

1 REID COLLINS & TSAI LLP
Betny A. Townsend (SBN 284497)
2 1301 S. Capital of Texas Hwy.
Bldg. C, Suite 300
3 Austin, Texas 78746
Tel.: 512-647-6100
4 btownsend@rctlegal.com

5 Attorney for Plaintiffs
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/25/2017 at 02:00:12 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
Civil Complex Center
9 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

10 CYNTHIA DAGNALL and MICHAEL
DAGNALL, individually and on behalf of a
11 class of similarly situated persons,

12 Plaintiffs,

13 vs.

14 ARBONNE INTERNATIONAL, LLC,
DONNA JOHNSON, CASSANDRA HOUSE,
15 TARRAH BRANDSMA, IAIN PRITCHARD,
and DEBORAH CARROLL NEAL,

16 Defendants.
17

CASE NO.: 30-2017-00922926-CU-RI-CXC

COMPLAINT FOR:

1. DECLARATORY RELIEF (6 DEL. C. §§ 2562-64)
2. OPERATION OF ILLEGAL PYRAMID SCHEME (CAL. PEN. CODE § 327 AND CAL. CIV. CODE § 1689.2)
3. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200)
4. UNJUST ENRICHMENT
5. RACKETEERING (18 U.S.C. §§ 1961-62)

(Jury Trial Requested)

Judge Kim G. Dunning

Dept CX104

SL

1 **ORIGINAL COMPLAINT**

2 Plaintiffs, Cynthia Dagnall and Michael Dagnall (“**Plaintiffs**”), individually, and on behalf
3 of all others similarly situated, plead as follows against Defendants Arbonne International, LLC
4 (“**Arbonne**”), Donna Johnson, Cassandra House, Tarrah Brandsma, Iain Pritchard, and Deborah
5 Carroll Neal (the “**Individual Defendants**,” and, together with Arbonne, the “**Defendants**”).

6 **I. PARTIES**

7 **A. PLAINTIFFS**

8 1. Plaintiff Cynthia Dagnall is, and at all materials times was, an individual who resides
9 in the County of Williamson, in the state of Texas. Plaintiff Michael Dagnall is Cynthia Dagnall’s
10 husband. At all relevant times, Cynthia and Michael lived together.

11 **B. ARBONNE AND THE INDIVIDUAL DEFENDANTS**

12 2. Defendant Arbonne is a Delaware corporation with its principal place of business in
13 Irvine, California.

14 3. Defendant Donna Johnson is an individual residing in Cave Creek, Arizona.

15 4. Defendant Cassandra House is an individual residing in New South Wales, Australia.

16 5. Defendant Tarrah Brandsma is an individual residing in Parker, Colorado.

17 6. Defendant Iain Pritchard is an individual residing in Chester, United Kingdom.

18 7. Defendant Deborah Carroll Neal is an individual residing in Pittstown, New Jersey.

19 **II. JURISDICTION AND VENUE**

20 8. Jurisdiction is found under Cal. Civ. Proc. Code § 410.10 and California Constitution
21 Article 6, Section 10.

22 9. Venue is proper pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5 as Defendants
23 are headquartered and/or transact business in the County of Orange.

24 **III. FACTUAL ALLEGATIONS**

25 **A. ARBONNE OPERATES A PYRAMID SCHEME**

26 10. Arbonne is an international multi-level marketing company (an “**MLM**”) that
27 reportedly generated \$541 million in net revenues in 2016. It also a pyramid scheme masquerading
28

1 as a direct seller of health and beauty products. Its many millions in revenues are primarily derived
2 from bilking its hundreds of thousands of distributors.

3 11. Participants in the Arbonne scheme are its so-called independent consultants (the
4 “**Consultants**”). Arbonne requires them to purchase start-up packages and pay annual dues, and the
5 Arbonne system makes it a virtual necessity that the distributors purchase Arbonne products—lots
6 of them. In return, the Consultants receive the right to receive compensation based in primary part
7 on their recruitment of new Consultants (who pay fees, pay dues, and purchase product). Just like a
8 classic pyramid scheme, the more new Consultants a Consultant brings into the Arbonne program
9 (and the more payments those new Consultants make), the more money a Consultant can make.

10 12. Unlike participants in a classic pyramid scheme, the Arbonne Consultants receive
11 health and beauty products, which the Consultants can theoretically sell. But that fact makes
12 Arbonne no less a pyramid scheme. As a group, the Consultants may sell a limited amount of
13 products at retail, but the bulk of the money paid to the Consultants comes from other Consultants.
14 Just like a classic pyramid scheme, Consultants are feeding off the money paid by other
15 Consultants.

16 13. The vast majority of Arbonne’s Consultants lose money. The only people who make
17 money from the Arbonne pyramid scheme are the very few at the top of the pyramid. These few—
18 including Defendants Donna Johnson, Cassandra House, Tarrah Brandsma, Iain Pritchard, and
19 Deborah Carroll Neal (collectively, the “**Individual Defendants**”)—actively participate in the
20 Arbonne pyramid scheme and profit from the payments to Arbonne made by the many thousands of
21 other losing Consultants.

22 **B. INDIVIDUAL DEFENDANTS AND ARBONNE PROMOTE THE PYRAMID**
23 **SCHEME**

24 **1. Individual Defendants Promote Arbonne and Mislead Consumers**

25 14. In coordination with Arbonne, the Individual Defendants have flooded the internet
26 with promotional materials designed to lure in new Consultants. All of the Individual Defendants
27 have produced videos and made statements via the internet knowingly promoting Arbonne’s
28 pyramid scheme by touting the financial rewards supposedly available to Consultants. Each of the

1 Individual Defendants made statements that furthered the pyramid scheme by encouraging persons
2 to become Consultants, by emphasizing that financial success depends on recruiting, and by
3 encouraging Consultants to remain Consultants and pursue Arbonne’s supposed business
4 opportunity.

5 15. The statements by the Individual Defendants imply, if not state explicitly, that
6 Consultants can achieve significant financial success through the Arbonne business. But the truth is
7 that only the tiniest minority of Consultants achieve the sort of financial success the Individual
8 Defendants tout, no matter how hard they work.

9 16. The Individual Defendants are well aware of this fact, but they seek to intentionally
10 mislead people (a) so that people will agree to sign up as new Consultants in the Individual
11 Defendants’ Downlines and (b) so that current Consultants will continue to participate in the
12 Arbonne system, which requires the purchasing of product and recruiting, all to the benefit of
13 Arbonne and the Individual Defendants. It is the continued hard work of the Defendants at
14 recruiting that will affect the ability of Arbonne and the Individual Defendants to continue to reap
15 financial rewards.

16 **2. Arbonne’s Own Promotional Materials are Misleading**

17 17. Arbonne’s own website boldly reinforces the message portrayed by the Individual
18 Defendants—that anyone can get rich with Arbonne, just as the Individual Defendants have.
19 Arbonne entices potential new Consultants with promises of the dream life:

20 Imagine the freedom to live the life of your dreams by starting your own
21 successful business. That’s the beauty of our business model. So many of our
22 Independent Consultants have done just that, and have transformed their careers,
23 their lives ... themselves. They have created a better work-life balance because
they choose when to work and when to play. With the right leadership, tools and
effort, you can too.

24 18. This message is obviously misleading, and Arbonne knows it. Arbonne’s own
25 income statement shows that over 86% of Consultants lose money with the Arbonne business
26 model. Certainly, a Consultant’s success or failure depends to some degree on “leadership, tools
27 and effort,” but the clear implication from the message is that any person willing to put in effort to
28 Arbonne will be financially successful. Unless 14% of Arbonne Consultants have the “right

1 leadership, tools and effort,” the implication from Arbonne’s website is belied Arbonne’s own
2 disclosures.

3 **C. PLAINTIFFS ARE VICTIMS OF ARBONNE’S PYRAMID SCHEME**

4 19. Between February 2014 and May 2016, Claimant Cynthia Dagnall spent
5 approximately \$2,500 in fees, product purchases, promotional materials and costs related to
6 attending Arbonne’s annual convention in Las Vegas. Her last payment to Arbonne was May 31,
7 2016. Over the course of her association with Arbonne, Cynthia received approximately \$30.00 in
8 payments from Arbonne.

9 20. Claimant Michael Dagnall joined Arbonne a few weeks after his wife in February
10 2014. He never ended up making money on Arbonne’s business opportunity. Michael paid
11 Arbonne \$340.00 in fees and product purchases between February 2014 and May 2015. His last
12 payment to Arbonne was May 2015. Over the course of his association with Arbonne, he received
13 \$0.00 in payments from Arbonne.

14 21. Plaintiffs seek to recover all monies they paid Arbonne, less any money Arbonne
15 paid them. They also seek the certification of a class of Consultants who, like Plaintiffs, became
16 Consultants in the Arbonne scheme and who received less from Arbonne than they paid Arbonne.

17 22. Plaintiffs seek to hold Defendants liable for the operation and promotion of a
18 pyramid scheme pursuant to 6 Del. C. §§ 2511-2516; 6 Del. C. §§ 2561-2564; Cal. Civ. Code
19 § 1689.2 and Cal. Penal Code § 327; unjust enrichment; and the Federal Racketeer Influenced and
20 Corrupt Organizations Act (“**RICO**”), 18 U.S.C. § 1961 *et seq.*

21 **IV. ARBITRABILITY**

22 23. Arbonne purports to contract with its Consultants through several documents,
23 including the Independent Consultant Application & Agreement (the “**Application**”); the Policies &
24 Procedures (“**P&P**”); the Arbonne SuccessPlan; and the Independent Consultant Code of Ethics
25 (collectively, the “**Contracts**”). The Application and the P&P each purport to require disputes
26 between Arbonne and its Consultants to be resolved through arbitration.

27 24. However, Plaintiffs contend that the instant dispute is not arbitrable, for at least two
28 reasons. First, the agreement between Arbonne and Plaintiffs is illusory and thus unenforceable.

1 Second, under Delaware law, pyramid scheme contracts are void and unenforceable. *See* 6 Del. C.
2 §§ 2561, 2564. Arbonne’s agreement with its Distributors is a pyramid scheme contract. Thus, the
3 agreement between Arbonne and Plaintiffs—including the arbitration provision—is void and
4 unenforceable.

5 25. For these reasons, Plaintiffs contend that the arbitration provision is not enforceable.
6 However, Plaintiffs are willing to submit the issue of arbitrability to arbitration. They intend to
7 obtain a determination from the arbitrator that the dispute is not arbitrable, then return to litigate
8 their claims and the class claims before this Court.

9 26. In recognition of the non-judicial resolution procedure set forth in the P&P, Plaintiffs
10 have also served a Notice of Mediation on Defendants requesting mediation regarding the same
11 claims at issue in this Complaint. Plaintiffs have filed this Complaint to preserve their rights should
12 mediation fail and as a protective measure to avoid any potential statute of limitations issues.

13 **V. CLASS ACTION ALLEGATIONS**

14 27. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
15 Procedure 23. Plaintiffs will bring this action as a class action before the U.S. District Court for the
16 Central District of California upon the Arbitrator’s declaring the contract between Plaintiffs and
17 Arbonne void under Delaware law as a pyramid scheme. Alternatively, Plaintiffs will pursue a
18 class action before the Arbitrator.

19 28. Plaintiffs seek relief on behalf of themselves and the “**Class**”: Consultants who, like
20 Plaintiffs, paid Arbonne’s fees and purchased Arbonne’s products between the date of the filing of
21 this Complaint and the end of any applicable limitations period, and who lost money from their
22 participation in the Arbonne scheme. The Individual Defendants are excluded from the Class.

23 29. The members of the Class (“**Class Members**”) number in the hundreds of thousands,
24 making joinder of all Class members in a single action impracticable.

25 30. There are questions of law and fact common to the Class that predominate over any
26 question affecting only individual Class Members.

27 31. The Plaintiffs’ claims are typical of the claims of the Class in that Plaintiffs were
28 Participants in Arbonne who lost money as a result of the pyramid scheme.

1 32. The Plaintiffs will fairly and adequately represent the interests of the Class in that
2 Plaintiffs' claims are typical of those of the Class and Plaintiffs' interests are fully aligned with
3 those of the Class. The Plaintiffs have retained counsel who are experienced and skilled in class
4 action litigation.

5 33. Class action treatment is superior to the alternatives, if any, for the fair and efficient
6 adjudication of the controversy alleged herein, because such treatment will permit a large number of
7 similarly-situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without unnecessary duplication of evidence, effort, and expense that numerous
9 individual actions would engender.

10 34. The Plaintiffs know of no difficulty likely to be encountered in the management of
11 this action that would preclude its maintenance as a class action.

12 **VI. CLAIMS FOR RELIEF**
13 **COUNT ONE**

14 **Declaratory Judgment that Contracts are Void—6 Del. C. §§ 2562-64**
15 **Against All Defendants**

16 35. Plaintiffs incorporate by reference all allegations set forth above.

17 36. Arbonne's multi-level marketing scheme, as set forth in the contractual agreements
18 between Arbonne and the Consultants, constituted a pyramid scheme under Delaware law.

19 37. Arbonne's Policies & Procedures designate Delaware law as the substantive law
20 applicable to disputes with Consultants.

21 38. Delaware law provides that any pyramid scheme contract is void. *See* 6 Del. C. §§
22 2562-64.

23 39. The contracts between Arbonne and Plaintiffs are therefore void.

24 40. The contracts between Arbonne and all Plaintiffs are identical (other than personal
25 information specific to each Plaintiff), and so all the contracts between Arbonne and all Plaintiffs
26 are void.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT TWO

Endless Chain Scheme—Cal. Pen. Code § 327 and Cal. Civ. Code § 1689.2

Against All Defendants

41. Plaintiffs incorporate by reference all allegations set forth above.

42. Under California Penal Code § 327, endless chain schemes are illegal. An endless chain scheme is defined under § 327 as, “any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.”

43. Arbonne perpetuates an endless chain scheme.

44. Each of the Defendants contrived, prepared, set up, proposed, and/or operated the Arbonne endless chain scheme.

45. Plaintiffs and the Class Members have suffered injuries in fact and have lost money or property because of Defendants’ operation of an endless chain scheme.

46. Plaintiffs and the Class are entitled to:

- a. Rescind the contracts upon which the scheme is based;
- b. Recover all consideration paid under the scheme, less any amounts paid or consideration provided to the participant under the scheme;
- c. Restitution, compensatory and consequential damages; and/or
- d. Attorneys’ fees, costs, pre- and post-judgment interest.

COUNT THREE

Unfair and Deceptive Practices – Cal. Bus. & Prof. Code § 17200, *et seq.*

Against All Defendants

47. Plaintiffs incorporate by reference all allegations set forth above.

48. Defendants have engaged in constant and continuous unlawful, fraudulent and unfair business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, *et seq.*

1 49. Arbonne’s business practices are unlawful under §17200 because they constitute an
2 illegal “endless chain” as defined under, and prohibited by, California Penal Code § 327.

3 50. Under California Business and Professions Code § 17200, a “fraudulent” business
4 practice is one that is likely to deceive the public. Arbonne’s business practices are fraudulent
5 because (i) Arbonne is an illegal and deceptive “endless chain scheme” and (ii) Arbonne’s
6 “business opportunity” was marketed and sold as available for everyone, yet it is not a true business
7 opportunity.

8 51. Under California Business and Professions Code § 17200, a business practice is
9 “unfair” if it violates established public policy or if it is immoral, unethical, oppressive or
10 unscrupulous and causes injury which outweighs its benefits. Arbonne’s promotion and operation
11 of an unlawful and fraudulent endless chain scheme and its fraudulent representations and
12 omissions regarding its purported “business opportunity” are unethical, oppressive, and
13 unscrupulous in that Arbonne is and has been duping Plaintiffs and the class members out of
14 hundreds of millions of dollars.

15 52. Defendants should be made to disgorge all ill-gotten gains and return to Plaintiffs
16 and the class members all wrongfully taken amounts of money.

17 **COUNT FOUR**

18 **Unjust Enrichment**

19 **Against Arbonne**

20 53. Defendants re-allege the preceding paragraphs as though fully set forth herein.

21 54. The Arbonne SuccessPlan is a pyramid scheme under Delaware, California, and
22 federal law.

23 55. The SuccessPlan is an integral part of the Contracts. The Contracts are illegal and
24 contrary to public policy. As such, the Contracts are void.

25 56. Plaintiffs and the Class Members paid Arbonne money pursuant to Arbonne’s
26 perpetration of an illegal pyramid scheme.

27 57. Arbonne has been unjustly enriched by its perpetration of an illegal pyramid scheme
28 and by Plaintiffs’ and the Class Members’ payments of money to Arbonne.

1 58. It would be unconscionable to allow Arbonne to retain the benefits of its illegal
2 conduct.

3 59. Arbonne should be required to return to Plaintiffs and each Class Member all the
4 money each paid Arbonne pursuant to its illegal pyramid scheme, less any money Arbonne paid
5 Plaintiffs and Class Member, or that amount of profit Arbonne earned from its association with the
6 Plaintiffs and each Class Member.

7 **COUNT FIVE**

8 **Racketeering Activity—18 U.S.C. §§ 1961(5) and 1962(c)**

9 **Against All Defendants**

10 60. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

11 61. Each Defendant is a “person” for purposes of RICO, 18 U.S.C. § 1962, because each
12 Defendant is, and was at all relevant times, an individual or entity capable of holding legal or
13 beneficial interest in property.

14 62. All of the Defendants in this action collectively form an “enterprise” under 18 U.S.C.
15 § 1962.

16 63. The Defendants have used false and fraudulent pretenses to obtain money and
17 property from the Plaintiffs and the Class.

18 64. Each of the Defendants acted with specific intent to perpetrate and operate a pyramid
19 scheme.

20 65. The Defendants’ numerous acts of mail fraud and wire fraud amount to a pattern of
21 racketeering activity because they are continuous and related.

22 66. The pyramid scheme affected interstate commerce by reason of, at least, each of the
23 Defendants’ numerous acts or omissions constituting use of the mail or interstate wire
24 communication facilities in furtherance of their scheme to defraud.

25 67. The Defendants committed racketeering acts by operating and promoting an illegal
26 pyramid scheme through the use of the mail or private or commercial carriers and by transmitting
27 and causing others to transmit, by means of wire in interstate commerce, writing, signs, signals,
28

1 pictures, and sounds, all in furtherance of and for purposes of executing a scheme or artifice to
2 defraud, namely an illegal pyramid scheme.

3 68. As a direct and proximate result of the Defendants' acts of mail and wire fraud,
4 Plaintiffs and the Class Members were injured in their business or property.

5 69. The Plaintiffs and the Class Members are the foreseeable victims of the pyramid
6 scheme and Defendants' acts of mail and wire fraud.

7 **COUNT SIX**

8 **Racketeering Activity—18 U.S.C. §§ 1961(5) and 1962(d)**

9 **Against All Defendants**

10 70. Plaintiffs incorporate by reference all foregoing paragraphs as if fully set forth
11 herein.

12 71. Section 1962(d) makes it “unlawful for any person to conspire to violate any of the
13 provisions of subsection (a), (b), or (c) of this section.”

14 72. Each of the Defendants intentionally and willfully participated in a conspiracy to
15 engage in Count 5. Each Defendant knew about and agreed to facilitate the pyramid scheme.

16 73. Each of the Defendants has participated in the Arbonne pyramid scheme and their
17 participation is necessarily a combination of more than two individuals. Each of the Defendants
18 have committed one or more overt acts to achieve or further the unlawful objects and purposes of
19 the pyramid scheme detailed herein.

20 74. Each of the Defendants had a meeting of the minds on the object or course of action,
21 specifically to create, support and maintain the pyramid scheme for their financial benefit as
22 evidenced by each Defendant's voluntary and knowing participation in the pyramid scheme, and the
23 similarity and consistency of their conduct.

24 75. The Defendants' creation, support, and maintenance of the pyramid scheme is
25 illegal.

26 76. Each of the Defendants has violated Section 1962(c) and is liable, jointly and
27 severally, for the business injury caused to the Plaintiffs and the Class Members by his, her, or its
28 actions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiffs, on their own behalf and on behalf of the Class Members, demand a trial by jury on all issues triable by a jury.

DATED: May 25, 2017

/s/ Betny A. Townsend
Betny A. Townsend
Attorney for Plaintiffs