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CAUSE NO. \_\_\_\_\_

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GARY ELLIOTT  
CLERK  
DALLAS CO., TEXAS  
BANDORALANTZ DEPUTY

MARY KAY INC.,

Plaintiff,

v.

AMY DUNLAP,

Defendant.

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IN THE DISTRICT COURT

95th-D

\_\_\_TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**ORIGINAL PETITION**

**TO THE HONORABLE COURT:**

Plaintiff Mary Kay Inc. files this Original Petition, and in support thereof would show:

**I. DISCOVERY CONTROL PLAN**

1. This case should proceed under Level 3 of Rule 190 of the Texas Rules of Civil Procedure.

**II. PARTIES AND VENUE**

2. Plaintiff Mary Kay Inc. is a Delaware corporation, licensed to do business in the State of Texas. Mary Kay maintains its principal place of business at 16251 Dallas Parkway, Addison, Texas 75001.

3. Defendant Amy Dunlap is an individual residing in Troy, Missouri. Her last known address is 142 White Oak Estates Drive, Troy, Missouri, 63379.

4. Venue is proper in Dallas County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because a substantial part of the events or omissions giving rise to the claim occurred in Dallas County, Texas. Venue is also proper in Dallas County pursuant to a written agreement in which the parties agreed to litigate any dispute or controversy concerning any matter related to the agreement in Dallas, County, Texas.

### III. FACTS

#### A. Mary Kay's Business Model

5. Mary Kay is a manufacturer and wholesale distributor of cosmetics, toiletries, skin care, and related products. The Company's products are now sold in over thirty-five (35) markets around the world. Founded in 1963, Mary Kay has become one of the largest direct sellers of skin care products and color cosmetics in the United States. Notwithstanding its international presence, Mary Kay maintains its national headquarters in Addison, Texas and continues to manufacture products at its manufacturing facility in Dallas, Texas.

6. Mary Kay's success can be attributed to the carefully designed business model it created for the marketing, sale, and distribution of its products. Through this business model, Mary Kay produces the highest quality products and sells them directly to Independent Beauty Consultants ("IBCs"), who then sell the products to their customers, the ultimate consumers. Mary Kay offers IBCs education and product knowledge that they can, in turn, share with their customers to provide the highest level of customer service and ensure product satisfaction. In turn, the Mary Kay trademark has earned and enjoys a highly distinctive and famous status, a stature Mary Kay vigorously protects.

7. Mary Kay uses the direct-sales method to market its products. Mary Kay sells its products at wholesale prices, and on a pre-paid basis, to the self-employed IBCs. The IBCs then offer Mary Kay's products to their customers at retail prices. An individual becomes an Independent Beauty Consultant when she/he submits an IBC Agreement, which is accepted by Mary Kay at its Addison, Texas Headquarters, and then purchases a demonstration kit containing product samples and general information for use in her/his business. IBCs make profits from the retail sales of Mary Kay products to their customers. IBCs may also choose to recruit others to become IBCs and can earn commissions when the individuals recruited make wholesale purchases of products from Mary Kay to sell at retail to their customers.

8. Mary Kay offers certain IBCs who demonstrate exceptional abilities in aiding, counseling, and inspiring other IBCs and who distinguish themselves through success to become a National Sales Director (an "NSD"). The NSD program offers participants the opportunity to earn increased special incentive compensation, the opportunity to participate in certain advertising and other programs using Mary Kay's trademarks as authorized by Mary Kay, and other valuable rights, privileges and benefits. In addition, as part of her participation in the program, an NSD receives valuable specialized instruction, education, and information covering cosmetic arts, leadership, business management, motivation, recruiting and selling techniques through personal participation in educational programs, classes, business meetings, and seminars, and through other Mary Kay sponsored programs and events. Importantly, Ms. Dunlap received personal access to Mary Kay's reports and other confidential information, including comprehensive lists of names, addresses, and telephone numbers and detailed records of various members of Mary Kay's independent sales organization.

**B. The NSD Agreement**

9. Ms. Dunlap executed an Independent National Sales Director Agreement ("NSD Agreement") on March 1, 2005, thereby accepting her appointment as an NSD, together with the rights, benefits, privileges, and responsibilities provided under the NSD Agreement. Among other things, Ms. Dunlap agreed to use her best efforts to promote the sale of Mary Kay's products, motivate, counsel, and advise the IBCs and Independent Sales Directors in her sales group, and recruit other IBCs. She also agreed to treat the information provided to her above, which includes competitively valuable business information, confidential, and not to use or disclose that information for purposes which conflict with the business interests of Mary Kay.

10. In consideration of the commission compensation under the NSD Agreement and the other rights and benefits provided under it, Ms. Dunlap agreed to certain on-going obligations for a period of two years after the termination of the agreement. She agreed not to (1) solicit or recruit Mary Kay's independent sales force to sell products or services other than those sold by

Mary Kay; (2) use any names, mailing lists or other non-public information she obtained during her association with Mary Kay for recruiting or promoting the sale of any other company's products in the United States; (3) solicit or induce any of Mary Kay's independent sales force from terminating their business relationship with Mary Kay; and (4) receive any financial benefit from any other company or business organization based upon the solicitation, recruitment, enrollment for such company of any person whom she knows or has reason to believe is under contract as a member of Mary Kay's independent sales force.

**C. Ms. Dunlap's Termination and Violation of the NSD Agreement.**

11. On September 5, 2011, Ms. Dunlap notified Mary Kay of her decision to terminate her Mary Kay business to "focus on ministry" with her family. Mary Kay confirmed receipt and accepted Ms. Dunlap's termination notice on September 7, 2010. Ms. Dunlap's termination of the agreement was effective September 30, 2011.

12. Mary Kay discovered, shortly after receiving Ms. Dunlap's letter, Ms. Dunlap's true intentions. She had no intention to "focus on her ministry," as she represented to Mary Kay, but instead embarked on a new business, designed to compete with Mary Kay and to poach its IBCs. Specifically, Ms. Dunlap used (and continues to use) Mary Kay's confidential business information, including lists of names, addresses, and telephone numbers and other detailed records provided to her by Mary Kay to compete with Mary Kay in a different direct sales business.

13. In addition to using this information in violation of her NSD Agreement, Ms. Dunlap has also (1) solicited, recruited, and attempted to solicit and recruit Mary Kay's independent sales force to sell products or services other than those sold by Mary Kay; (2) used names, mailing lists or other non-public information she obtained during her association with Mary Kay for recruiting and attempting to recruit, and promoting the sale of another company's products in the United States; (3) solicited, induced and attempted to solicit and induce Mary Kay's independent sales force to terminate their business relationship with Mary Kay; and (4)

has received financial benefit from another company or business organization based upon the solicitation, recruitment, enrollment for such company of persons she knows or has reason to believe is under contract as a member of Mary Kay's independent sales force Ms. Dunlap has engaged in these activities within two years of the date of her termination of the NSD Agreement.

**Count I**  
**Breach of Contract**

14. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

15. By the terms of the NSD Agreement Ms. Dunlap agreed not to (1) solicit or recruit Mary Kay's independent sales force to sell products or services other than those sold by Mary Kay; (2) use any names, mailing lists or other non-public information she obtained during her association with Mary Kay for recruiting or promoting the sale of any other company's products in the United States; (3) solicit or induce any of Mary Kay's independent sales force from terminating their business relationship with Mary Kay; and (4) receive any financial benefit from any other company or business organization based upon the solicitation, recruitment, enrollment for such company of any person whom she knows or has reason to believe is under contract as a member of Mary Kay's independent sales force. She also agreed to treat Mary Kay's competitively valuable business information confidential, and not to use or disclose that information for purposes which conflict with the business interests of Mary Kay.

16. As alleged above, Ms. Dunlap has engaged in conduct that violates each of those provisions of the NSD Agreement. For the reasons stated above and incorporated herein, Ms. Dunlap has breached her agreements with Mary Kay and caused harm to Mary Kay. She is therefore liable to Mary Kay for breach of contract in an amount to be proven at trial.

**Count II**  
**Attorneys' Fees**

17. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

18. Mary Kay retained the undersigned attorneys to represent it in this action and agreed to pay reasonable and necessary attorneys' fees. Mary Kay seeks recovery of its reasonable and necessary attorneys' fees through trial and all appeals in accordance with Section 38.001 of the Texas Civil Practice & Remedies Code and applicable law.

**Count III**  
**Injunctive Relief**

19. Mary Kay hereby alleges and incorporates all of the preceding allegations as if set forth fully herein.

20. Ms. Dunlap has damaged Mary Kay, and is continuing to damage Mary Kay, by the willful and unlawful acts complained of herein. Unless she is restrained by this Court, she will cause irreparable injury to Mary Kay for which there is no adequate remedy at law. Accordingly, Mary Kay seeks the entry of the injunctive relief requested below.

**REQUEST FOR JURY TRIAL**

21. Mary Kay demands a trial by jury.

**PRAYER FOR RELIEF**

For the reasons stated above, Plaintiff Mary Kay prays:

A. that Ms. Dunlap, her officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with her, be preliminarily and permanently enjoined and restrained from violating the terms of the NSD Agreement;

B. that Ms. Dunlap, her officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with her, be preliminarily and permanently enjoined and restrained from further breaches of Ms. Dunlap's agreements with Mary Kay;

C. for an award of damages sustained as a result of Defendant's activities, trebled as allowed by law;

D. for an award of exemplary damages sustained as a result of Defendant's activities;

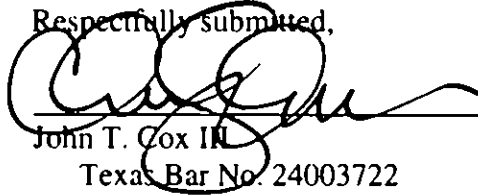
E. for an award of attorneys' fees and costs as allowed by law;

F. for an award of prejudgment and post-judgment interest on all sums awarded; and

G. for such other and further relief as the court may deem just, equitable and appropriate.

DATED: December 2, 2011

Respectfully submitted,



John T. Cox III

Texas Bar No. 24003722

Christopher J. Schwegmann

Texas Bar No. 24031515

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