

**STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE  
COUNTY OF NEW HANOVER SUPERIOR COURT DIVISION**

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FILE NO:

NEW HANOVER COUNTY, C.S.C.

BY [Signature]

**DAVID CHRISTIAN LUDWIG,  
and  
ARUZA, LLC  
Plaintiffs,**

v.

**DAMON LILLY  
Defendant.**

**COMPLAINT  
AND DEMAND FOR JURY TRIAL**

COME NOW Plaintiffs, **David Christian Ludwig**, and **Aruza, LLC**, complaining of the Defendant, **Damon Lilly**, and respectfully set forth and allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

- 1. Individual Plaintiff David Christian Ludwig (“Ludwig”) and Defendant Damon Lilly (“Lilly”) are residents of New Hanover County, North Carolina, and the actions herein complained of took place substantially in New Hanover County. Plaintiff Aruza, LLC (“Aruza”) is a North Carolina Limited Liability Corporation with its principle office located in Mecklenburg County, North Carolina.

2. The Plaintiff Ludwig and Defendant Lilly are over the age of majority and competent to participate in this litigation. The Plaintiffs have suffered damages in an amount to be determined by a jury, but in any case, in excess of the jurisdictional minimum for venue to be appropriate in the Superior Court.
3. Venue, personal jurisdiction, and subject-matter jurisdiction are all proper before this Court under N.C. Gen. Stat. §§ 1-75.4, 1-82, and 95-25.

### **STATEMENT OF FACT**

4. Until February of 2018, Plaintiff Ludwig was a sales representative for Aptive Environmental, LLC (“Aptive”), a company which markets and provides pest control services. Aptive employs a non-salaried salesforce to market the company's services, wherein each salesperson’s compensation is a combination of commissions of sales made directly by the representative to consumers and commissions based on sales made by “downline” representatives who have been recruited by the more senior representative. Sales representatives are thus incentivized to build (recruit) downline teams of personnel who are effective salespeople and/or effective recruiters of salespeople. A representative’s “downline” (the entire team recruited by a representative, recruited by those recruits, etc.) substantially determines that representative’s income stream, and is therefore an extremely valuable and jealously guarded asset.
5. As a condition of Plaintiff Ludwig’s employment agreement with Aptive, he retained “ownership” of his downline; that is, he was permitted by contract to

encourage or solicit the sales personnel he recruited at Aptive to continue to work under him if he left Aptive.

6. Plaintiff Ludwig did leave Aptive on February 6<sup>th</sup> of 2018 to co-found his own pest control company (Plaintiff Aruza) utilizing a commission-based sales and marketing program similar to that used by Aptive.
7. Defendant Lilly was a sales representative in Plaintiff Ludwig's downline at Aptive, having been recruited to Aptive by Plaintiff in 2015. Plaintiffs did not solicit Defendant Lilly to join the salesforce at Aruza when Plaintiff Ludwig left Aptive.
8. Within a few months of Plaintiff Ludwig co-founding Aruza, several of Aruza's key sales representatives broke their contracts to join Defendant Lilly's downline at Aptive. Upon investigating the cause of these departures, Plaintiffs learned that Defendant Lilly was engaged in an ongoing campaign of libel and slander with the express intent of harming Plaintiffs and Plaintiffs' business.
9. Defendant Lilly specifically targeted Plaintiffs' representatives and attempted to convince them to break their contracts with Aruza and join his downline at Aptive. Defendant Lilly knowingly and intentionally made false statements to Plaintiffs' representatives on myriad occasions, including (without limitation):
  - a. Defendant Lilly repeatedly represented, verbally and in text messages, that Plaintiff Ludwig was fired from Aptive after having been caught in illegal activity and/or that he had been fired for cheating his representatives. As specific

examples, in or about July of 2018, Defendant Lilly made these false statements to several of Plaintiffs' representatives, including Caleb Bryson and Hunter Cox. In or about April of 2019, Defendant Lilly repeated these defamatory statements to Plaintiffs' representative Jacob Randall. Defendant Lilly also made these statements in or about January 2020 to several of Plaintiffs' representatives including (without limitation) Mason Schmucker, Aaron Holtzclaw, Josh Motsinger, Jacob Randall, Ean Smookler, Jordan De Morais, Blaise Rorie, Caleb J. Bryson, and Jared Kerner. Defendant Lilly knew the true circumstances of Ludwig's voluntary departure from Aptive and knew that his statements about Ludwig being fired were false, and that his allegations of illegal activity or cheating of representatives were also false. Defendant Lilly made these statements with the explicit malicious intent to disparage and harm Plaintiffs, to undermine Plaintiffs' personal and professional reputations, and to impede Plaintiffs' ability to conduct business.

b. Defendant Lilly repeatedly represented, verbally and in text messages, that Plaintiffs were being sued by Aptive. At the times when Defendant Lilly made these allegations, no lawsuit existed between the parties. Defendant Lilly also frequently stated that this lawsuit had bankrupted or would bankrupt Plaintiffs, and that Ludwig would soon be in jail as a result of the lawsuit. Defendant Lilly made these false statements about Plaintiffs going bankrupt or going to jail to several of Plaintiffs' sales representatives, including Caleb Bryson, Nathan Campbell, Dylan Hill, Anthony Marinakis, Robby White, Matthew Lambert, and Jack Cameron.

c. Although a lawsuit was ultimately initiated between Aptive and Plaintiff Ludwig, that lawsuit was resolved in the fall of 2019. Knowing that the lawsuit was resolved and concluded, Defendant Lilly nonetheless continued to spread intentional defamatory misinformation that Plaintiffs were being sued and would soon be out of business because of it. By way of specific example, in or about January of 2020 Defendant Lilly falsely claimed knowledge of an ongoing lawsuit by Aptive against Ludwig, to Plaintiffs' representative Josh Motsinger. At that time, Defendant Lilly had actual knowledge that the opposite was true, that all legal disputes between Plaintiffs and Aptive had been resolved and any potential claims released. Defendant Lilly made these statements with the explicit malicious intent to disparage and harm Plaintiffs, to undermine Plaintiffs' personal and professional reputations, and to impede Plaintiffs' ability to conduct business.

d. Defendant Lilly repeatedly represented, verbally and in text messages, that Plaintiff Ludwig was destitute and could not pay his employees. He told Plaintiffs' representatives that Ludwig had been forced to sell his car, that Ludwig had been forced to move into a cheap apartment in a bad part of town, and that he (Lilly) had personal knowledge that Plaintiffs had run out of money or were about to run out of money. As specific examples, in or about July of 2018, Defendant Lilly made these false statements to several of Plaintiffs' representatives, including Shaun Zywicki, Caleb Bryson, Nathan Campbell and Hunter Hicks. In or about April of 2019, Defendant Lilly repeated these false statements to Plaintiffs' representative Mason Schmucker. These statements by Defendant

Lilly were complete fabrications, and Defendant Lilly knew that they were false when he made them. Defendant Lilly made these statements with the explicit malicious intent to disparage and harm Plaintiffs, to undermine Plaintiffs' personal and professional reputations, and to impede Plaintiffs' ability to conduct business.

e. Defendant Lilly repeatedly falsely represented, verbally and in text messages, that Plaintiffs were swindling employees. He told Plaintiffs' representatives that Plaintiffs were "screwing over" the sales staff, not paying them their contractual bonuses, falsifying reasons to withhold due compensation, and that Plaintiffs did not have the money to pay promised "backend" compensation. As specific examples, in or about October of 2018, Defendant Lilly made these false statements to several of Plaintiffs' representatives, including Hunter Hicks, and Anthony Marinakis. In or about April 2019, Defendant Lilly made these false statements to Plaintiff's representative Jacob Randall. In or about January 2020, Defendant Lilly again made these false statements to several of Plaintiffs' representatives, including Ean Smookler, Mason Schmucker, Jared Kerner, Jacob Randall, and Parth Sajwan. These statements by Defendant Lilly were complete fabrications, and Defendant Lilly knew that they were false when he made them. Defendant Lilly made these statements with the explicit malicious intent to disparage and harm Plaintiffs, to undermine Plaintiffs' personal and professional reputations, and to impede Plaintiffs' ability to conduct business.

10. Defendant Lilly made the above-described false and defamatory statements as part of a targeted campaign to “poach” the sales staff recruited by Plaintiffs, especially those recruited by Plaintiff Ludwig. Defendant Lilly knew that Plaintiffs’ sales staff were contractually prohibited from leaving Aruza to join Defendant Lilly’s downline at Aptive. Defendant Lilly was specifically informed of this fact by Plaintiffs’ sales staff when he tried to recruit them to Aptive. Defendant Lilly knowingly, expressly, and maliciously encouraged, bribed, and coerced Plaintiffs’ representatives to violate their contractual obligations.
11. In addition to spreading false information in order to convince Plaintiffs’ personnel that Plaintiffs were defrauding them or underpaying them and that Plaintiffs’ business was failing, Defendant Lilly offered payments to Plaintiffs’ personnel to violate their contracts. Defendant Lilly told various representatives that Plaintiffs didn’t have the money to enforce the contractual obligations (including their non-compete clauses, their non-solicitation clauses, and/or their confidentiality clauses), or that he (Lilly) had ways to help the personnel avoid the consequences of breaching their contracts. Defendant Lilly, with actual knowledge of the contractual obligations prohibiting Plaintiffs’ employees from joining him and soliciting other of Plaintiffs’ employees to similarly breach their contracts, offered explicit cash bribes to coerce Plaintiffs’ employees to violate their contracts. Defendant Lilly did so with the specific intent to harm Plaintiffs and enrich himself.
12. Defendant Lilly further induced Plaintiffs’ personnel to divulge proprietary and confidential business information, including client and sales representative lists

and sales leaderboards belonging to Aruza, in express violation of the salespeople's contracts, which information Lilly used to harm Plaintiffs' business and benefit himself.

13. Defendant Lilly has repeatedly admitted his illicit actions, and bragged about his "stealing" Plaintiffs' representatives and Plaintiffs' business by these deceptive and unlawful means. Defendant bragged that by January of 2020 he had coerced enough senior sales personnel to breach their contracts with Plaintiffs to total over one hundred total representatives, and that he had profited hugely by his misdeeds.
14. As a direct and clearly foreseeable effect of Defendant's misconduct, Plaintiffs have been very substantially harmed. In terms of revenue lost through lost sales contracts and lost ongoing sales production from accomplished sales representatives and their respective downlines, Defendant's actions have harmed both Aruza and Plaintiff Ludwig personally in an amount to be determined by a jury, but reasonably estimated by Plaintiffs to exceed Ten Million Dollars.
15. As a direct and clearly foreseeable effect of Defendant's malicious defamatory attacks, Plaintiff Ludwig has suffered extreme emotional distress including physical symptoms and injury, damage to his professional and personal reputations, financial harm, loss of business, and other damages in an amount to be determined at trial. Plaintiff Aruza has likewise suffered damage to reputation, financial harm, loss of business, and other damages in an amount to be determined at trial.



**FIRST CLAIM FOR RELIEF: PER SE DEFAMATION**

16. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.
17. Defendant knew his allegations of criminal conduct or moral turpitude and statements impeaching Plaintiffs' trade or profession to be false or, believing them to be true, lacked reasonable grounds for such belief, or made such statements with reckless disregard for whether they were true or false.
18. Defendant's conduct in disseminating these statements constitutes libel *per se*. The false statements were undertaken out of ill will and personal malice toward Plaintiffs, with the intention of subjecting Plaintiffs to ridicule, contempt, or disgrace and with the specific intent to damage Plaintiffs' professional reputations.
19. As a direct and proximate result of Defendant's defamatory statements, Plaintiffs have sustained injury in the form of emotional distress, disgrace and contempt, loss of business, and damage to professional reputation.
20. Plaintiffs are entitled to recover damages for the Defendant's Defamation *per se* in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF: DEFAMATION**

21. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

22. Defendant knew his statements as described herein to be false or, believing them to be true, lacked reasonable grounds for such belief, or made such statements with reckless disregard for whether they were true or false.

23. As a direct and proximate result of Defendant's Defamation, Plaintiffs have sustained actual harm and injury as stated herein, and Plaintiffs are entitled to recover damages for the Defendant's Defamation in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF: INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS**

24. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

25. Defendant's conduct, as described above, was malicious and intentional, or at a minimum grossly reckless, and was undertaken with the clear intent to cause Plaintiff Ludwig harm and to cause severe emotional distress.

26. Defendant's conduct did cause Plaintiff Ludwig severe emotional distress, along with other harms and damages as articulated herein.

27. Plaintiff Ludwig is entitled to recover damages for the Defendant's Intentional Infliction of Emotional Distress in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF: NEGLIGENT INFLICTION  
OF EMOTIONAL DISTRESS**

28. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

29. It was reasonably foreseeable that Defendant's conduct would cause the Plaintiff Ludwig severe emotional distress, and Defendant acted negligently to cause or permit that emotional distress to be inflicted upon the Plaintiff.
30. Defendants' conduct did cause Plaintiff Ludwig severe emotional distress, along with other injuries and damages as articulated herein.
31. Plaintiff Ludwig is entitled to recover damages for the Defendant's Negligent Infliction of Emotional Distress in an amount to be determined at trial.

**FIFTH CLAIM FOR RELIEF:**  
**UNFAIR AND DECEPTIVE TRADE PRACTICES**

32. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.
33. The acts of Defendant described herein were "acts or practices in or affecting commerce," as defined in N.C. Gen. Stat. §75-1.1.
34. The acts of Defendant as described herein, including (without limitation) spreading false allegations regarding Plaintiffs' financial status, falsely alleging that Plaintiffs did not fully and fairly pay employees, falsely alleging that Plaintiff engaged in illegal activity, coercing employees to breach contractual obligations, seeking out and profiting from unlawfully acquired private business information, and impeding Plaintiffs' ability to conduct business by falsely damaging his reputation within the business community and community of consumers are all violative of established public policy, and are immoral, unethical, oppressive, and unscrupulous.

35. The acts of Defendant described herein constitute unfair or deceptive acts or practices under N.C. Gen. Stat. § 75-1.1, and therefore unlawful thereunder.
36. Plaintiffs are entitled to recover damages for the Unfair and Deceptive acts of Defendant in an amount to be determined at trial, and Plaintiffs are further entitled to have those damages trebled.

**SIXTH CLAIM FOR RELIEF:**  
**TORTIOUS INTERFERENCE WITH CONTRACT**

37. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.
38. The acts of Defendant described herein were conducted with malice and without justification.
39. The acts of Defendant described herein, including without limitation his defamation of Plaintiffs and his express encouragement to third-parties (Plaintiffs' sales personnel) to abandon and/or violate their contractual obligations with regard to Plaintiffs, were intended to harm Plaintiffs and gain advantage for the Defendant.
40. The acts of Defendant described herein were in fact the but-for cause of many of Plaintiffs' sales representatives abandoning and/or violating their obligations under each of their individual employment contracts, causing substantial financial harm to the Plaintiffs. As such, the acts of Defendant did actually harm Plaintiffs and gain advantage for the Defendant.

41. Plaintiffs are entitled to recover damages for the Defendant's Tortious Interference in an amount to be determined at trial.

**SEVENTH CLAIM FOR RELIEF:**  
**TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

42. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.

43. The acts of Defendant described herein were conducted with actual malice, without justification, and with recklessness toward the law and the legal rights of Plaintiffs.

44. The acts of Defendant described herein, including without limitation his defamation of Plaintiffs and his express encouragement to third-parties to abandon and/or violate their contractual obligations with regard to Plaintiffs were intended to harm Plaintiffs and gain advantage for the Defendant, and were not reasonably related to the protection of a legitimate business interest.

45. The acts of Defendant described herein were in fact the but-for cause of many of Plaintiffs' sales representatives abandoning and/or violating their obligations under each of their individual employment contracts, causing substantial financial harm to the Plaintiffs. As such, the acts of Defendant did actually harm Plaintiffs and gain advantage for the Defendant.

46. Plaintiffs are entitled to recover damages for the Defendant's Tortious Interference in an amount to be determined at trial.

**EIGHTH CLAIM FOR RELIEF: PUNITIVE DAMAGES**

47. Plaintiffs hereby incorporate by reference the allegations contained in all previous paragraphs into this Claim for Relief.
48. The acts of Defendant described herein were extreme and outrageous, and constitute vexatious, wanton, and reckless behavior for which punitive damages, in addition to statutory and civil damages, are warranted in a sum to be proven at trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays the Court for judgment as follows:

- a. That all matters so triable be tried before a jury;
- b. For compensatory damages in an amount to be determined by the finder of fact, but in any event, to the extent Rule 8(a)(2) of the North Carolina Rules of Civil Procedure is applicable, in an amount in excess of Ten Thousand Dollars (\$10,000.00);
- c. For punitive damages in an amount calculated to punish Defendant and deter similar future conduct;
- d. For trebled damages pursuant to the Unfair & Deceptive Trade Practices Act;
- e. For an award of Plaintiffs' attorneys' fees, costs and expenses incurred in connection with this suit; and,
- f. Such other and further relief as the Court may deem just and proper.

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Respectfully submitted, this the 25th day of March, 2020.

**The Forge Law Group**

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