



This 3DAdvisors Report Covers:

- ✓ **Insider Trading:** Insider Trading Behavior
- ✓ **Accounting:** Quality of Earnings Issues
- Governance:** Corporate Governance Issues

Amended Complaint Filed in “Channel Stuffing” Suit Avon Products, Inc. (NYSE:AVP) Update

January 23, 2004

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Avon Products, Inc. is a global manufacturer and marketer of beauty and related products. The Company's business is comprised of direct selling, which is conducted in North America, Latin America, Europe and the Pacific. Avon's products fall into four product categories: Beauty, which consists of cosmetics, fragrances and toiletries (CFTs); Beauty Plus, which consists of jewelry, watches and apparel and accessories; Beyond Beauty, which consists of home products, gifts, decorative items and candles, and Health and Wellness, which consists of vitamins, an aromatherapy line, exercise equipment and stress relief and weight management products. The Company has operations in 58 countries, including the United States, and its products are distributed in 85 more countries, for a total coverage of 143 markets.

Summary of 3DAdvisors Findings for AVP

- **Accounting:** Amended complaint filed in “channel stuffing” suit

Discussion of 3DAdvisors Findings

Accounting: Amended complaint filed in “channel stuffing” suit

The attorneys for the plaintiffs filed their anticipated Second Amended Complaint in California Superior Court for the County of Los Angeles against Avon Products, Inc. We have attached a copy of the complaint to this report for your review, since this is now a public document. We believe this amended complaint has the potential to draw considerable media attention.

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Attorneys for Plaintiffs RAVEN BLAKEMORE,
 ROBIN SMITH, LUPE LANE, AND ELDA GARCIA,
 individually, and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

RAVEN BLAKEMORE, ROBIN SMITH,
 LUPE LANE, and ELDA GARCIA,
 individually, and on behalf of all others
 similarly situated,

Plaintiffs,

v.

AVON PRODUCTS, INC., a New York
 corporation; and Does 1 through 50, inclusive,

Defendants.

CASE NO. BC 292702

Hon. Wendell Mortimer, Jr.
 Dept. 307

Action Filed: March 24, 2003

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR (1) FRAUDULENT
 CONCEALMENT; (2) BREACH OF
 CONTRACT; (3) UNJUST
 ENRICHMENT; AND (4) VIOLATION OF
 BUSINESS & PROFESSIONS CODE
 §17200 ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiffs, individually and on behalf of all others similarly situated, allege as follows:
2

3 **SUMMARY OF THE CASE**

4 1. For the past four years, Defendant Avon Products, Inc.’s (“Avon”) success in
5 boosting sales, increasing earnings, and propelling its stock price to new highs has come at the
6 expense of its own sales representatives (“Sales Representatives”). Even Avon’s own beauty
7 products cannot cover-up the ugly methods by which the company’s rosy financial performance
8 was achieved.

9 2. Avon is a direct marketer that sells its beauty products to consumers through Sales
10 Representatives, commonly known as “Avon ladies.” Avon recruits new Sales Representatives
11 with the assurance that they face little financial risk in selling Avon products because they may
12 order as little or as many products as they can sell and, if any products are left unsold, those
13 products may be returned to the company for full credit.

14 3. Plaintiffs are Sales Representatives who sold Avon products on either a full or part-
15 time basis from their homes or offices to earn additional income for their working-class families.
16 During the time Plaintiffs worked as Avon Sales Representatives, the company engaged in a
17 widespread scheme known as “Channel Stuffing.” Channel Stuffing is a practice whereby Avon
18 forces (or “stuffs”) products onto its Sales Representatives (who are the company’s channels of
19 distribution) by deliberately shipping products to the Sales Representatives that they did not order
20 or far in excess of the quantities that they ordered. Such practices benefit Avon enormously
21 because the company records these unordered product shipments as final sales which “boost” the
22 company’s sales revenues.

23 4. In addition, to make its Channel Stuffing practices appear as legitimate product
24 sales, Avon takes this scheme one step further. When Sales Representatives return the unordered
25 or excess products to Avon for full credit, Avon refuses to grant any credit in violation of its own
26 return policy. Among other things, Avon falsely denies receiving the returned products when the
27 company in fact did receive such products. By so doing, Avon avoids recording these returns,
28 which otherwise would decrease the company’s sales revenues and likely reveal its unseemly

1 business practices. And, as an added benefit, Avon is free to re-sell the returned products for
2 additional revenue.

3 5. Further, Avon perpetuates its Channel Stuffing practices by eventually coercing –
4 through various and increasing penalties – the Sales Representatives into accepting and paying for
5 unordered products rather than returning them for credit. Avon unfairly requires the Sales
6 Representatives (rather than the company) to pay the return shipping costs. If that deterrence fails,
7 Avon revokes “Instant Credit” which requires the Sales Representatives to pay for the unordered
8 products in full until Avon completes its lengthy return process. As its next tactic, Avon refuses to
9 ship any further products until the Sales Representatives pay for their entire order in advance
10 which most, as the company well knows, cannot afford to do. Finally, if Sales Representatives
11 persist in returning unordered products for credit, Avon ultimately threatens to terminate their
12 businesses which, for some, constitute their livelihood. By such heavy-handed tactics, Avon
13 eventually succeeds in economically coercing many of the Sales Representatives into accepting
14 and paying for unordered products.

15 6. Although some Sales Representatives quit or are terminated for refusing to accept
16 Avon’s Channel Stuffing practices, Avon still seeks to extract monies from them that they do not
17 owe. Avon submits claims based on unordered products that it knows, or should know, were
18 returned by the Sales Representatives to collection agencies in order to harass the Sales
19 Representative into paying monies they do not owe.

20 7. The motive behind Avon’s Channel Stuffing scheme is nothing but plain old-
21 fashioned greed. The compensation of Avon’s top executives is directly tied to the company’s
22 sales revenues and financial performance. Thus, Plaintiffs are compelled to bring this action for
23 damages, restitution, and injunctive relief against Avon for its fraudulent, unfair, and unlawful
24 business practices.

THE PARTIES

A. Plaintiffs

8. Plaintiff Raven Blakemore (“Ms. Blakemore”) is an individual residing in the City of Sonora in the County of Tuolumne in the State of California. From approximately July 2002 through November 2002, Ms. Blakemore worked as an Avon Sales Representative.

9. Plaintiff Robin Smith (“Ms. Smith”) is an individual residing in the City of Belmont in the County of San Mateo in the State of California. From approximately August 2001 through April 2002, Ms. Smith worked as an Avon Sales Representative.

10. Plaintiff Lupe Lane (“Ms. Lane”) is an individual residing in the City of Ventura in the County of Ventura in the State of California. From approximately August 2002 through July 2003, Ms. Lane worked as an Avon Sales Representative.

11. Plaintiff Elda Garcia (“Ms. Garcia”) is an individual residing in the City of South Gate in the County of Los Angeles in the State of California. From approximately March 2001 to the present, Ms. Garcia has been working as an Avon Sales Representative.

B. Defendants

12. Plaintiffs are informed and believe and based thereon allege that Avon is, and at all times mentioned herein was, a corporation organized and existing under the laws of the State of New York, doing business in the County of Los Angeles, State of California.

13. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does 1 through 50, inclusive, and therefore sue those defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when they are ascertained. Plaintiffs are informed and believe and based thereon allege that each of such fictitiously-named defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiffs’ injuries as herein alleged were proximately caused by said defendants’ acts.

14. Plaintiffs are informed and believe and based thereon allege that, at all times mentioned herein, Does 1 through 50, inclusive, and each of them, are and were the agents, servants, employees, joint venturers, parents, subsidiaries, or otherwise affiliated corporations or

1 business of each other and of Avon and, in doing the acts and omissions herein alleged, are and
2 were acting within the course and scope of such agency and employment and with the permission,
3 consent, and ratification of Avon.

4 **CHANNEL STUFFING**

5 **“Forced Delivery”**

6 15. Typically, Sales Representatives place orders for only those products requested by
7 their customers as they do not want to pay for an inventory of products that they may be unable to
8 sell in the future. Avon provides a detailed, multiple-page purchase order with the assurance that
9 it will ship (and charge for) only those products specifically ordered by the Sales Representatives
10 in their purchase orders. However, Plaintiffs are informed and believe and based thereon allege
11 that Avon engages in a company-wide practice of deliberately shipping (and charging for)
12 products that either were not ordered by the Sales Representatives or far in excess of the quantity
13 ordered. Such practice is commonly known as “Forced Delivery.”

14 16. For example, in or about August 2002, Plaintiff Raven Blakemore received three
15 (3) Quilted Drawstring Bags and other products from Avon that she never ordered and was
16 charged for those unordered products in excess of \$83. Also, in or about the next month, Ms.
17 Blakemore received twice the number of products that she ordered and was charged for those
18 duplicate products in excess of \$235. And, on another occasion, Ms. Blakemore ordered three (3)
19 Vintage Watches and Pin Sets, at a cost of \$19.99 each, but instead received thirty (30) Vintage
20 Watches and Pin Sets, for which she was charged in excess of \$599.

21
22 **“Preferred Preview”**

23 17. In another example of Channel Stuffing, Avon deliberately ships unordered
24 products to its Sales Representatives in a program commonly known as “Preferred Preview.” On
25 every occasion that Avon debuts a new product (which occurs approximately four times per year),
26 the company automatically ships the new product to all of its Sales Representatives. Prior to such
27 shipment, Avon represents in writing that a Sales Representative may decline to receive the
28

1 Preferred Preview product by so notifying Avon (usually by calling a toll number at the Sales
2 Representative's expense).

3 18. However, Plaintiffs are informed and believe and based thereon allege that such
4 representation is false in that Avon engages in a company-wide practice of deliberately shipping
5 the Preferred Preview products to all of its Sales Representatives – even to those who decline
6 receipt of such product.

7
8 **The No-Credit "Return Policy"**

9 19. Upon receiving unordered products under the Forced Delivery Practice or Preferred
10 Preview Program, Sales Representatives return such products to Avon pursuant to the company's
11 return policy ("Return Policy"). Under that policy, Avon represents, both in writing and orally,
12 that Sales Representatives may return unordered products to Avon for full credit.

13 20. However, Plaintiffs are informed and believe and based thereon allege that such
14 representation is false in that Avon has a policy and practice of denying credit to Sales
15 Representatives who return unordered products by falsely claiming Avon never received the
16 returned products when in fact the company did receive such products. By so doing, Avon avoids
17 recording such returned products, which otherwise would reduce its gross sales revenues and
18 likely reveal its fraudulent business practices. And, as an added bonus, Avon is free to re-sell the
19 returned products to further boost its sales revenues.

20
21 **Credit Reversals**

22 21. In other instances, Avon attempts to conceal or cover-up its No-Credit Return
23 Policy. To do so, Avon deceptively "grants" immediate credit to a Sales Representative in one
24 month's account statement and then later reverses such credit in subsequent account statements. If
25 or when the Sales Representatives happen to discover the credit reversal and contact Avon to
26 adjust their account statements, Avon resorts to falsely claiming it never received the returned
27 products or that the credit initially granted to the Sales Representatives was in error.

22. Plaintiffs are informed and believe and based thereon allege that Avon never intends to grant credit for unordered products that Sales Representatives return but rather intends to deny credit all along. As a result, contrary to its Return Policy, Avon does not grant credit for unordered products that are returned to the company.

Penalties For Returning Unordered Products

23. In addition to denying credit, Avon unfairly penalizes Sales Representatives who return unordered products for credit in order to discourage them from doing so. Avon imposes such penalties in order to coerce the Sales Representatives into eventually accepting and paying for unordered products. As an initial deterrence, Avon requires the Sales Representatives (rather than the company) to pay the shipping costs of returning unordered products even though the Sales Representatives were not at fault for receiving those unordered products and thus should not have to pay any costs for returning them.

24. If that fails, Avon imposes more severe penalties under the guise that the Sales Representative who return unordered products for credit are making “excessive” returns. Plaintiffs are informed and believe and based thereon allege that Avon has unreasonably deemed an “excessive” amount of returns to be products returned in any two-week period worth \$50 or more. That amount is unreasonably low because Avon includes products that Sales Representatives return because they were never ordered. Moreover, Plaintiffs are informed and believe and based thereon allege that the amount of unordered products that Avon deliberately ships to Sales Representatives under the Forced Delivery Practice or Preferred Preview Program usually exceeds the sum of \$50. In addition, the \$50 threshold is unreasonably low because Avon also includes products that end-users (customers of the Sales Representatives) return under Avon’s 100% satisfaction guaranty policy. Under that liberal policy, Avon permits the end-user, through her Sales Representative, to return any products with which she is not 100% satisfied but counts those returns against the Sales Representative.

25. Thus, when Sales Representatives return unordered products for credit (which usually exceed the sum of \$50), Avon revokes their “Instant Credit” under the pretense that they

1 made “excessive” returns. Instant Credit, which is automatically available to all Sales
2 Representatives, grants immediate credit for products that will be or have been returned under
3 Avon’s Return Policy. Thus, under Instant Credit, Sales Representatives may deduct charges for
4 products that they return (because those products were not ordered, damaged, disliked or the like)
5 from their statements and pay the balance. However, without Instant Credit, Sales Representatives
6 bear the economic burden of paying the entire balance of their orders – including for unordered,
7 damaged, and other such products – until Avon completes its lengthy return process which usually
8 takes eight weeks or longer. As Avon well knows, many Sales Representatives cannot afford to
9 sell Avon products without Instant Credit. As a result, Avon economically coerces those Sales
10 Representatives who financially depend on Instant Credit into accepting and paying for unordered
11 products so that the Sales Representatives may continue to service their clients and operate their
12 businesses.

13 26. In addition, a more severe penalty that Avon unfairly imposes on Sales
14 Representatives who return unordered products for credit is to require them to pre-pay for their
15 orders. Typically, Avon does not require Sales Representatives to pay for products until two
16 weeks after receipt, which is usually a sufficient period of time for the Sales Representatives to
17 deliver the products to their customers and collect their payment. However, when Sales
18 Representatives refuse to pay for unordered products that have been returned but not credited,
19 Avon refuses to release future or pending orders unless the Sales Representatives pay for the entire
20 order in advance – before they can collect any customer payments. As Avon well knows, many
21 Sales Representatives cannot afford to pre-pay for their orders. As a result, Avon economically
22 coerces those Sales Representatives who cannot afford pre-payment into accepting and paying for
23 unordered products so that the Sales Representatives may continue to service their clients and
24 operate their businesses.

25 27. And, for those Sales Representatives who persist in returning unordered products
26 for credit, Avon ultimately “threatens” to terminate them. As Avon well knows, many Sales
27 Representatives earn their livelihood by selling Avon products and/or have spent years developing
28 their businesses. Thus, Avon economically coerces those Sales Representatives who are not

1 willing to risk the loss of their livelihood or long-time businesses into accepting and paying for
2 unordered products so that the Sales Representatives may continue to service their clients and
3 operate their businesses.

4
5 **Collection Agencies**

6 28. Although some Sales Representatives quit or are terminated for refusing to accept
7 Avon's Channel Stuffing practices, Avon nonetheless continues its relentless pursuit of extracting
8 monies from them that they do not owe. Avon claims the Sales Representatives owe monies for
9 unordered products that Avon knows, or should know, were returned and submits these false
10 claims to collection agencies which then harass the Sales Representatives into paying monies they
11 do not owe, including but not limited to by calling them in the early morning and late evening
12 hours as well as on multiple occasions in a single day and threatening to sue, report the false debts
13 to credit reporting agencies and take other adverse actions.

14
15 **"No Drop" Policy**

16 29. Avon also engages in Channel Stuffing practices to create the appearance of a
17 growing and thriving sales force. Avon represents that it will automatically drop from its active
18 sales roster Sales Representatives who fail to order a product at least once every four "campaign"
19 periods. A campaign period is comprised of two weeks. Thus, Avon's automatic drop policy
20 permits Sales Representatives who no longer wish to sell Avon products to terminate their
21 relationship simply by not ordering any products for four campaign periods.

22 30. However, Avon avoids automatic termination by shipping products to Sales
23 Representatives that they never ordered. Thus, when a Sales Representative fails to order products
24 for four campaign periods (or eight consecutive weeks), Avon thereafter ships that representative
25 unordered merchandise (including but not limited to Avon sales brochures/catalogs). Moreover,
26 not one to miss an opportunity for Channel Stuffing, Avon ships substantially more sales
27 brochures/catalogs or other merchandise than the Sales Representative can sell or use and charges
28 her for that merchandise.

1 31. In addition, Plaintiffs are informed and believe and based thereon allege that Avon
2 also attempts to avoid automatic termination by instructing its District Sales Managers, who
3 supervise the Sales Representatives, to either order products on behalf of non-ordering Sales
4 Representatives and pay for those products with “Demo Certificates” or send a “Demo Certificate”
5 to non-ordering Sales Representatives in order to encourage them to order products. A Demo
6 Certificate is essentially a gift certificate for Avon products, typically in the amount of five dollars
7 (\$5), that is paid for by the company. Thus, by regularly dispensing Demo Certificates, Avon is
8 effectively purchasing its own products solely to create the illusion of an ever growing sales force.

9
10 **Fictitious Sales Representatives**

11 32. Avon also “grows” its sales force by enlisting fictitious Sales Representatives.
12 Plaintiffs are informed and believe and based thereon alleges that Avon instructs, encourages, and
13 pressures its District Sales Managers into “signing up” fictitious persons as Avon Sales
14 Representatives by, including but not limited to, making up names and even Social Security
15 numbers of people who do not exist. Avon further instructs, encourages, and pressures District
16 Sales Managers into placing bogus “orders” for Avon products on behalf of such fictitious Sales
17 Representatives in order to artificially boost the company’s sales revenues.

18
19 **AVON’S RECENT CHANNEL STUFFING CAMPAIGN**

20 33. Recently, Avon has gone into Channel Stuffing overdrive. To increase sales in the
21 year 2003, the company devised yet another scheme, dubbed the Holiday Credit Extension
22 Program, which grants significant credit to its Sales Representatives. Under this program, Avon
23 encourages and pressures its Sales Representatives into ordering thousands of dollars worth of
24 products (thereby boosting Avon’s sales revenues) with the promise that the Sales Representatives
25 will have an extraordinarily lengthy time to either sell the products or return any unsold products
26 for full credit. Plaintiffs are informed and believe and based thereon allege that, as in the past,
27 Avon will refuse to grant credit for returned products by falsely claiming it never received them.

18 Accounting Cover-Up

26 37. For example, in the year 2002, Avon recorded approximately \$540 million in gross
27 sales and allocated only \$49.5 million to ADAR, approximately 8.9% of the total gross sales (or
28 Accounts Receivables). However, in that year, Avon's actual returns totaled \$108.3 million, over

1 18% of the total Account Receivables. For the past three years (1999-2001), Avon similarly
2 allocated only 8.9% of the total gross sales for ADAR even though its actual returns were
3 approximately 18% of the total gross sales.

4 38. Further, Avon conceals the company's high rate of returns by inaccurately
5 categorizing those amounts for accounting purposes as "Costs & Expenses" because such
6 accounting entry does not require itemization. Consequently, Avon's sales revenue and overall
7 financial condition are grossly inflated.

8 39. Plaintiffs are informed and believe and based thereon allege that Avon's financial
9 performance is manipulated in order to enrich the company's top executives (including the Chief
10 Executive Officer, Chief Operating Officer, and Global Officers) whose compensation packages
11 are directly tied to Avon's sales revenues and other financial results. In short, Avon gouges its
12 own Sales Representatives through company-wide Channel Stuffing practices in order to stuff its
13 own pockets.

14
15 **JURISDICTION AND VENUE**

16 40. This Court has jurisdiction over all causes of action asserted herein pursuant to the
17 California Constitution, Article VI, § 10, because this case is a cause not given by statute to other
18 trial courts.

19 41. This Court has jurisdiction over Avon because it is a foreign corporation doing
20 business in California. Avon does sufficient business in California, has sufficient minimum
21 contacts with California, and otherwise intentionally avails itself of the laws and markets of
22 California through the promotion, sales, marketing and distribution of its products in California.
23 These facts render the exercise of jurisdiction by California courts proper.

24 42. Venue is proper in this Court because Avon conducts substantial business in this
25 county, and a substantial part of the acts and events giving rise to this complaint occurred in the
26 County of Los Angeles.

CLASS ACTION ALLEGATIONS

Ascertainable Class

43. Pursuant to section 382 of the California Code of Civil Procedure, Plaintiffs Raven Blakemore, Robin Smith, Lupe Lane, and Elda Garcia (collectively “Named Plaintiffs”) bring this case as a class action, as representatives of a class of persons consisting of all Avon Sales Representatives residing in the United States who, since March 24, 1999, received products from Avon they did not order, thereafter returned the unordered products to Avon, and did not receive credit for those returned products (the “Nationwide Class”); and as representatives of a class of persons consisting of all Avon Sales Representatives residing in California who, since March 24, 1999, received products from Avon they did not order, thereafter returned the unordered products to Avon, and did not receive credit for those returned products (the “California Sub-Class”). Named Plaintiffs and members of the Nationwide Class and California Sub-Class sometimes will be referred to collectively as “Plaintiffs.”

Community of Interest

Numerosity

44. The proposed classes are believed to number in the thousands of persons and is so numerous that joinder of all members would be impracticable. The exact size of the Nationwide Class and the California Sub-Class, and the identities of the Nationwide Class members and the California Sub-Class members are ascertainable from the business records of Avon.

Common Questions of Law and Fact Predominate

45. Common questions of law and fact predominate over questions affecting only individual class members, including but not limited to the following:

a. Whether Avon committed fraudulent concealment by engaging in a common course of conduct of making the same, or substantially the same, representations to Plaintiffs that Avon would ship and charge for only those products ordered by Plaintiffs and give full credit for unordered products that Plaintiffs returned without disclosing that Avon would ship

1 and charge for products that Plaintiffs did not order, refuse to grant credit for the unordered
2 products that Plaintiffs returned, and seek payment from Plaintiffs for those returned products;

3 b. Whether Avon breached the terms of its written agreements with Plaintiffs
4 by shipping and charging for products that Plaintiffs did not order and refusing to grant credit for
5 the unordered products that Plaintiffs returned;

6 c. Whether Avon was unjustly enriched by refusing to grant credit after
7 Plaintiffs paid for products that they did not order and thereafter returned to Avon; and

8 d. Whether Avon engaged in fraudulent, unfair, and/or unlawful business
9 practices by shipping and charging for products that Avon knows or should have known were not
10 ordered by Plaintiffs; refusing to grant credit for unordered products that were returned by
11 Plaintiffs; by penalizing Plaintiffs who return unordered products for credit by requiring them to
12 pay the return shipping costs, revoking their Instant Credit, requiring pre-payment of future or
13 pending orders, and threatening to terminate their businesses; and seeking to collect payment for
14 unordered products that Plaintiffs returned to Avon by submitting such false claims to collection
15 agencies.

16
17 **Typicality**

18 **Plaintiff Blakemore**

19 46. While working as an Avon Sales Representative, Ms. Blakemore received products
20 from Avon that she did not order and far in excess of the quantity she ordered, including but not
21 limited to Quilted Drawstring Bags, Angel Fountain, and Vintage Watch and Pin Sets. For
22 example, in or about August 2002, Avon shipped three (3) Quilted Drawstring Bags, one (1)
23 Angel Fountain, and other products that Ms. Blakemore did not order, and charged Ms. Blakemore
24 for those unordered products in the total amount of \$83.79. Ms. Blakemore returned the
25 unordered products to Avon and paid the return shipping costs. And, on or about September 5,
26 2002, Ms. Blakemore paid for these unordered products that she returned in the sum of \$83.79,
27 with the expectation that she would receive credit for that amount in her future account statements
28

1 pursuant to Avon's Return Policy. However, Avon failed to give any credit to Ms. Blakemore for
2 these products that she never ordered and thereafter duly returned to Avon.

3 47. In addition, in or about the following month, September 2002, Avon shipped twice
4 the number of products that Ms. Blakemore ordered and charged her for the duplicate products in
5 excess of \$235. Ms. Blakemore promptly returned the unordered products to Avon and paid the
6 return shipping costs. However, Avon denied receiving the returned products and refused to grant
7 any credit for those products.

8 48. Further, in or about September 2002, Ms. Blakemore ordered three (3) Vintage
9 Watch and Pin Sets, but instead received thirty (30) Vintage Watch and Pin Sets and was charged
10 in excess of \$599. Ms. Blakemore again returned these unordered products to Avon and paid the
11 return shipping costs. However, Avon denied receiving the returned products and refused to grant
12 any credit for those products.

13 49. When Ms. Blakemore refused to pay any further amounts for unordered products
14 that she duly returned to Avon, Avon sent a false claim to a collection agency, Allied Interstate,
15 which has been harassing Ms. Blakemore for payment in excess of \$900. Allied Interstate, on
16 behalf of Avon, has threatened to sue, report the false debt to credit reporting agencies, and take
17 other adverse actions against Ms. Blakemore to collect monies that she does not owe.

18
19 **Plaintiff Smith**

20 50. While working as an Avon Sales Representative, Ms. Smith received products from
21 Avon that she did not order and far in excess of the quantity she ordered.

22 51. For example, in or about August 2001, Ms. Smith received unordered products in
23 the sum of approximately \$50. Ms. Smith promptly returned the unordered products to Avon and
24 paid the return shipping costs. And, Ms. Smith paid for these unordered products that she returned
25 in the sum of approximately \$50, with the expectation that she would receive credit for that
26 amount in her future account statements pursuant to Avon's Return Policy. However, Avon failed
27 to give Ms. Smith any credit for these products that she never ordered and thereafter duly returned
28 to Avon.

1 52. On another occasion, Ms. Smith ordered 50 sales brochures but instead received
2 500 sales brochures from Avon. Ms. Smith then returned the excess 450 sales brochures to her
3 District Sales Manager. However, Avon refused to grant credit to Ms. Smith for those returned
4 sales brochures by falsely denying it received such brochures where in fact it did receive them.
5 When Ms. Smith refused to pay any further amounts for unordered products that she duly returned
6 to Avon, Avon sent a false claim to a collection agency, Allied Data Corporation, which has been
7 harassing Ms. Smith for payment in excess of \$300. Allied Data Corporation, on behalf of Avon,
8 has threatened to sue, report the false debt to credit reporting agencies, and take other adverse
9 actions against Ms. Smith to collect monies that she does not owe.

10
11 **Plaintiff Lane**

12 53. While working as an Avon Sales Representative, Ms. Lane received products from
13 Avon that she did not order. For example, on one occasion, Ms. Lane received twice the number
14 of products that she ordered from Avon and was charged approximately \$400 for the duplicate
15 products that she did not order. Ms. Lane returned the unordered products to Avon and paid the
16 return shipping costs. And, Ms. Lane paid for these unordered products that she returned in the
17 sum of approximately \$400, with the expectation that she would receive credit for that amount in
18 her future account statements pursuant to Avon's Return Policy. However, Avon failed to give
19 Ms. Lane any credit for these products that she never ordered and thereafter duly returned to
20 Avon.

21
22 **Plaintiff Garcia**

23 54. While working as an Avon Sales Representative, Ms. Garcia received products
24 from Avon that she did not order. For example, in or about July 2002, Ms. Garcia received five
25 (5) Retroactive Eye products that she did not order and was charged the sum of \$54 for these
26 unordered products. Then, in her next account statement, Avon – without any explanation –
27 increased the charge for those unordered Retroactive Eye products to the sum of \$79.06. Ms.
28 Garcia returned all five (5) of the unordered Retroactive Eye products to Avon and paid the return

1 shipping costs. In or about August 2002, Ms. Garcia paid for the unordered Retroactive Eye
2 products that she returned in the sum of \$79.06, with the expectation that she would receive credit
3 for that amount in her future account statements pursuant to Avon's Return Policy. However,
4 Avon failed to give any credit to Ms. Garcia for these products that she never ordered and
5 thereafter duly returned to Avon.

6
7 **Adequacy of Representation**

8 55. Named Plaintiffs will fairly and adequately represent and protect the interests of the
9 members of the Nationwide Class and the California Sub-Class. Named Plaintiffs have retained
10 counsel competent and experienced in both consumer protection and class action litigation.

11
12 **Superiority**

13 56. A class action is superior to any other available method for the fair and efficient
14 adjudication of this controversy because:

- 15 a. Common questions of law and fact predominate over any individual
16 questions that may arise;
- 17 b. Due to the amounts at stake for each individual class member, it is
18 financially unfeasible for them to individually litigate their claims;
- 19 c. To Plaintiffs' knowledge, no other litigation involving this controversy has
20 been commenced;
- 21 d. It is desirable to litigate this action in this forum because Avon does
22 significant business in this jurisdiction;
- 23 e. Class litigation is the most efficient means by which this controversy can be
24 adjudicated;
- 25 f. In the absence of a class action, Avon will continue to engage in the
26 fraudulent, unfair, and unlawful business practices described herein; and
27
28

1 g. Avon has engaged in acts or omissions towards the National Class and the
2 California Sub-Class in a manner generally applicable to each class, thereby making appropriate
3 final injunctive relief with respect to the National Class and the California Sub-Class as a whole.
4

5 **Avon's Significant Contacts with California**

6 57. Plaintiffs are informed and believe and on that basis allege that Avon has
7 significant contacts or aggregation of contacts in California to support applying California law to
8 nonresident class members. Avon conducts substantial business in California, including but not
9 limited to promoting, marketing, advertising, selling, and distributing a significant amount of its
10 products in California. Plaintiffs are informed and believe and on that basis allege that the amount
11 of Avon products sold in California far exceed those sold in any other state in the United States
12 and thus a substantial number class members reside in California.

13 58. In addition, Avon has a major Distribution Office and Training Center located in
14 Pasadena, California. Plaintiffs are informed and believe and on that basis allege that a substantial
15 amount of Avon products sold by Sales Representatives located throughout the United States are
16 distributed, shipped, and processed from Avon's Pasadena facility. And, Plaintiffs are informed
17 and believe and on that basis allege that a substantial amount of Avon products that are returned
18 by Sales Representatives located in the United States are sent to and processed by Avon's
19 Pasadena facility.

20 59. Further, Avon has executive offices in its Pasadena facility where, Plaintiffs are
21 informed and believe and on that basis allege that, top corporate officers decided, enacted, and
22 implemented the company-wide policies and practices alleged herein. Also, Avon trains
23 numerous Division Managers and District Sales Managers who reside in or outside of California at
24 its Pasadena facility, and thus Plaintiffs are informed and believe and on that basis allege that the
25 Pasadena facility is where the company instructed, encouraged, and pressured the Division
26 Managers and District Sales Managers into implementing and perpetuating the company-wide
27 policies and practices alleged herein. Thus, Plaintiffs are informed and believe and on that basis
28 allege that a substantial extent of the above-described Channel Stuffing practices, the No-Credit

1 Return Policy, Credit Reversal Practice, the company's false denials of not receiving returned
2 products, and other fraudulent representations and practices that affected both resident and
3 nonresident class members occurred in, and emanated from, California.

4
5 **FIRST CAUSE OF ACTION**

6 (Fraudulent Concealment Brought by Named Plaintiffs on behalf of themselves, the National
7 Class, and the California Sub-Class, Against Avon and Does 1-50, inclusive)

8 60. Plaintiffs re-allege and incorporate paragraphs 1 through 59, inclusive, as though
9 fully set forth herein.

10 61. Plaintiffs are informed and believe and based thereon allege that Avon intentionally
11 and deliberately concealed and suppressed materials facts regarding its ordering, shipping, and
12 return policies and practices, including but not limited to the Forced Delivery Practice, the
13 Preferred Preview Program, the Return Policy and the Credit Reversal Practice.

14 62. With regard to the Forced Delivery Practice, Avon represented that the company
15 will ship and charge for only those products that are ordered by Plaintiffs and in the quantity
16 ordered by Plaintiffs. However, Avon failed to disclose that it deliberately ships and charges for
17 products that are not ordered by Plaintiffs and/or far in excess of the quantity ordered. Avon
18 further failed to disclose that Plaintiffs must pay the shipping costs of returning the unordered
19 products or that Avon will not honor its Return Policy by refusing to grant credit for the unordered
20 products that Plaintiffs return. Each of these undisclosed facts materially qualified the
21 representations Avon made to Plaintiffs.

22 63. With regard to the Preferred Preview Program, Avon represented that Plaintiffs will
23 not receive the Preferred Preview product if they contact Avon to decline receipt. However, Avon
24 failed to disclose that it deliberately ships the Preferred Preview products to Plaintiffs regardless
25 of whether they contact Avon to decline receipt. Avon further failed to disclose that Plaintiffs will
26 be charged for the Preferred Preview products they did not want, Plaintiffs must pay the return
27 shipping costs, or Avon will not honor its Return Policy by refusing to grant credit for the
28

1 Preferred Preview products that Plaintiffs return. Each of these undisclosed facts materially
2 qualified the representations Avon made to Plaintiffs.

3 64. With regard to the Return Policy, Avon represented that Plaintiffs may return
4 products that they did not order to the company for full credit. However, Avon failed to disclose
5 that it denies credit for unordered products that Plaintiffs return by falsely claiming they did not
6 receive the returned products when in fact the company did receive them. Avon further failed to
7 disclose that the company will seek payment for unordered products that Plaintiffs return by
8 submitting such false claims to collection agencies in order to harass Plaintiffs into paying monies
9 they do not owe. Each of these undisclosed facts materially qualified the representations Avon
10 made to Plaintiffs.

11 65. With regard to the Credit Reversal Practice, Avon represented that the company
12 immediately grants credit to Plaintiffs' accounts for unordered products that they will or have
13 returned to Avon. However, Avon failed to disclose that it initially grants credit and later reverses
14 such credit in future account statements in the hopes that Plaintiffs will not notice the subsequent
15 credit reversal. Avon further failed to disclose that should Plaintiffs happen to notice the
16 subsequent credit reversal the company will refuse to grant credit by falsely denying receipt of the
17 returned products and claiming that its initial grant of credit was in error. Each of these
18 undisclosed facts materially qualified the representations Avon made to Plaintiffs.

19 66. Avon owed a duty to disclose the above material facts to Plaintiffs because it made
20 representations, both orally and in writing, regarding its ordering, shipping, and return policies and
21 practices but failed to disclose facts that materially qualified the representations made, or which
22 render the representations made likely to mislead Plaintiffs. In addition, Avon owed a duty to
23 disclose the above material facts because such facts were known or accessible only to Avon, and
24 Avon knew such facts were not known to or reasonably discoverable by Plaintiffs.

25 67. Plaintiffs are informed and believe and based thereon allege that Avon concealed
26 and suppressed the above material facts with the intent to defraud Plaintiffs into enlisting or
27 remaining active Sales Representatives, ordering products from Avon, accepting unordered
28

1 products from Avon, returning unordered products to Avon, and paying Avon for unordered
2 products that they returned.

3 68. Plaintiffs were unaware of the above material facts and would not have enlisted or
4 remained active Sales Representatives, ordered products from Avon, accepted unordered products
5 from Avon, returned unordered products to Avon, or paid Avon for unordered products.

6 69. As a direct and proximate result of Avon's fraudulent concealment and
7 suppression, Plaintiffs have suffered substantial damages in a sum not presently susceptible to
8 precise calculation but in an amount in excess of the minimum jurisdictional limitations of this
9 Court.

10 70. Avon has acted as alleged herein with the intent to injure Plaintiffs such that
11 Avon's actions constitute fraud, oppression, or malice within the meaning of California Civil Code
12 section 3294. Avon's conduct was intended to cause injury to Plaintiffs and was carried on by
13 Avon in willful and conscious disregard of Plaintiffs' rights. Avon's conduct was despicable,
14 oppressive, and outrageous, justifying the imposition of punitive and exemplary damages against
15 Avon in an amount sufficient to punish Avon and to make an example of Avon and to deter such
16 conduct in the future. Plaintiffs are informed and believe and based thereon allege that this
17 conduct was authorized, ratified, and otherwise approved of not only by the employees of Avon,
18 but also by the managers, supervisors, and agents who speak with authority on behalf of Avon.

19
20 **SECOND CAUSE OF ACTION**

21 (Breach of Contract Brought by Named Plaintiffs on behalf of themselves, the National Class, and
22 the California Sub-Class, Against Avon and Does 1-50, inclusive)

23 71. Plaintiffs reallege and incorporate paragraphs 1 through 59, inclusive, as though
24 fully set forth herein.

25 72. Plaintiffs entered into identical, or substantially identical, written Sales
26 Representative contracts with Avon, which Avon from time to time has amended and modified
27 both orally and in writing, including but not limited to in its training guides, sales brochures,
28 marketing pamphlets, and promotional materials (collectively the "Sales Representative

1 Contract”). Attached hereto as Exhibit “A” are copies of some of the terms of the Sales
2 Representative Contract. Plaintiffs are informed and believe and based thereon allege that there
3 are additional materials in the possession, custody or control of Avon that are part of the Sales
4 Representative Contract. Plaintiffs will supplement Exhibit “A” when it has obtained these
5 additional materials.

6 73. Implied in the Sales Representative Contract is a covenant of good faith and fair
7 dealing that Avon will do nothing to deprive Plaintiffs of the benefits of the Sales Representative
8 Contract.

9 74. The material benefits that Plaintiffs were to receive under the Sales Representative
10 Contract included but were not limited to the following:

11 a. Avon would ship only those products that Plaintiffs ordered and in the quantities
12 that they ordered;

13 b. Avon would charge for only those products that Plaintiffs ordered and in the
14 quantities that they ordered;

15 c. Avon would grant credit for unordered products that Plaintiffs returned;

16 d. Avon would not refuse to grant credit for unordered products that Plaintiffs
17 returned by denying receipt of those returned products when in fact it received those products;

18 e. Avon would not penalize Plaintiffs for returning unordered products for credit by
19 requiring them to pay the return shipping costs;

20 f. Avon would not penalize Plaintiffs for returning unordered products for credit by
21 revoking their Instant Credit, requiring advance payment for future or pending orders, or
22 threatening to terminate Plaintiffs; and

23 g. Avon would not falsely claim that Plaintiffs owed monies for unordered products
24 that they returned and submit such false claims to collection agencies in order to harass Plaintiffs
25 into paying monies they do not owe.

26 75. Beginning in or about 1999, and continuing to the present, Avon has breached the
27 Sales Representative Contract by, including but not limited to the following:

28

(Unjust Enrichment Brought by Named Plaintiffs on behalf of themselves, the National Class, and the California Sub-Class, Against Avon and Does 1-50, inclusive)

78. Plaintiffs re-allege and incorporate paragraph 1 through 59, inclusive, as though fully set forth herein.

1 79. Plaintiffs received products from Avon that they did not order, returned those
2 unordered products to Avon, and paid for those products with the expectation that Avon would
3 grant credit therefor pursuant to its Return Policy.

4 80. Although Avon has received payment for the unordered products from Plaintiffs as
5 well as the unordered products that were returned by Plaintiffs, it has failed to give any credit or
6 refund to Plaintiffs.

7 81. As a direct and proximate result of the foregoing acts and omissions, Avon has
8 been unjustly enriched at the expense of Plaintiffs in an amount to be proven at trial.

9
10 **FOURTH CAUSE OF ACTION**

11 (Violation of California Business and Professions Code § 17200, *et seq.*)

12 Brought by Named Plaintiffs on behalf of themselves, the California Sub-Class, and the General
13 Public, Against Avon and Does 1-50, inclusive)

14 82. Plaintiffs re-allege and incorporate paragraphs 1 through 59, inclusive, as though
15 fully set forth herein.

16 83. Avon's acts and business practices, including but not limited to the Forced Delivery
17 Practice, the Preferred Preview Program, the Return Policy, the Credit Reversal Practice, the
18 unfair penalties imposed on Plaintiffs for returning unordered products for credit, and the practice
19 of sending false claims against Plaintiffs to collection agencies as set forth above, are fraudulent,
20 unfair, and/or unlawful in violation of California's Unfair Competition Law, Business and
21 Professions Code Section 17200.

22 84. Avon's acts and business practices are fraudulent in that they are likely to deceive
23 members of the general public about Avon's ordering, shipping, and return policies and practices
24 by, including but not limited to the following:

25 a. Falsely representing that Avon will ship and charge for only those products
26 that are ordered by the Sales Representatives without disclosing that it deliberately ships and
27 charges for products that are not ordered by the Sales Representatives which deceives new and
28 existing Sales Representatives into selling and ordering Avon products;

1 b. Falsely representing that Sales Representatives may return any products that
2 they did not order to Avon for full credit without disclosing it deliberately refuses to grant such
3 credit which deceives Sales Representatives into accepting unordered products from Avon;

4 c. Falsely representing that Avon will grant credit for unordered products that
5 Sales Representatives return without disclosing that Avon does not grant such credit which
6 deceives Sales Representatives into paying for unordered products that they return with the
7 expectation that they will receive due credit at a later time in future account statements; and

8 d. Submitting false claims to collection agencies based on unordered products
9 sent to the Sales Representatives but were returned to Avon which deceives Sales Representatives,
10 who are harassed and threatened by the collection agencies, into paying monies they do not owe.

11 85. In addition, Avon's acts and business practices are unfair in that they are immoral,
12 unethical, oppressive, unscrupulous and/or substantially injurious to consumers because, including
13 but not limited to the following:

14 a. Avon deliberately ships products that the Sales Representatives did
15 not order or in excess of the quantity ordered and unfairly requires the Sales Representatives to
16 pay the shipping costs of returning the unordered products even though they were not at fault for
17 receiving such products and thus should not bear the cost of doing so;

18 b. Avon deliberately ships products that the Sales Representatives did
19 not order or in excess of the quantity ordered and then unfairly revokes the Instant Credit of Sales
20 Representatives who return such unordered products for credit under the guise that they are
21 making "excessive" returns. As Avon well knows, many Sales Representatives cannot afford to
22 sell Avon products without Instant Credit and, thus, by unfairly revoking their Instant Credit Avon
23 economically coerces Sales Representatives into accepting and paying for unordered products so
24 that they can continue servicing their clients and operating their businesses;

25 c. Avon deliberately ships products that the Sales Representatives did
26 not order or in excess of the quantity ordered and then unfairly requires pre-payment from Sales
27 Representatives who return such unordered products for credit under the guise that they are
28 making "excessive" returns. As Avon well knows, many Sales Representatives cannot afford to

1 pre-pay for their entire orders and, thus, by unfairly requiring such pre-payment Avon
2 economically coerces Sales Representatives into accepting and paying for unordered products so
3 that they can continue servicing their clients and operating their businesses;

4 d. Avon deliberately ships products that the Sales Representatives did
5 not order or in excess of the quantity ordered and then unfairly threatens to terminate Sales
6 Representatives who persist in returning unordered products for credit. As Avon well knows,
7 many Sales Representatives earn their livelihood by selling Avon products and/or have spent years
8 developing their businesses and, thus, by unfairly threatening termination Avon economically
9 coerces Sales Representatives who are not willing to risk the loss of her livelihood or long-time
10 business into accepting and paying for unordered products so that they may continue servicing
11 their clients and operating their businesses; and

12 e. Avon falsely claims that Sales Representatives owe monies for
13 products that they never ordered and thereafter returned to the company and unfairly submits such
14 false claims to collection agencies in order to harass the Sales Representatives into paying monies
15 they do not owe.

16 86. Further, Avon's acts and business practices are unlawful in that Avon ships
17 products to Sales Representatives that they did not order or in excess of the quantities ordered in
18 violation of the federal Unordered Merchandise Statute, 39 United States Code Section 3009.

19 87. As a proximate result of Avon's acts and omissions as alleged herein, Plaintiffs are
20 entitled to restitution from Avon in an amount to be proven at trial.

21 88. Further, Plaintiffs and consumers in the General Public are entitled to injunctive
22 relief to enjoin Avon from engaging in any of the fraudulent, unfair, and unlawful practices as
23 alleged herein pursuant to California Business & Professions Code Section 17203.

24
25 **WHEREFORE**, Named Plaintiffs on behalf of themselves, members of the Plaintiff
26 Classes, and on behalf of the General Public, request from this Court the following relief:
27
28

1 1. Pursuant to California Code of Civil Procedure Section 382, for an order certifying
2 that the action may be maintained as a class action and appointing Named Plaintiffs and Named
3 Plaintiffs' undersigned counsel to represent the National Class and California Sub-Class;

4 2. For compensatory damages in an amount according to proof, and for punitive and
5 exemplary damages pursuant to California Civil Code Section 3294 in an amount according to
6 proof;

7 3. For restitution in an amount to be proven at trial;

8 4. For a preliminary and permanent injunction enjoining Avon from engaging in the
9 unlawful, unfair and fraudulent business practices as alleged herein;

10 5. For Plaintiffs' attorneys fees and costs incurred herein; and

11 6. For such other and further relief as this Court may deem just or proper.

12
13 DATED: January 23, 2003

HURON MAKI & JOHNSON LLP

14
15 By: _____
16 JEFFREY HURON
17 Attorneys for Plaintiffs RAVEN
BLAKEMORE, ROBIN SMITH, and
LUPE LANE, individually and on behalf
of all others similarly situated

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