

**JAMS ARBITRATION**

QUIXTAR INC.,

Claimant,

File No. 1100046544

vs.

Mark and Patricia MIDDLETON,  
Luke & Deborah BECKNELL, Alyn L. & Susan  
BENEZETTE, Tony W. & Diane M. BOSWORTH,  
Paul Jr. & Rosemary BOWMAN, Howard &  
Deborah BREEDLOVE, James & Mary Jo  
BROCK, James T. & M. Dianne BURK, Alfred  
CARDWELL, Bradley & Brenda A. DURCHOLZ,  
Robert W. & Marlene ERB, Benjamin L. FLORA,  
Kent C. GOFF, Alan & Peggy GROSSNICKLE,  
Gregory & Jean HALFAST, H. Ray & Sazan J.  
HAZEN, Thomas L. HESS, David & Alison M.  
HEYDE, Kimberly & Dennis L. HIATT,  
David A. & Kathy HINSHAW, Noel & Linda  
HOKE, Angelo & Christy JULOVICH, J. Keith &  
Joan KLINE, Dale & Karen LEWIS, Vey & Luanne  
LINVILLE, Mary Ann MERTZ, Rex & Cynthia  
MILLER, Ann E. MITCHELL, James & Susan  
PARE, Sharon R. & David PEROVICH,  
Louis D. & Shelly L. PLUMLEE, George A. &  
Sharon D. RITTER, Thomas & Sandra L. SHARP,  
Dave & Melana SMITH, Eric C. & Nicole J.  
SMITH, John & Cathy SMOLNICKY, Sue &  
Richard SPRUNGER, James & Caroline E.  
STANTON, Isabelle & James STEPHAN,  
Dennis & Julie A. STREETER, John R. & Kristine  
STREETER, John W. & Sharon L. TARRY,  
Dawn & Michael W. THOMAS, Barbara TITUS,  
Thomas O. & Joy TROUTMAN, Pamela UHLIR,  
Debra WADDELL, Rex A. & Lisa K. WEIPER,  
M. Shane WOLFF,

Respondents.

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**EXHIBIT F**

**RESPONDENTS' MOTION TO DISQUALIFY JAMS**

The Respondents, through their undersigned counsel, move to disqualify JAMS and all persons associated therewith, including any alleged arbitrator who is a member of the JAMS arbitration panel, and allege:

1. Quixtar Inc. (hereinafter "Quixtar") has filed the above styled arbitration proceeding, purporting to invoke the arbitration provisions of contracts allegedly entered into between Respondents and Quixtar.

2. Under the rules invoked by Quixtar, Respondents allegedly have no choice but to arbitrate this dispute using JAMS to administer the arbitration, who in turn will select a panel of JAMS arbitrators from which the parties must select an arbitrator.

3. JAMS has a long-standing contractual relationship with Quixtar and cannot be impartial in the administration of the arbitration, or otherwise in selection of arbitrators and submission of the case to arbitration.

4. Apparently, JAMS' arbitrators are also shareholders of JAMS and, in that capacity, have a financial incentive to maintain JAMS' contract with Quixtar, which can only be accomplished if Quixtar continues to receive favorable results in JAMS arbitrations.

5. Indeed, a recent decision by the United States District Court for the Western District of Missouri, styled Nitro Distributing, Inc., West Palm Convention Services, Inc., Netco, Inc., Schmitz & Associates, Inc., and U-Can II, Inc. vs. Alticor, Inc., Amway Corporation, and Quixtar, Inc., Case No. 03-3290-CV-W-RED, a copy of which is attached, conclusively establishes that the Quixtar/JAMS arbitration process is both procedurally and substantively unconscionable for numerous reasons, including the following:

- a. Quixtar requires all IBO's to sign the JAMS arbitration provision in a "take it or leave it manner" and "negotiation of the arbitration clause [is] unheard of." ORDER at p. 21.
- b. The "procedure utilized by [Quixtar] to screen, train and ultimately hand-pick their panel of arbitrators [from JAMS] does not come close to passing any reasonable test of fairness and neutrality required for a legitimate arbitration proceeding." ORDER at p.23.
- c. The method of screening and training of JAMS arbitrators "was designed to produce a very favorable view of [Quixtar]" and thereafter "after personal interviews" Quixtar would "pick the final panel of arbitrators from which all arbitrators for Amway disputes would be chosen." ORDER at p. 24.
- d. Of particular significance is the fact that Quixtar never loses in JAMS arbitrations: "Also telling is the fact that [Quixtar has] never lost in arbitration, with the exception of a few counterclaims." ORDER at p. 24.
- e. JAMS arbitrations are procedurally flawed because of favoritism to Quixtar, with the federal court noting that, when Quixtar is the defendant, "the process takes much longer than when they are the Plaintiffs in arbitration, and longer than JAMS arbitrations in general" and because there is no guarantee to discovery in the Quixtar arbitration rules, "it is for the arbitrator to choose if discovery should be allowed." ORDER at p.24.
- f. The federal court has already found JAMS arbitration process to be such as to "undermine[] the neutrality of the proceedings" resulting in a process that is "both unreasonable and unfair." ORDER at p.25.

6. The facts set forth in the above referenced court order were concealed by Quixtar and/or JAMS and were unknown to Respondents at the time they became Quixtar IBO's and thereafter as they renewed their contracts with Quixtar. If Respondents had known of the incestuous relationship between Quixtar and JAMS, and the inherent unfairness of the JAMS arbitration proceedings, they would never have acquiesced in the arbitration of disputes by JAMS.

7. Because the arbitration system set up by Quixtar is one-sided and skewed in Quixtar's favor, the neutrality of the process is undermined. Hooters of America v. Phillips, 173 F.3<sup>rd</sup> 933, 938 (4<sup>th</sup> Cir. 1999) (a list of arbitrators created exclusively for Hooters resulted in a selection process that was "crafted to ensure a biased decisionmaker.")

8. Based upon the federal court order, Respondents have a reasonable belief they will not receive a fair hearing because of the "evident partiality" of JAMS and its arbitrators. Because "a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration" JAMS should be disqualified and a neutral arbitrator assigned. Apperson v. Fleet Carrier Corporation, 879 F.2d 1344, 1358 (6<sup>th</sup> Cir. 1989); ANR Coal Company, Inc. v. Cogentrix of North Carolina, Inc., 173 F.3<sup>rd</sup> 493, 500 (4<sup>th</sup> Cir. 1999). All that needs to exist for disqualification is "a reasonable impression of partiality." Sheet Metal Workers Int'l Ass'n Local 420 v. Kinney Air Conditioning, 756 F.2d 742, 745-46 (9<sup>th</sup> Cir. 1985).

9. The exact relationship between Quixtar and JAMS remains undisclosed, but it is obvious that JAMS is a for-profit entity with a pecuniary interest in retaining the Quixtar arbitration contract. This is similar to Floss v. Ryan's Family Steak Houses, Inc., 211 F.3d 306, 314 (6<sup>th</sup> Cir. 2000), wherein a similar arbitration process was invalidated by the Sixth Circuit because "an alleged financial relationship between the employer company and [the arbitration service] compounded by the latter's pecuniary interest in retaining its arbitration service contract, might foster bias in favor

of the employer client.” See also, Walker v. Ryan’s Family Steak Houses, Inc., 400 F.3d 370, 386 (6<sup>th</sup> Cir. 2005) (because the arbitration service selected the pool of arbitrators and had a “potential bias” toward employers, it was “unlikely that applicants/employees will participate in an unbiased forum.”)

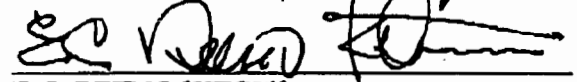
10. It is axiomatic that arbitrators act in a quasi judicial capacity, serving in the place of a court of law and must be fair and impartial so as to carry out their obligation to do justice to the parties. Kentucky River Mills v. Jackson, 206 F.2d 111 (6<sup>th</sup> Cir. 1953). “In order for arbitration to remain effective, arbitrators must not only be honest, but also above suspicion.” International Produce, Inc. v. A/S Rosshavet, 504 F. Supp. 736, 739 (S.D. N.Y. 1980). “Arbitration agreements are aimed at amicable determination of disputes with results which both parties are willing to accept. . . Where imbalance is unnecessarily effected the purpose and advantages of arbitration are defeated.” In re: Arbitration between Lobo & Co. and Plymouth Navigation Company of Monrovia, 187 F. Supp. 859, 860 (S.D. N.Y. 1960).


11. This motion should be granted so that a neutral arbitrator can be appointed. Otherwise, this entire arbitration proceeding will be tainted *ab initio*, ultimately resulting in a challenge to the arbitration award. Under these circumstances, a court is authorized to appoint a neutral arbitrator “when the potential bias of a designated arbitrator would make arbitration proceedings simply a prelude to later judicial proceedings challenging the arbitration award.” Masthead Mac Drilling Corp. v. Fleck, 549 F. Supp. 854, 856 (S.D. N.Y. 1982); Erving v. Virginia Squires Basketball Club, 468 F.2d 1064, 1068 (2<sup>nd</sup> Cir. 1972) (court would appoint a neutral arbitrator in the place of the arbitrator named in the contract because “federal law is to be implemented in such way as to make the arbitration effective.”)

12. In an effort to salvage this convoluted arbitration process, Quixtar has unilaterally changed the rules by inserting a provision for an "Alternate Roster" of neutrals who have not attended a Quixtar "Orientation." The fact that this issue is even addressed in the rules belies the obvious – that Quixtar set out to establish an arbitration process, through JAMS, that was skewed in Quixtar's favor, leading any reasonable person to question whether a fair hearing could ever be conducted when Quixtar is unilaterally controlling the process. Moreover, other unconscionable provisions of the rules remain intact, including the fact that Quixtar has the unilateral right to amend or rescind the rules at any time; Quixtar does not have to submit to arbitration if it doesn't want to; the confidentiality provisions of the rules permit Quixtar to conceal the unfairness of the proceedings from the outside world, and there is no requirement for discovery to be permitted. Under these circumstances, basic fairness dictates that a neutral impartial arbitrator be selected.

WHEREFORE the Respondents, through their undersigned counsel move to disqualify JAMS, and any JAMS arbitrator, from administering or presiding over the arbitration.

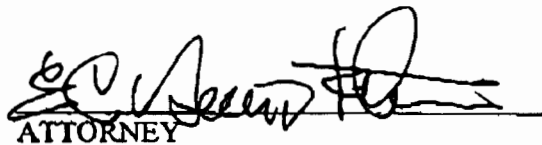
  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S Mail this 12<sup>th</sup> day of January, 2006 to John C. Peirce, BRYAN CAVE LLP, 700 13<sup>th</sup> Street NW, Washington, DC 20005.

  
ATTORNEY



**ARBITRATOR DISCLOSURE FOR ALL ARBITRATIONS  
AND  
COURT REFERENCE MATTERS**

**Arbitrator Disclosure Checklist pursuant to:**  
Code of Ethics for Arbitrators in Commercial Disputes  
JAMS Ethical Guidelines for Arbitrators

Case Title: Quixtar Inc. vs. Middleton, Mark & Patricia, et al.  
JAMS Ref. #: 1100046544  
Panelist Name: Hon. Richard E. Neville (Ret.)  
Checklist supplements disclosure reports 16A

Yes No

1. Arbitrator or member of arbitrator's family [The term "member of the arbitrator's family" includes the arbitrator's immediate family or member of the arbitrator's household] is a party, a party's spouse or domestic partner, an officer, director or trustee of a party?

( )

2. Arbitrator or member of arbitrator's family is a lawyer in the arbitration, related to a lawyer in the arbitration or currently associated in the private practice of law with a lawyer in the arbitration?

( )

3. Arbitrator or a member of arbitrator's family has or has had a significant personal relationship with any party or lawyer for a party?

( )

4. Arbitrator is serving or within preceding 5 years has served:

(A) As a neutral arbitrator in another arbitration involving a party to the current arbitration or lawyer for a party?

( )

(B) As a party-appointed arbitrator in another arbitration for either a party to the current arbitration or lawyer for a party?

( )

(C) As a neutral arbitrator in another arbitration in which s/he was selected by a person serving as a party-appointed arbitrator in the current arbitration?

( )

(D) As a dispute resolution neutral other than an arbitrator in another pending or prior case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in

**EXHIBIT G**

the private practice of law with a lawyer in the arbitration.

~~X~~

5. Arbitrator has or has had an attorney-client relationship with a party or lawyer for a party to the current arbitration, including representing the party; an officer, director or trustee of a party, or the arbitrator provided legal advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration?

~~X~~

6. Arbitrator or arbitrator's family has or has had any other professional relationship with a party or lawyer for a party, including as an expert witness or consultant?

~~X~~

7. Arbitrator or member of arbitrator's family has a financial interest in a party? (The term "financial interest" means ownership of a legal or equitable interest, or a relationship as a director, adviser, or other active participant in the affairs of a party. [See, 28 U.S.C.A. sec. 455.]

~~X~~

8. Arbitrator or member of arbitrator's family has personal knowledge of disputed evidentiary facts relevant to the arbitration? A person likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts.

~~X~~

9. Is there any other matter that:

(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial?

~~X~~

(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration?

~~X~~

(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice?

~~X~~

10. Is the arbitrator not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment?

~~X~~

11. Are there any constraints on the arbitrator's availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner?

~~X~~

If the arbitrator has answered "yes" to any of the above questions, s/he will explain below and/or see attached rider:



Arbitration Matter between:

Quixtar Inc.

v.

Middleton, Mark & Patricia, et al.

Reference Number: 1100046544

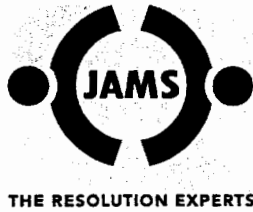
## **STIPULATION FOR ARBITRATION AND SELECTION OF ARBITRATOR**

It is stipulated and agreed by the Parties to submit all disputes, claims or controversies to neutral, binding arbitration at JAMS, pursuant to JAMS Rules and the JAMS Arbitration Administrative Policies. The Parties hereby agree to give up any rights they might possess to have this matter litigated in a court or jury trial.

Parties agree that [Panelist] shall serve as Arbitrator in this matter and that no party may have *ex-parte* communications with the Arbitrator. Any necessary communication with the Arbitrator must be initiated through the case manager. Parties agree that service of all documents shall be made by regular US mail.

BY:

BY:



**JUDICIAL ARBITRATION AND MEDIATION SERVICE**  
*The Resolution Experts*

<b>IN THE MATTER OF:</b>	)	
	)	
<b>QUIXTAR, INC.</b>	)	<b>CASE NO. 1100046544</b>
	)	
<b>Claimant,</b>	)	
	)	
<b>and</b>	)	<b>RULING ON RESPONDENT'S</b>
	)	<b>MOTION TO DISQUALIFY JAMS</b>
<b>MARK AND PATRICIA MIDDLETON,</b>	)	
<b>ET AL.</b>	)	
	)	
<b>Respondent.</b>	)	

This matter has been brought to the Arbitrator on the Respondents' Motion to Disqualify JAMS, which was filed on January 12, 2006. The Claimant has filed a response to that motion and objects to the disqualification request. The attorneys for the parties and Richard E. Neville, Arbitrator, participated in a telephonic conference call at 10: 00 Eastern Standard Time on February 8, 2006. The Respondents had requested a short continuance from the original call date of Monday February 6, 2006 to prepare for oral arguments on the motion.

Each side participated and presented their positions on the various issues raised in the motion to disqualify.

The Respondents indicated that they have a reasonable belief that JAMS is not an appropriate service provider and that an arbitrator selected from the JAMS panel also would not be appropriate as both JAMS and any such arbitrator cannot be fair to the Respondents. The Respondents have stated that this belief is based on the written ruling of Federal District Court Judge, Richard E. Dorr in an unrelated matter.

All Respondents in this matter it is alleged have entered into an agreement with the Claimant which sets out each party's respective rights and obligations. That allegation does not appear to be contested.

**EXHIBIT H**

These agreements have an arbitration provision and other rules which govern the relationship between the parties. Those rules are contained in the IBO Rules of Conduct. The arbitration provision is in Rule 11.

The Claimant has filed an Amended Demand for Arbitration and the Respondents have filed a motion to disqualify JAMS as the administrator. The Rule 11 arbitration provision designates JAMS as the administrator of any arbitration filed by either of the parties.

Judge Dorr made certain findings and comments regarding the relationship between the parties in that case that included a lengthy discussion of competing arbitration provisions between the parties and their enforceability. Judge Dorr found that there was no contractual agreement between the parties that would require the Plaintiff's to submit to arbitration as demanded by the Respondents and so ordered.

Judge Dorr also found that the pre-selection of certain JAMS arbitrators "...as presently set up by the Defendants is unconscionable." The parties disagree as to whether this comment by Judge Dorr is dicta.

The set up described by Judge Dorr was a pre-selection of panelists who were trained by Quixtar in some manner.

That issue is not present in this arbitration as the Arbitrator in this matter has no knowledge of such a training program and never attended such a program and has not been pre-selected.

Judge Dorr questioned the fairness of certain rules that apparently applied in the matter that was before him. The Respondent's in paragraph 5 of their motion list those issues.

Several of the issues dealt with the pre-selection and training of some JAMS panelists, as stated above.

As to another issue, the presentations made herein indicated that the parties signed their agreements each year over several years and that the rules changed over the years to address current issues between the parties. There was no evidence presented in this record to indicate that these were contracts of adhesion.

Another issue was whether JAMS had a financial interest in these types of cases that would indicate that JAMS could not be fair to the Respondents. There has been no evidence presented that JAMS has any financial interest beyond an administration role that would be the same for any arbitration administration provider.

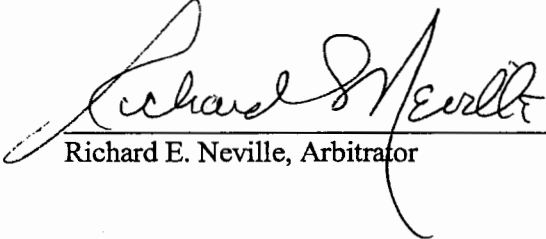
Another issue is whether discovery would be allowed under the IBO rules. Since the rules provide for the United States Arbitration Act to apply to this hearing, and since

any fair hearing would require a reasonable opportunity to prepare for the hearing, it is clear to this Arbitrator that appropriate discovery would be allowed.

The Arbitrator has filed a disclosure statement in this case that states there is no reason or issue that would prevent him from serving as a fair and impartial arbitrator. The Arbitrator has no relationship or prior professional contact with any of the Respondents, nor with the Claimant, nor with any of the attorneys who have appeared on this case.

Based on the presentations of the parties, a review of Judge Dorr's order, and the written submissions of both parties, the Arbitrator denies the motion to disqualify JAMS and all of its arbitrators.

Dated: February 10, 2006

  
Richard E. Neville, Arbitrator