

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

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, 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,

CASE NO: 4:06-cv-83 SPM/WCS

Plaintiffs/Respondents,

vs.

QUIXTAR, INC.,

Defendant/Claimant.

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE, FLORIDA

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FILED

**COMPLAINT FOR DECLARATORY JUDGMENT OR,
IN THE ALTERNATIVE, TO COMPEL ARBITRATION BEFORE A
NEUTRAL ARBITRATION BODY AND REQUEST FOR EMERGENCY STAY**

The Plaintiffs/Respondents file this Complaint for Declaratory Judgment or, In the Alternative, to Compel Arbitration Before a Neutral Arbitration Body and Request for Emergency Stay, and in support would show:

1. This is a complaint for a declaratory judgment or, in the alternative, to compel arbitration before a neutral arbitration body filed under the Federal Declaratory Judgment Act, 28 U.S.C. §2201 *et. seq.* and the Federal Arbitration Act, 9 U.S.C. §1 *et. seq.* This court has jurisdiction pursuant to 28 U.S.C. 1332.

2. The Plaintiffs are independent business owners (“IBO’s”) who are distributors for the Defendant, Quixtar, Inc. (“Quixtar”). Plaintiffs Mark and Patricia MIDDLETON, Luke & Deborah BECKNELL, Tony W. & Diane M. BOSWORTH, 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, Rex & Cynthia MILLER, Ann E. MITCHELL, Louis D. & Shelly L. PLUMLEE, 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, Rex A. & Lisa K. WEIPER, and M. Shane WOLFF are residents of the State of Indiana. Plaintiffs James & Susan PARE are residents of the State of Maryland. Plaintiffs Mary Ann MERTZ, Pamela UHLIR, and Debra WADDELL are residents of the State of Nebraska. Plaintiffs Alyn L. & Susan BENEZETTE, and Paul Jr. & Rosemary BOWMAN are residents of the State of Florida. Plaintiffs George A. & Sharon D. RITTER are residents of the State of Nevada.

3. Quixtar is a Michigan corporation whose principal place of business is the State of Michigan. Quixtar is the successor in interest to Amway Corporation (“Amway”). Quixtar is subject to personal jurisdiction in this court because it is conducting substantial business in the Northern District of Florida. Quixtar is engaged in interstate commerce, with IBO distributors selling Quixtar merchandise in every state of the union, including the State of Florida. Quixtar has over 200 IBO distributors residing in the Northern District of Florida who solicit orders for Quixtar merchandise from customers in the Northern District of Florida. Those orders are filled and shipped into the Northern District of Florida by Quixtar. Quixtar executives and representatives routinely travel into the Northern District of Florida for meetings to recruit additional IBOs to the Quixtar IBO network.

4. As a result of a dispute that has arisen between the parties, Quixtar filed an arbitration complaint against the Plaintiffs and other IBOs, styled as an Amended Statement of Claims and Request for Immediate Interim Award Granting Temporary and Permanent Injunctive Relief (“Amended Statement of Claims”), a copy of which is attached hereto as Exhibit A. The amount in controversy, which includes compensatory and punitive damages, exceeds \$75,000, exclusive of interest and costs. Thereafter, Quixtar filed a Verified Motion for Immediate Interim Award Granting Temporary and Preliminary Injunctive Relief Against Respondents the Middletons,

Juloviches, Pares, Plumless, Smiths, Stephans, Streeters and Troutmans (“Motion for Temporary Relief”), a copy of which is attached as Exhibit B. The Amended Statement of Claims and Motion for Temporary Relief were filed with Judicial Arbitration and Mediation Service (“JAMS”).

5. JAMS is an administrator for arbitration, mediation, and other alternative dispute resolution services.

6. In the Amended Statement of Claims, Quixtar claims that the IBO’s violated a non-compete provision of the IBO Rules of Conduct, specifically Rule 6.5, a copy of which is attached as Exhibit C, and that the IBOs are bound to arbitrate this dispute pursuant to Rule 11 of the IBO Rules of Conduct, a copy of which is attached as Exhibit D.

7. The IBOs deny they are bound by the non-compete provisions of Rule 6.5. The IBOs are longstanding members of the Amway/Quixtar network and did not agree to that provision as a condition of joining Amway/Quixtar. The IBOs have never agreed in writing to be bound by Rule 6.5 as presently written, which is materially different from previous non-compete provisions in the Quixtar rules. In fact, the new Rule 6.5 was unilaterally adopted by Quixtar, allegedly sometime in 2004, without notice to the IBOs or for any consideration.

8. The IBOs never agreed to arbitrate any claim relating to Rule 6.5. The arbitration requirements of Quixtar’s rules are procedurally and substantively unconscionable as set forth with more particularity in the findings of United States District Judge Richard E. Dorr of the Western District of Missouri in an order dated September 16, 2005. A copy of Judge Dorr’s order is attached hereto as Exhibit E (the “Missouri Order”). The Missouri Order is a terse condemnation of Quixtar’s complicity in creating an arbitration system designed to insure that Quixtar will always win in JAMS arbitrations. According to Judge Dorr:

Also telling is the fact that Defendants [Quixtar and Amway] have never lost in arbitration, with the exception of a few counterclaims. The record shows that when Defendants are defending in arbitration, the process takes much longer than when they are the Plaintiffs in arbitration, and longer than JAMS arbitrations in general.

Missouri Order at p. 24.

9. At the time the IBOs arguably agreed to be bound to arbitrate this dispute, the facts relating to the collusion between Quixtar and JAMS were concealed from them by Quixtar. If the IBOs had known the facts set forth in the Missouri Order, they would never have agreed to be bound to arbitrate any dispute and certainly would not have agreed that an arbitration could be administered by Quixtar's co-conspirator JAMS.

10. In order to address one aspect of Judge Dorr's criticism, Quixtar unilaterally amended the rules to create two categories of JAMS arbitrators, those who had been "trained" by Quixtar and those who had not been to a Quixtar "Orientation." See Rule 11.5.13. The fact that the rules were changed further confirms that Quixtar, with the cooperation of JAMS, set out to create an arbitration system that would tip the scales of justice and produce a predetermined outcome in favor of Quixtar. The IBOs simply have no confidence that any arbitration with Quixtar would produce a fair result and certainly a JAMS-administered arbitration does not even have the appearance of neutrality.

11. The misconduct of Quixtar in taking advantage of the arbitration provisions in the Rules of Conduct to create an unfair adjudication of claims in its favor should be construed as a waiver of Quixtar's purported right to arbitrate this dispute.

12. The IBOs are in doubt concerning whether they are required to arbitrate this dispute with Quixtar and, if so, whether they are required to submit to an arbitration before JAMS. The IBOs seek this court's order declaring their rights and responsibilities therein.

13. In the alternative, the IBOs seek an order of this court assigning the arbitration of this matter to a neutral arbitration body as contemplated by the Quixtar rules. Under Rule 11.5.5 of the IBO Rules of Conduct, JAMS is the named arbitration administrator, but:

If for any reason JAMS is unable or unwilling to perform its responsibilities as Administrator the parties agree that they will invite the American Arbitration Association to administer the arbitration in accordance with these Rules, selecting the arbitrator from among AAA arbitrators who satisfy the Standards of Experience, Impartiality and Diversity in Rules 11.5.15 and 11.5.16.

14. The IBOs moved to disqualify JAMS as the administrator of the arbitration based upon the perceived bias of JAMS toward Quixtar. A copy of the IBOs' Motion to Disqualify JAMS is attached as Exhibit F. This motion was filed prior to the selection of an arbitrator by the administrator assigned to the arbitration by JAMS.

15. The IBOs have a reasonable belief they will not receive a fair and impartial hearing before a JAMS arbitrator.

16. Over the IBOs' objection, JAMS has proceeded with the arbitration and on January 26, 2006, assigned Richard E. Neville as the arbitrator of this dispute. As noted in Judge Dorr's order, the JAMS arbitrators have a financial stake in JAMS as JAMS shareholders, a fact confirmed by Arbitrator Neville's disclosure statement filed after his assignment. See Exhibit G attached hereto. Thus, the JAMS arbitrators have a financial interest in continuing JAMS' association with Quixtar.

17. On February 10, 2005, Arbitrator Neville entered a written ruling denying the IBOs' Motion to Disqualify JAMS. A copy of Arbitrator Neville's order is attached as Exhibit H.

**REQUEST FOR EMERGENCY STAY OF JAMS
ARBITRATION PENDING RULING ON THIS MOTION**

18. Arbitrator Neville has scheduled a hearing on March 13-14, 2006, to take evidence on Quixtar's request for a preliminary injunction. In the interim, Arbitrator Neville has announced his intention to rule on Quixtar's Motion for Temporary Relief against the above named Plaintiffs on Monday, February 20, 2006.

19. The IBOs will be irreparably harmed and their businesses destroyed if Arbitrator Neville rules in favor of Quixtar.


20. The IBOs request this court to enter an order staying further proceedings in the JAMS arbitration pending a ruling on this motion.

WHEREFORE, the IBOs petition this court to:

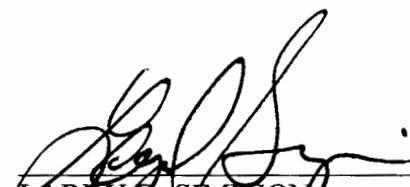
A. Enter a declaratory judgment that the IBOs are not required to submit this dispute to arbitration;

B. In the alternative, to appoint a neutral arbitration body to administer the arbitration of this dispute;

C. To stay all proceedings in the JAMS arbitration pending ruling on this motion.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 2006, I faxed and mailed the foregoing document by first-class mail to John C. Peirce, BRYAN CAVE LLP, 700 13th Street NW, Washington, DC 20005.


ATTORNEY