of obligations of the Amex Debt Subclass to Stanley, and knew or reasonably should have know of the misconduct set forth above.

133. Class Representatives Michael Brown and Glenn Perkinson, individually, and on behalf of the Amex Debt Subclass invoke the Court's powers pursuant to 28 U.S.C. § 2201(a) to declare "the rights and other legal relations of any interested party seeking such declaration," namely that vis. a vis. the Amex Debt Subclass, Amex and KBNA stand in the shoes of Stanley, and are estopped from enforcing obligations against the Amex Debt Subclass for the same reasons that Stanley is so estopped, based on the above fraudulent and unfair conduct.

**THIRD CLAIM FOR RELIEF**  
**BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT STANLEY**

134. Plaintiffs and Class members repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

135. Consequent to the distributorship agreements between Plaintiffs and Mac, Plaintiffs and Class members were required to send all monies collected from their customers to Mac.

136. Mac then acted as the accountant for Plaintiffs and Class members, in applying those funds to the correct accounts of the distributors' concomitant with an accountant-client relationship.

137. When Mac accepted "legal title" to monies and property (tool trucks, tool inventories, and equipment) that it held for the "beneficial enjoyment" of Plaintiffs and Class members, Mac assumed fiduciary duties with respect to that property.

138. When Mac received Plaintiffs' and Class members' property and monies pursuant to the Agreements, Mac simultaneously was cloaked with the duty to properly value the property, and credit Plaintiffs and Class members. Its failure to do so constitutes a breach of trust or fiduciary duty.

139. "A 'fiduciary relationship' is one in which special confidence and trust is reposed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust." Such a relationship existed between Mac and Plaintiffs (including absent Class members).

140. As a result of said breaches of fiduciary duty, Plaintiffs and Class members were damaged in an amount to be proven at trial.

**FOURTH CLAIM FOR RELIEF**  
**CONVERSION AGAINST DEFENDANT STANLEY**

141. Plaintiffs and Class members repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

142. When Mac failed to properly and accurately account to Plaintiffs and Class members for the property and money Mac received from them, the consistent result was that Mac kept the money and the property.

143. Mac therefore converted Plaintiffs' and Class members' property and money to its own use and benefit, through its ability to wrongfully exercise or control that property, in denial of their rights.

144. As a result of said conversion of Plaintiffs' and Class members' monies and property by Mac, they were damaged in an amount to be proven at trial.

**FIFTH CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT AGAINST DEFENDANT STANLEY**

145. Plaintiffs and Class members repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

146. Plaintiff and Class members have conferred on Mac a benefit in the form of payment for tools, trucks, and other items.

147. The payments by Plaintiffs and Class members would not have been made had Mac not misrepresented the facts regarding the viability of its business model for distributors.

148. Retention of the benefit by Mac would be inequitable and unjust in this case because Mac misrepresented and omitted to disclose material facts regarding the viability of the distributor business model, but for which the distributors would not have

gone into the business and made payments to Mac.

149. In fairness, under the equitable doctrine of unjust enrichment as applied under state common law and/or federal common law, Mac should be required to disgorge the ill-gotten revenue siphoned from Plaintiffs and Class Members.

150. For example, at least a thousand Plaintiffs and Class members executed agreements with Mac prior to 1993 which promised them an exclusive list of customers in a geographic region.

151. Beginning in the late 1990's, Mac made direct sales of tools over the internet to customers of Plaintiffs and Class members.

152. Mac then failed to remit the distributors' portion of the profit on these gross sales.

153. Inherent in this unjust enrichment of Mac, Plaintiffs and Class members were directly and obviously impoverished in an amount to be proven at trial.

**SIXTH CLAIM FOR RELIEF**  
**BREACH OF CONTRACT AGAINST DEFENDANT STANLEY**

154. Plaintiffs repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

155. With regard to the Plaintiffs and Class members who were MDSR's, Mac agreed to pay commissions as promised. Mac has failed to do so, even under the constantly changing commission program such failure amounts to an express breach of contract.

156. All of the Distributor Agreements, and the related agreements, that Plaintiffs had to sign before becoming Mac distributors or employees are contracts of adhesion. That is, they are standardized contract forms offered to Plaintiffs and the Class

Members on essentially a “take it or leave it” basis without affording Plaintiffs a realistic opportunity to bargain, and under such conditions that Plaintiffs and Class Members could not obtain the desired route for a distribution business except by acquiescing in form contracts. Plaintiffs and the Class Members had no realistic choice as to the terms of the various contracts.

157. Moreover, the contracts are not simply contracts of adhesion; they are both substantively and procedurally unconscionable under Ohio law. First, the terms of the Agreements plainly illustrate their unfairness to Plaintiffs and Class members. Indeed, it is hard to imagine more lopsidedly-drafted agreements.

158. For example, in the 19-page Distributor Agreement effective in 2002, the list of section 3, titled “Responsibilities of Distributor,” exceeds four pages, consisting of 21 subparts, totaling 33 paragraphs; and the list in section 4, titled “Route and Customer Calls,” is an additional page of service requirements, totaling 5 subparts and 8 paragraphs.

159. In contrast, Mac is “obligated” to sell the products at such prices and terms as it exclusively determines, and reserves the right to make changes unilaterally, effective on notice. Similarly, the payment terms for products purchased by Plaintiffs and Class members may be changed at any time in Mac’s sole discretion by making revisions to a Manual that is not given to the distributor until the Distributor’s training, if at all. Mac reserves the right to amend the Manual at any time.

160. Even more egregiously, Mac attempts to disclaim liability for any delay in shipping Plaintiffs’ and Class members’ orders for any reason including lack of production, or supplies, or sales to other customers. Plaintiffs’ and Class members’

requests to return broken or defective tools are only permitted at Mac's will in accordance with the Manual's policies, which can be unilaterally changed by Mac at any time.

161. When Plaintiffs and Class members could not sustain themselves economically as Mac distributors, or chose to retire, quit, or otherwise leave the business, and as a result, needed to return their inventory of new, unused, and pristine tools to Mac for cash or credit, they were charged a 10% restocking fee. Returned tools that Mac, in its unilateral discretion, labeled as: "less than a full set, truck-worn, or obsolete/out of production" are retained by Mac without any cash or credit to Plaintiffs and Class members. The contracts do not require Mac to timely or accurately process returns, or account to Plaintiffs and Class members for tools returned. Nor is Mac required to explain or justify its rejection decisions with reasons that are not arbitrary and capricious.

162. Changes in product availability are reserved to Mac without notice or liability. Assignability of the contract by the distributor is forbidden; assignability by Mac, denominated "limited," is not.

163. Also, Ohio law creates a 15 year statute of limitations for breach of written contract claims; the contract expressly limits claims to a period of 1 year.

164. The Agreements used by Mac are not industry standard.

165. The Agreements are also procedurally unconscionable. Only a few, if any, of the Plaintiffs and Class members are college educated. Prior to becoming Mac distributors, they were either mechanics or salespeople who joined the labor force during or shortly after high-school. They thus lacked business acumen and experience at the time the agreements were executed, and Mac clearly had superior bargaining power.

166. Despite the recitation in the Distributor Agreement that the Agreement was received at least 5 days prior to signing, in nearly every instance, the agreements were received on the day of signing in a “cattle call” procedure. Immediately following an orientation, Plaintiffs and Class members were called to another room to sign as many as 17 or 18 different agreements just before their flights home, or to wherever they are to pick up their tool trucks.

167. Mac drafted all of the agreements, and did not explain the terms to Plaintiffs or Class members, or invite them verbally to seek advice of counsel. Mac did not permit alterations to the terms of the Agreement by Plaintiffs or Class members. Thus, the relative bargaining positions of the parties categorically favored Mac to an extreme degree.

168. Moreover, the arbitration clauses in particular are unconscionable. Mac offered no explanation of arbitration at the orientation. Mac did not disclose that for years, Mac has selected and used JAMS as its sole mediator/arbitrator. The volume of business with the Mac-selected ADR provider raises the inference of bias. Neither Mac nor the Agreements disclose the costs of arbitration. Rather, the Agreement simply references the JAMS Rules and Procedures. Pursuant to those rules, which are not supplied to Plaintiffs or Class members at the time of signing the Agreements, JAMS “splits” the fee of mediation between the distributors and Mac, thereby subsidizing the cost of ADR to Mac by 50%. Additionally, mediation is regularly held in New York City, with its attendant costs of travel, room and meals (for him/her and his/her representative counsel). These costs usually exceed any single distributor’s ability to pay.

169. Mac chose the applicable law governing arbitration, the Federal Arbitration Act and Ohio law. The arbitration procedures of JAMS provide for only limited discovery, namely the voluntary exchange of relevant documents (narrower than the federal discovery rules); and only one deposition of the other party, which especially benefits corporate parties which can take the only deposition it needs, the claimant. Conversely, these rules hamstring claimants who must chose only one of the list of usually numerous deponents. The federal rules provide for 10 depositions per side.

170. Finally, distributors (Plaintiffs and Class members) are deprived of their rights to punitive damages, attorneys' fees, and other remedies and damages available as their substantive rights under Ohio statutes.

171. Where a contract or its provisions are found to be unconscionable, a court may refuse to enforce the contract. Alternatively, a court may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result. Accordingly, this Court should respectfully refuse to enforce these unconscionable and adhesive agreements.

172. Irrespective of the unconscionable terms, Mac's conduct should be measured against the requirements of the implied covenant of good faith and fair dealing. A source of Mac's duty of good faith and fair dealing is found in the Uniform Commercial Code (as codified in Section 1301.01 et seq. of the Ohio Revised Code), and the Restatement of the Law 2nd, Contracts. The relevant sections of the Ohio Revised Code are: (1) R.C. 1301.09 (Section 1-203 of the UCC) which provides that every contract falling within the UCC "imposes an obligation of good faith in its performance or enforcement," and (2) R.C. 1301.01 (Section 1-201[19] of the UCC) which defines

“good faith” as “honesty in fact in the conduct or transaction concerned.”

173. Mac’s conduct relative to the Agreements with its distributors, as set forth above, was intentional and in bad faith. Accordingly, Plaintiffs and Class members allege tortious, bad faith breach of contract by Mac.

174. Also, thousands of Plaintiffs and Class members entered into agreements with Mac, the express terms of which were breached by Mac.

175. Those are binding contracts or agreements. Plaintiffs and Class members performed their contractual obligations while Mac failed to fulfill its contractual obligations without legal excuse.

176. As a result of said breaches of contract, Plaintiffs and Class members were damaged in an amount to be proven at trial.

**SEVENTH CLAIM FOR RELIEF**  
**LEGAL OR CONSTRUCTIVE FRAUD AGAINST DEFENDANT STANLEY**

177. Plaintiffs repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

178. Under Ohio law, Mac had a duty to disclose material information to Plaintiffs and Class Members. Mac failed to do so, and such failure had the effect of misleading the Plaintiffs and Class members. Mac made actual or implied representations and concealment of matters of fact, which are material to the transaction, as discussed above. Those statements were made falsely with knowledge of their falsity or with disregard or recklessness for the truth, and were made with the intent of misleading Plaintiffs and Class members into reliance upon them in entering into the transactions. As a result of Mac’s legal or constructive fraud, Plaintiffs and Class members were damaged.

**EIGHTH CLAIM FOR RELIEF  
TORTIOUS INTERFERENCE WITH  
BUSINESS RELATIONS AGAINST DEFENDANT STANLEY**

179. Plaintiffs repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

180. Mac's practice of sending credit-dunning letters to Plaintiffs customers, when those customers had paid in full, constitutes tortious interference with the business relations between Plaintiffs and those parties.

181. Mac, without privilege, induced or otherwise purposely caused Plaintiffs' and Class members' customers to discontinue, refuse to enter, or otherwise strain their business relationship.

182. Mac knew that Plaintiffs and Class members had contracts with their customers for goods, because of the existence of the distributor agreements and their requirements that distributors report all of their sales to Mac twice a week.

183. Mac intentionally procured the contracts' breach by sending false letters to customers regarding amounts owed, which would foreseeably lead to those customers believing that their suppliers were "pocketing" payments made on goods. Mac had no legitimate justification for causing the breach, given the poor state of its own accounting records, but repeated the practice nationwide.

184. Mac, without legitimate justification, intentionally desired and procured the intended breaches of the contracts between the distributors and their customers. Mac desired to drive Plaintiffs and Class members out of business.

185. Mac's intent can be readily ascertained from its utter failure to issue letters of correction and apology to the wrongfully dunned customers.

186. As a result of said tortious interference with Plaintiffs' and Class members' contracts with their customers, they were damaged in an amount to be proven at trial.

**NINTH CLAIM FOR RELIEF**  
**INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS**

187. Plaintiffs and Class members repeat and re-allege the allegations set forth in the paragraphs above as if fully set forth herein.

188. As set forth therein, Mac's accounting records were incredibly inaccurate.

189. When Mac assigned its loans to members of the Amex Debt Subclass to Amex for collection, the amounts involved were not accurate.

190. Equity requires that the Court enjoin Stanley, Amex and KBNA from collecting on amounts allegedly owed by Plaintiffs or the Class members.

**INDIVIDUAL PLAINTIFFS' FIRST NON-CLASS CLAIM FOR RELIEF**  
**ACTUAL FRAUD AND FRAUD-IN-THE-INDUCEMENT**  
**AGAINST DEFENDANT STANLEY**

191. Individual Plaintiffs, and Class Representatives in their individual capacities, repeat and re-allege, in extension, the allegations set forth in the paragraphs above.

192. Mac made actual and implied false representations concerning material facts to the transactions. Moreover, Mac had a duty to disclose material facts and yet concealed those facts.

193. Mac knew of the falsity of its representations and of its concealment, or acted with such recklessness or utter disregard for its truthfulness that knowledge may be inferred.

194. Mac intended to induce reliance on its representations by Individual

Plaintiffs, and Class Representatives acting in their individual capacities.

195. Individual Plaintiffs, and Class Representatives acting in their individual capacities, justifiably relied on Mac's representations.

196. As a proximate result of said actual fraud and fraud-in-the-inducement, they were damaged in an amount to be proven at trial.

**INDIVIDUAL PLAINTIFFS' SECOND NON-CLASS CLAIM FOR RELIEF  
DEFAMATION  
AGAINST DEFENDANT STANLEY**

197. Individual Plaintiffs, and Class Representatives in their individual capacities, repeat and re-allege and copy in extensio the allegations set forth in the paragraphs above.

198. Mac, through its employees, management, officers, Board of Directors, and other agents, made false and defamatory statements concerning certain Plaintiffs.

199. Mac, acting without privilege, published said false and defamatory statements to various third parties including Plaintiffs' customers, fellow distributors, and the mobile tool industry in general.

200. Mac, its employees, management, officers, Board of Directors, and other agents were at least negligent in publishing such false and defamatory statements.

201. Said false and defamatory statements were either actionable irrespective of special harm, or they caused special harm by virtue of their publication.

202. As a proximate result of said defamation, Individual Plaintiffs, and Class Representatives acting in their individual capacities, were damaged in an amount to be proven at trial.

**INDIVIDUAL PLAINTIFFS' THIRD NON-CLASS CLAIM FOR RELIEF**

**FALSE IMPRISONMENT  
AGAINST DEFENDANT STANLEY**

203. Certain Individual Plaintiffs repeat and re-allege, in extensio, the allegations set forth in the paragraphs above.

204. Certain Individual Plaintiffs were intentionally detained by Mac through its employees or agents or others acting under the actual or apparent authority of Mac.

205. Said detentions were unlawful because they lacked a lawful privilege and there was no consent.

206. Mac based these false imprisonments upon baseless allegations that the detainees had committed crimes.

207. As a proximate result of said false imprisonment, these Certain Individual Plaintiffs were damaged in an amount to be proven at trial.

**FRAUDULENT CONCEALMENT**

208. The unlawful actions of Defendant Stanley were wrongfully concealed and carried out in a manner which precluded detection. Defendant Stanley conducted activities in furtherance of its attempts to suppress truthful information concerning its business model from reaching the Plaintiffs and Class members.

209. Due to the fraudulent concealment, any applicable statute of limitations affecting or limiting the rights or causes of action by Plaintiffs and Class members has been tolled.

WHEREFORE, Class Representatives, on behalf of themselves and the class members they seek to represent, request the following relief:

- a. a finding that issues inherent in this action make it proper for

handling as a class action pursuant to Federal Rule of Civil Procedure 23, and establishing an appropriate class or classes, and finding that Class Representatives and their counsel are proper representatives of the classes eventually sought to be certified;

b. an order requiring Defendant Stanley to refund Plaintiffs and Class members, all monies acquired from the sale of tools, trucks and other items of Plaintiffs and Class members;

c. an order requiring Defendant Stanley to disgorge all profits from the foregoing unlawful schemes and unjust enrichment;

d. an order awarding Class Representatives and Class members all compensatory, punitive, statutory, and all other available damages, in an amount to be proven at trial for the wrongful acts complained of;

e. an order imposing a constructive trust in favor of Class Representatives and Class Members;

f. an accounting from Stanley as to the bases for any alleged debt, lien, loan, mortgage, or encumbrance, allegedly owed to Stanley;

g. an accounting from Stanley for all properties held or collected by Mac from Class Representatives and Class members;

h. an accounting from Stanley for all monies collected by Mac from Class Representatives and Class members, and how that money was justifiably applied to their trade accounts;

i. an order awarding Class Representatives and Class members pre-judgment interest;

j. an order awarding Class Representatives and Class members their

costs and expenses in this litigation, including, but not limited to, expert fees and attorneys' fees; and

k. an order awarding Class Representatives and Class members such other and further relief as may be just and proper.

WHEREFORE, Individual Plaintiffs and Class Representatives on their own behalf, request the following relief:

a. a judgment declaring the rights and other legal relations of the parties with regard to the ADR clause of the agreements between them and Mac;

b. an order requiring Defendant Stanley to refund all monies acquired from the sale of tools, trucks and other items to Plaintiffs;

c. an order requiring Defendant Stanley to disgorge all profits from the foregoing unlawful schemes and unjust enrichment;

d. an order awarding Plaintiffs' compensatory, punitive, statutory, and all other available remedies, and damages in an amount to be proven at trial for the wrongful acts complained of;

e. an order awarding Plaintiffs' pre-judgment interest;

f. an order awarding Plaintiffs' their costs and expenses in this litigation, including, but not limited to, expert fees and attorneys' fees; and

g. an order awarding Plaintiffs' such other and further relief as may be just and proper.

WHEREFORE, Class Representatives, Glenn Perkinson, and Michael Brown, individually and on behalf of the Amex Debt Subclass further request the following relief:

a. an accounting from Stanley and Amex as to the bases for any alleged debt, lien, loan, mortgage, or encumbrance, owed to Stanley or Amex;

b. an order awarding Plaintiffs' such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiffs demand trial by jury of all issues which may be so tried.

**RESPECTFULLY SUBMITTED:  
THE MAC TOOL LITIGATION GROUP**

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ANDRE' F. TOCE T.A. (LA #16769, TX#00795900)  
600 Jefferson St., Suite 408  
P.O. Box 2716  
Lafayette, LA 70502-2716  
Phone: (337) 233-6818  
Fax: (337) 237-3649, Email: andre'@toce.com

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Elwood C. Stevens, Jr.(La.Bar#12,459)  
Law Office of Elwood C. Stevens, Jr., A.P.L.C.  
1205 Victor II Blvd  
P.O. Box 2626  
Morgan City, La. 70381  
Phone: 985 384 8611  
Fax: 985 385 4861, Email: attyecs@aol.com

Joseph Arshawsky (NM Bar 8679, CA Bar 135891)  
Arshawsky Law Firm, P.C.  
4404 Corrales Road  
Corrales, New Mexico 87048  
Phone: (505) 792-8200  
Fax: (505)792-0088 , Email: [joe@arshawskylaw.com](mailto:joe@arshawskylaw.com)

W. B. Latta, Jr. (CA Bar 69786, ID 2000)  
Attorney at Law  
P. O. Box 2192  
Boise ID 83701-2192

Phone: (208) 344-9443  
Fax: (208) 338-9256, Email: lattaslaw@msn.com

Lance Houghtling (OK Bar#13899)  
4001 S. 4100 Rd.  
Talala, OK 74080  
Phone: (918) 275-4252  
Fax: (918) 275-4731, Email: lehoughtling@totalcsi.com

**CERTIFICATE OF SERVICE BY MAIL**