

David S. Hunt (#8062)
THE HUNT LAW CORPORATION
66 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 355-7878
Facsimile: (801) 906-6164
Attorney for Plaintiff Markyl Lee aka Markyl Angel Lee

FILED
U.S. DISTRICT COURT

2009 FEB 26 A 10:05

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Derek Banducci (pro hac vice application pending)
Scott W. Wellman (pro hac vice application pending)
WELLMAN & WARREN, LLP
24411 Ridge Route, Suite 200
Laguna Hills, California 92653
Telephone: (949) 580-3737
Facsimile: (949) 580-3738
E-mail: derek@w-wlaw.com
E-mail: swellman@w-wlaw.com
Attorney for Plaintiff Markyl Lee aka Markyl Angel Lee

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

MARKYL LEE aka MARKYL ANGEL
LEE, an individual; and PROMISES TO
KEEP, LLC, a Florida limited liability
company,

Plaintiffs,

vs.

MAX INTERNATIONAL, LLC, A Utah
limited liability company,

Defendants.

COMPLAINT

[Jury Demand]

Case: 2:09cv00175
Assigned To : Benson, Dee
Assign. Date : 2/26/2009
Description: Lee, et al v Max
International

The Plaintiffs, Markyl Lee aka Markyl Angel Lee ("Lee") and Promises to Keep, LLC (collectively referred to as "Plaintiff" or "Plaintiffs"), complain and alleges as follows:

NATURE OF ACTION

1. This is an action to redress 1) Breach of Oral Contract (March 2007 CEO Agreement), 2) Breach of Implied Covenant of Good Faith and Fair Dealing (March 2007 CEO Agreement), 3) Promissory Estoppel (March 2007 CEO Agreement), 4) Breach of Written Contract (Distributor Agreement), 5) Breach of Implied Covenant of Good Faith and Fair Dealing (Distributor Agreement), 6) Unjust Enrichment/Quantum Meruit, 7) Fraud/Promise Without Present Intent To Perform,
2. Plaintiff seeks compensation and damages pursuant to the above stated laws.

THE PARTIES

3. Plaintiff Markyl Lee aka Markyl Angel Lee is an individual residing in Florida.
4. Plaintiff Promises To Keep, LLC is a limited liability company that is formed under the laws of the state of Florida. Promises To Keep, LLC is wholly owned by Lee.
5. Defendant Max International, LLC (“Defendant” or “Max International” or “Max”) is a limited liability company formed under the laws of the state of Utah.

JURISDICTION AND VENUE

6. This Court has diversity jurisdiction over the parties to this action pursuant to 28 U.S.C. § 1332.
7. The amount in controversy exceeds \$75,000 exclusive of interest and costs.
8. Plaintiff is a citizen of the State of Florida. Defendant is a limited liability company formed under the laws of the State of Utah and having its principal place of business in Salt Lake City, Utah and therefore is a citizen of the State of Utah.

9. Venue is proper in this District inasmuch as the oral agreement that is the subject of this action was entered into in Salt Lake City, Utah.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) because the sole defendant in this case is a limited liability company formed under the laws of Utah and having its principal place of business in Salt Lake City, Utah.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2), as a substantial part of the events giving rise to the claims asserted herein arose in this District.

12. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 (a) over all subjects of this case over which it does not have original jurisdiction.

GENERAL ALLEGATIONS

13. Max International is a “network marketing” company that sells nutritional supplement products.

14. As a “network marketing” company, Max International sells its products through independent Distributors (“Distributors”) who earn commissions from the sale of each product and who also may earn residual income from the sales of Distributors who they recruit and are aligned under them in an organization commonly known as a “downline.”¹

15. In the network marketing industry, the Distributor who is at the top of the downline for an entire company is commonly referred to as the “Master Distributor.” However, even though Max International is a network marketing company with a Master Distributor, Max International’s Master Distributor is not at the top of the downline for

¹ Some well known “network marketing” companies, which are also commonly called “multi-level marketing” companies or “MLM” companies, are Amway and Herbalife.

the entire company because at Max International there is one person above the Master Distributor.

16. The title of “Master Distributor” is prestigious and has significant responsibilities and benefits. The Master Distributor is responsible for giving training seminars for Distributors in the entire network marketing company, serving on the Max International Advisory Counsel, and advising Max International on promotions. The Master Distributor is compensated for this by receiving commissions based on the Distributors’ sales.

17. In December 2006, Bill Andersen contacted Lee and expressed to him that Craig Case, then CEO & President of Max International, wanted Lee to consider consulting and/or discuss becoming the Master Distributor of Max International.

18. Bill Andersen asked Lee to fly to Salt Lake City to discuss opportunities at Max International. Lee agreed to a meeting and therefore ended up flying to Salt Lake City multiple times beginning in December 2006. These multiple meetings often, but not always, included Ken Dunn, Bill Anderson, Steven K. Scott (a founder), Fred Ninow (a founder), Greg Fullerton (a founder), Craig Case (the President and CEO at the time), and Jeff Hill (CFO).

19. The result of these meetings was that Lee declined an offer to accept the title of Master Distributor. However, Lee agreed to be a consultant for Max International and accept the top Distributor position, above the Master Distributor position, in the company’s downline (hereinafter this will be referred to as the “Distributor Agreement”). This Distributor Agreement was entered between Max International, on the one hand, and Promises To Keep, LLC, on behalf of Lee, on the other hand. For the purposes of the

allegations herein, Lee and Promises To Keep, LLC are one and the same.

20. It was further agreed pursuant to the Distributor Agreement that the Master Distributor for Max International, directly under Lee in the company's downline, would be Ken Dunn and Bill Anderson.

21. Pursuant to the Distributor Agreement, Lee and Max International agreed that Lee would receive fifty percent (50%) matching on all "Team Commissions/Binary Pay" compensation to persons sponsored by Lee. What this means is that for every team commission/binary pay dollar of commissions that is paid for team commission/binary pay to a person sponsored by Lee, he is entitled to a fifty cent commission from Max International. The document attached hereto as Exhibit "A" explains the compensation program for Max International and how Max International calculates its compensation to Distributors.

22. It was orally agreed that Lee would personally sponsor Bill Anderson and Ken Dunn. Accordingly, Lee would receive fifty percent (50%) matching on all of Bill Anderson and Ken Dunn's "Team Commissions/Binary Pay." What this means is that for every team commission/binary pay dollar of commissions that is paid for team commission/binary pay to either Bill Anderson or Ken Dunn, Lee is entitled to a fifty cent commission from Max International.

23. It was further agreed pursuant to the Distributor Agreement that Lee would personally "build a position" if and whenever he chose to. To "build a position" means to recruit people into a downline so that a Distributor will receive residual income from those downline Distributors' sales of products.

24. A few months later in another meeting in Salt Lake City, in March 2007,

Lee was orally offered the position of CEO of Max International. The salary that was offered by Max International to Lee was \$25,000 per month plus “7 levels matching.” What this means is that if and when Lee chooses to build a position, Lee would receive matching compensation for all Team Commissions/Binary Pay that is paid to Lee’s downline, up to seven positions downline from Lee. In other words, if a person who is recruited by Lee gets a one dollar commission then Lee also gets a certain commission. If a person who is recruited by Lee’s recruit gets a one dollar commission then Lee gets some certain commission. And so on, for seven levels. The certain commissions are defined in Max International’s compensation which is a written document that is available to all distributors.

25. At this meeting Lee specifically stated to Fred Ninow, a founder of Max International, “I want it [i.e. the Distributorship Agreement] in perpetuity” and Fred Ninow replied by stating “I don’t see a problem with that.” The reason Lee wanted to clarify whether his Distributorship Agreement would be in “perpetuity” if he took on the role of CEO is because he did not want his taking on this role to diminish his rights in any way as a distributor and his right to receive commissions from the sales of his downline.

26. Lee accepted this March 2007 offer to be CEO. (Hereafter, this will be referred to as the “March 2007 CEO Agreement”.) Therefore, from April 1, 2007 until the middle of February 2008, Lee performed as CEO of Max International and Max International held Lee out as its CEO during this period.

27. Despite demands for payment, Max International never paid Lee his \$25,000 per month salary that he was promised as CEO of Max International, nor has he

been paid his complete 7 levels matching.

28. Lee was entitled to 3 levels matching even without the March 2007 CEO Agreement because he met the requirements for receiving that level of compensation which are set forth in Max International's compensation plan. Lee was also entitled to fifty percent matching on Ken Dunn and Bill Anderson pursuant to his original consulting agreement with Max International because under that agreement he was entitled to fifty percent matching on any person he personally recruited to join the company.

29. When Lee inquired about why he was not receiving his salary or other promised compensation, he was told by Jeff Hill, the Chief Financial Officer of Max International, that the company was keeping his \$25,000 monthly salary "safe" for him.

30. In addition to never receiving his \$25,000 monthly salary, Lee never received the complete 7 levels matching that he was promised when he accepted the CEO position. Also, since February 2008, Max International stopped paying the 3 levels matching that Lee is entitled to under the Distributor Agreement. However, Max International did send Lee a small bonus check for a short period of time after February 2008.

31. Also, Fred Ninow (a founder of Max International and the person who had recruited Lee to join Max International as its CEO, as set forth in paragraph 24 above) orally promised Lee that Max International would pay him for one year of automobile expenses and one year of living expenses.

32. In or around late January or early February 2008, after still never having been paid for his duties as CEO, Lee discussed Max International's failure to pay him for

his work as CEO in a conversation with Fred Ninow, Jeff Hill, and Peter Nordberg (the current CEO of Max International). This conversation took place in Lee's office. At this time, Max International paid Lee approximately \$8,000 as partial compensation for his automobile expenses but still did not pay him any of the other monies owing.

33. In addition to salary, living expenses, automobile expenses, and matching compensation, Lee is also owed reimbursement for expenses he incurred as CEO of Max International. The amount of this reimbursement is approximately \$50,000.

34. Lee continued to work as CEO for Max International. However, during one of his many requests to receive documentation on his CEO salary, he was informed by Jeff Hill ("Hill"), Max International's CFO, that Fred Ninow had instructed Hill to pay Mr. Lee his monthly Distributor earnings only. At this time, Max International stopped paying Lee his CEO pay but continued to pay him some of his other commissions such as matching on team commission/binary pay from Ken Dunn and Bill Anderson and similar matching from other distributors who Lee had personally recruited to Max International.

35. Hill explained to Lee that Lee's CEO salary for April 2007 to August 2007 (\$125,000) was being held safely for him and that Max International maintained that it still owed Lee his \$125,000 CEO salary plus his expenses. However, Lee would have to talk with Fred Ninow to find out why he instructed Hill to, as of September 2007, begin paying Lee his Distributor compensation only, explaining that it is probably a simple misunderstanding.

36. Lee's Distributor income in August 2007 was around \$20,000 per month and kept rising to over \$50,000 per month in February 2008. This is money that was paid to Lee from Max International.

37. Lee was informed on February 19, 2008 that his Distributorship was being suspended by Max International. This wrongful suspension was also communicated to Lee in a letter dated February 18, 2008, handed to him by Craig Case, which is attached hereto as Exhibit "B".

38. Lee is now informed and believes that the February 19, 2008 suspension letter is truly a wrongful termination letter that is cloaked in other language.

39. The allegations made against Lee in the February 19, 2008 suspension letter are without merit.

40. Lee has demanded to receive compensation that he is owed since February 2008 but Max International fails and refuses to pay this compensation that is owed to Lee.

FIRST CAUSE OF ACTION - BREACH OF ORAL CONTRACT
(MARCH 2007 CEO AGREEMENT)
(As against Max International)

41. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

42. Plaintiff and Defendant entered into an oral agreement wherein Plaintiff would be CEO of Max International in return for certain compensation.

43. At all relevant times, Plaintiff performed his contractual duties pursuant to the March 2007 CEO Agreement. Notably, Plaintiff significantly contributed to the creation of Max International's "hybrid-style" compensation plan which Max currently uses and he convinced Max to not use an inferior compensation plan. The selection of a competitive compensation plan is an extremely critical task for any network marketing

company. Also, Plaintiff created the "Max Action Planner" which is a pocket planner that is sent to Max International's Distributors to help them in their business building efforts.

44. The March 2007 CEO Agreement was terminated by mutual consent in February 2008.

45. Defendant's failure to pay Plaintiff pursuant to the terms of the March 2007 CEO Agreement constitutes a breach of the material terms of that agreement.

46. Under the terms of the March 2007 CEO Agreement, Plaintiff is owed \$25,000 per month (totaling \$125,000). In addition, Plaintiff is owed approximately \$50,000 in reimbursements for incidental expenses. In addition, Plaintiff is owed one year of living expenses, one year of automobile expenses (less \$8,000 already paid).

47. Defendant is liable to Plaintiff under the terms of the March 2007 CEO Agreement for an amount to be proven at trial, but at least the amounts listed above in paragraph 42, plus interest at the legal rate, plus attorney fees and costs.

48. Plaintiff is entitled to recover the damages he has sustained by reason of Defendant's breach of contract.

**SECOND CAUSE OF ACTION - BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(MARCH 2007 CEO AGREEMENT)**
(As against Max International)

49. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

50. Pursuant to common law and Utah Code Ann. § 70A-1-203, every commercial contract includes an implied covenant of good faith and fair dealing and requires the parties to not intentionally or purposely do anything that will destroy or injure the other parties' right to receive the fruits of that contract.

51. In order to comply with the covenant of good faith and fair dealing, a party must act consistent with the agreed common purpose and the justified expectations of the other party that are based upon the intentions of the contracting parties, the contract language and the parties' past dealings.

52. Defendant breached the covenant of good faith and fair dealing by failing and refusing to pay Plaintiff pursuant to the terms of the March 2007 CEO Agreement.

53. Defendant is liable to Plaintiff under the terms of the March 2007 CEO Agreement for an amount to be proven at trial, but at least the amounts listed above in paragraph 42, plus interest at the legal rate, plus attorney fees and costs.

54. Defendants did not act in good faith and did not deal fairly with Plaintiff. Plaintiff is entitled to recovery of damages due to this breach.

THIRD CAUSE OF ACTION – PROMISSORY ESTOPPEL
(MARCH 2007 CEO AGREEMENT)
(As against Max International)

55. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

56. At all times alleged herein, Defendant made clear and unambiguous promises to Plaintiff that they would pay him the amounts specifically described in paragraph 42 above.

57. At all times alleged herein, Plaintiff reasonably relied upon such promises.

58. It was foreseeable to Defendant that Plaintiff would reasonably rely upon such promises.

59. It is unconscionable for Defendant to deny the promise upon which Plaintiff relied.

60. As a direct and proximate result of his reasonable and foreseeable reliance on Defendant's promise, Plaintiff has sustained an unconscionable injury and has been damaged in an amount of not less than the amounts described in paragraph 42 above, which sum shall be determined at trial.

FOURTH CAUSE OF ACTION - BREACH OF WRITTEN CONTRACT
(DISTRIBUTOR AGREEMENT)
(As against Max International)

61. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

62. Plaintiff and Defendant entered into a written agreement called an "Associate Application" whereby Plaintiff became a Distributor for Max International. The signed "Associate Application" is in the possession of Max International. Lee is informed and believes that the document attached hereto as Exhibit "C" is substantially similar to the written agreement that he and Max International signed and which is now in the possession, custody, or control of Max International.

63. The Associate Application incorporates a document called "Max Compensation Plan." Lee is informed and believes that the document attached hereto as Exhibit "A" is the "Max Compensation Plan" that is incorporated into the "Associate Application."

64. The Associate Application incorporates a document called "Max Policies and Procedures." Lee is informed and believes that the document attached hereto as Exhibit "D" is the "Max Policies and Procedures" that is incorporated into the "Associate Application."

65. These documents collectively constitute the Distributor Agreement.

66. At all relevant times, Plaintiff performed his contractual duties pursuant to the Distributor Agreement.

67. The Distributor Agreement was suspended without justifiable cause by Defendant on or around February 14, 2008 and was subsequently terminated by Defendant, again without justifiable cause.

68. Defendant's termination of the Distributor Agreement constitutes a breach of the material terms of that agreement.

69. At the time of suspension/termination, Plaintiff was earning \$50,000 per month pursuant to the Distributor Agreement.

70. Defendant is liable to Plaintiff under the terms of the Distributor Agreement for an amount to be proven at trial, plus interest at the legal rate, plus attorney fees and costs.

71. Plaintiff is entitled to recover the damages he has sustained by reason of Defendant's breach of contract.

**FIFTH CAUSE OF ACTION - BREACH OF IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING
(DISTRIBUTOR AGREEMENT)
(As against Max International)**

72. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

73. Pursuant to common law and Utah Code Ann. § 70A-1-203, every commercial contract includes an implied covenant of good faith and fair dealing and requires the parties to not intentionally or purposely do anything that will destroy or injure the other parties' right to receive the fruits of that contract.

74. In order to comply with the covenant of good faith and fair dealing, a party must act consistent with the agreed common purpose and the justified expectations of the other party that are based upon the intentions of the contracting parties, the contract language and the parties' past dealings.

75. Defendant breached the covenant of good faith and fair dealing by wrongfully suspending/terminating the Distributor Agreement.

76. Defendant is liable to Plaintiff under the terms of the Distributor Agreement for an amount to be proven at trial, plus interest at the legal rate, plus attorney fees and costs.

77. Defendants did not act in good faith and did not deal fairly with Plaintiff. Plaintiff is entitled to recovery of damages due to this breach.

SIXTH CAUSE OF ACTION – PROMISSORY ESTOPPEL
(DISTRIBUTOR AGREEMENT)
(As against Max International)

78. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

79. At all times alleged herein, Defendant made clear and unambiguous promises to Plaintiff that they would honor the Distributor Agreement.

80. At all times alleged herein, Plaintiff reasonably relied upon such promises.

81. It was foreseeable to Defendant that Plaintiff would reasonably rely upon such promises.

82. It is unconscionable for Defendant to deny the promise upon which Plaintiff relied.

83. As a direct and proximate result of his reasonable and foreseeable reliance on Defendant's promise, Plaintiff has sustained an unconscionable injury and has been damaged in an amount which shall be determined at trial.

SEVENTH CAUSE OF ACTION - UNJUST ENRICHMENT / QUANTUM
MERUIT
(As against Max International)

84. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

85. At all relevant times, Plaintiff performed under the March 2007 CEO Agreement and the Distributor Agreement in good faith.

86. By performing under the terms of the March 2007 CEO Agreement and the Distributor Agreement Plaintiff conferred significant benefits on Defendant.

87. At all relevant times, Defendant has enjoyed and continues to enjoy financial gains due to Plaintiff's performance under the terms of the March 2007 CEO Agreement and the Distributor Agreement.

88. Defendant has failed to pay Plaintiff the value of the benefit received.

89. Defendant knew that Plaintiff expected just compensation for the value of his services under the March 2007 CEO Agreement and the Distributor Agreement.

90. Defendant has wrongfully retained the benefits of Plaintiff's efforts in performing under the March 2007 CEO Agreement and the Distributor Agreement.

91. Defendant has been unjustly enriched at Plaintiff's expense.

92. Equity and good conscience require restitution to Plaintiff.

93. As a result of the foregoing, Plaintiff is entitled to an unjust enrichment judgment against Defendant in an amount to be proven at trial.

94. Plaintiff is entitled to recover the benefits conferred on Defendant as a result of his services and the expenses that he has incurred on behalf of Defendant.

**EIGHTH CAUSE OF ACTION – FRAUD/PROMISE WITHOUT PRESENT
INTENT TO PERFORM**
(As against Max International)

95. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

96. On or around March 2007, Defendants made the following promises to Plaintiff:

- a. Plaintiff would receive \$25,000 per month in return for being CEO of Max International;
- b. Plaintiff would receive one year of living expenses in return for being CEO of Max International;
- c. Plaintiff would receive one year of automobile expenses in return for being CEO of Max International;
- d. Plaintiff would receive fifty percent matching on all Team Commissions/Binary Pay compensation paid to Bill Anderson and/or Ken Dunn;
- e. Plaintiff would receive fifty percent matching on all Team Commissions/Binary Pay compensation to all persons who Lee personally recruits to join Max International;
- f. Plaintiff would automatically be qualified for 7 levels of matching the matching bonus check component of the compensation plan;
and

g. Plaintiff's extra benefits as a distributor, which are described above, would be in "perpetuity."

97. These promises made by Defendants were false when made because Plaintiff is informed and believes that Defendant never intended to perform these promises.

98. Plaintiff is informed and believes that when these promises were made, on or around March 2007, Defendant did not intend to perform them. In other words, Plaintiff is informed and believes that Defendant either knew these promises to be false (i.e. never intended to pay for Plaintiff's services) or made these promises recklessly, knowing that they had insufficient knowledge on which to base their promises (i.e. Defendant knew that it probably would not have the money to pay Plaintiff for his services after the services were performed).

99. These promises were made by Defendant to induce Plaintiff to perform services under their March 2007 CEO Agreement. Specifically, these promises were made to induce Plaintiff to hold himself out as CEO of Max International and direct operations at Max International from April 2007 until February 2008.

100. Plaintiff acted reasonably and in ignorance of Defendant's true intention to not perform on their promises.

101. Plaintiff was damaged by Defendant's false promises because as a result of Defendant's promises he expended time, effort, and expense in working as CEO of Max International from April 2007 until February 2008.

102. As a direct and proximate result of Defendant's false promises to Plaintiff, he has sustained damages in an amount to be determined at trial.

103. Defendant's false promises were the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of Plaintiff, and therefore, justifies an award of punitive damages under Utah Code Ann. § 78-18-1.

REQUEST FOR RELIEF

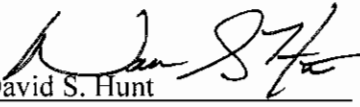
1. For compensatory damages of not less than \$3,000,000;
2. For restitution of any and all profits arising from Max International that resulted from Plaintiff's actions.
3. For attorney's fees and costs of this action;
4. For exemplary and punitive damages in an amount to be determined at trial; and
5. For such other and further relief as the court may deem proper and just.

JURY DEMAND

Plaintiff hereby demands a jury on all issues triable of right by jury.

Dated: February 24, 2009

THE HUNT LAW CORPORATION

By: 

/s/ David S. Hunt
David S. Hunt
Attorney for Plaintiffs
Attorney for Plaintiffs Markyl Lee
aka Markyl Angel Lee and
Promises to Keep, LLC

Plaintiff's Address:

Markyl Angel Lee
c/o WELLMAN & WARREN, LLP
24411 Ridge Route, Ste. 200
Laguna Hills, CA 92652