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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GEORGE and JILL GUZZARDO, MARK and
RITA HAAS, MARK and ANNA HUBER,
WILLIAM and JACQUELINE LEWIS, MARK
and JENNIFER PAUL, CURTIS and DEBORAH
SPOLAR, DOUGLAS and SHERYL STROH,
LARRY and MARTHA VAN BUSKIRK,
MATTHEW and CHERYL ABRAHAM,
MANASE and LISA FOTU, TERRY and
MARJORIE FRANKS, DEAN and TERESA
FREY, MICHAEL and VIOLA GOWEN,
GERALD and PAULETTE HARTEIS,
individually and on behalf of a class of similarly
situated persons and entities,

Plaintiffs,

PROPOSED CLASS ACTION
Case No.

**PLAINTIFFS' CLASS ACTION
COMPLAINT
JURY DEMANDED**

v.

QUIXTAR, INC., now known as AMWAY
CORP., a Virginia corporation, and AMWAY
CORPORATION, now known as Amway
International Inc., a Delaware corporation.

Defendants.

**PLAINTIFFS' CLASS ACTION COMPLAINT
JURY DEMANDED**

This Class Action Complaint is filed on behalf of a class of former independent distributors of Defendants Quixtar, Inc. and Amway Corp. (collectively “Quixtar”), who are affiliated with a motivational tools and training organization known as TEAM. The purpose of this Complaint is to enjoin Quixtar from harassing and intimidating Plaintiffs and Class Members with repetitive arbitrations asserting trumped up violations of Quixtar’s unilaterally-enacted non-compete, non-solicitation, and trade secret rules, and to obtain a declaration that these rules and Quixtar’s arbitration agreement are unenforceable. Quixtar has undertaken this abusive litigation strategy to bankrupt former Quixtar distributors and to coerce them into abandoning the lawful pursuit of independent businesses as distributors of MonaVie, LLC (“MonaVie”). The absence of administrative constraints in arbitration has permitted Quixtar to run roughshod over its opponents, obtaining lengthy pre-arbitration schedules with essentially unlimited discovery that permits Quixtar’s many in-house counsel and several litigating law firms to engage them in a war of attrition.

Quixtar’s abhorrent litigation strategy has been implemented through a network of secret arbitrations which are being conducted pursuant to an arbitration agreement and rules that have

been held to be *unconscionable* and *unenforceable* by numerous federal courts, including *Morrison v. Amway Corp.*, 517 F.3d 248 (5th Cir. 2008); *Pokorny v. Quixtar, Inc.*, 2008 U.S. Dist. LEXIS 28439 (N.D. Cal. Mar. 31, 2008)(unpublished); *Simmons v. Quixtar, Inc.*, 2008 U.S. Dist. LEXIS 52535 (E.D. Tex. July 8, 2008)(unpublished); *Nitro Distributing, Inc. v. Alticor*, No. 03-3290-CV-W (W.D. Mo. Sept. 16, 2005)(unpublished); *Stewart & Assoc. v. Quixtar*, No. 05-3440-CV-S (W.D. Mo. Nov. 20, 2006)(unpublished); and *McCrone v. Quixtar*, No. 1:07CV2737 (N.D. Ohio 2008).

Each arbitration arises out of the same set of facts and circumstances, alleges the same or similar claims, predicates liability on the same acts of the same group of TEAM-affiliated Class Members, and seeks the same duplicative recovery. Each arbitration targets a different group of Class Members and is conducted under a cloak of secrecy erected by Quixtar's unilaterally-enacted confidentiality rules. Litigants in one arbitration are thereby prohibited from learning of the evidence, rulings and results of the others, which allows Quixtar to continually re-assert in subsequent arbitrations, claims and legal positions that have been rejected in earlier arbitrations. Quixtar's strategy is to deplete the resources of its opponents, and concomitantly, their ability to defend.

Quixtar has extended this cloak of secrecy to related federal and state court actions, obtaining orders in some cases which have sealed the entire docket from public view. Quixtar uses these multiple proceedings to harass Plaintiffs and Class Members with duplicative depositions and document requests, amassing a repository of information that its opponents cannot gain access to. Quixtar's excessive demands include repetitive subpoenas and motions to compel against non-party TEAM members, followed by new arbitration demands against them.

The resulting imbalance has so perverted the arbitration alternative that it cannot be recognized as a favored proceeding under the Federal Arbitration Act.

THE DEFENDANTS

1. Defendant Quixtar, Inc., now known as Amway Corp., (“Quixtar”) is a Virginia corporation with its principal place of business at 5101 Spaulding Plaza, Ada, Michigan 49355. Quixtar is the successor-in-interest to Amway Corporation as of September 1, 1999.

2. Defendant Amway Corporation, now known as Amway International Inc., is a Delaware corporation with its principal place of business at 7575 Fulton Street East, Ada, Michigan 49355.

3. Quixtar and Amway are wholly owned subsidiaries of Alticor Corporation and are multilevel or network marketing companies (“MLM”). Plaintiffs and Class Members were formerly independent business owners (“IBOs”) with Quixtar. Amway Corporation and Quixtar are sometimes hereinafter referred to collectively as “Quixtar.”

THE PLAINTIFFS AND CLASS MEMBERS

4. Plaintiffs George and Jill Guzzardo are citizens of, and reside in, Ironwood, Michigan. Mr. and Mrs. Guzzardo are former Quixtar IBOs and are affiliated with TEAM, a motivational tools and training organization founded by former Quixtar IBOs Orrin Woodward and Chris Brady. More than six months after terminating their IBO distributorship, Far North Associates, of which Mr. and Mrs. Guzzardo are the sole owners, registered to become distributors for MonaVie, a multilevel marketing company based in Salt Lake City, Utah. Mr. and Mrs. Guzzardo’s former “contract” with Quixtar is the subject of a tortious interference claim Quixtar filed against MonaVie in this Court. The case is pending before Judge Bruce

Jenkins. *See Amway v. MonaVie*, Case No. 08-cv-00209 (consolidated with Case No. 08-cv-00204). Quixtar filed an arbitration demand against Mr. and Mrs. Guzzardo in JAMS, being JAMS Case No. 1100057932. Quixtar has also filed a Complaint against Mr. and Mrs. Guzzardo in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel Mr. and Mrs. Guzzardo to arbitrate according to Quixtar's arbitration rules.

5. Plaintiffs William and Jacqueline Lewis are citizens of, and reside in, Grand Blanc, Michigan. Mr. and Mrs. Lewis are former Quixtar IBOs through WPL Enterprises, LLC, of which they are the sole members, and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Thrill LLC, of which Mr. and Mrs. Lewis are the sole members, registered to become a distributor for MonaVie. Their names appear on a list of 31,000 TEAM-affiliated former Quixtar IBOs that Quixtar's counsel provided to MonaVie's counsel on March 4, 2008 and March 5, 2008 (the "List"), accompanied by a threat to sue MonaVie if MonaVie did not terminate the distributorships of the listed individuals. Mr. and Mrs. Lewis' former "contract" with Quixtar is the subject of the action Quixtar commenced against MonaVie for tortious interference. Quixtar filed a demand for arbitration against Mr. and Mrs. Lewis in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Lewis in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar's arbitration rules.

6. Plaintiffs Curtis and Deborah Spolar are citizens of, and reside in, Corona, California. Mr. and Mrs. Spolar are former Quixtar IBOs through Independence International, of which they are the sole members, and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Independence International registered to become a

distributor for MonaVie. Their former “contract” with Quixtar is the subject of the action Quixtar commenced against MonaVie for tortious interference. Quixtar filed a demand for arbitration against Mr. and Mrs. Spolar in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Spolar in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

7. Plaintiffs Douglas and Sheryl Stroh are citizens of, and reside in, Evergreen, Colorado. Mr. and Mrs. Stroh are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, AJAM Consulting, LLC, of which they are the sole members, registered to become a distributor for MonaVie. Their former “contract” with Quixtar is the subject of the action Quixtar commenced against MonaVie for tortious interference. Quixtar filed a demand for arbitration against Mr. and Mrs. Spolar in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Stroh in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

8. Plaintiffs Dean and Teresa Frey are citizens of, and reside in, Bloomsburg, Pennsylvania. Mr. and Mrs. Frey are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Mr. and Mrs. Frey registered to become distributors for MonaVie. Their former “contract” with Quixtar is the subject of the action Quixtar commenced against MonaVie for tortious interference. Quixtar filed a demand for arbitration against Mr. and Mrs. Frey in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Frey in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

9. Plaintiffs Gerald and Paulette Harteis are citizens of, and reside in, Dallas, Pennsylvania. Mr. and Mrs. Harteis are former Quixtar IBOs through Harteis Associates, Inc., of which they are the sole shareholders, and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Harteis Associates, Inc. registered to become a distributor for MonaVie. Their former “contract” with Quixtar is the subject of the action Quixtar commenced against MonaVie for tortious interference. Quixtar filed a demand for arbitration against Mr. and Mrs. Harteis in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Harteis in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

10. Plaintiffs Mark and Rita Haas are citizens of, and reside in, Florissant, Missouri. Mr. and Mrs. Haas are former Quixtar IBOs, and are affiliated with TEAM. More than six months after terminating the IBO distributorship, MARIH Business Services, LLC, of which Mr. Haas is the sole member, registered to become a distributor for MonaVie. Quixtar filed a demand for arbitration against Mr. and Mrs. Haas in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Haas in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

11. Plaintiffs Mark and Anna Huber are citizens of, and reside in, Grand Blanc, Michigan. Mr. and Mrs. Huber are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Starfish Acquisitions, LLC, of which Mr. Huber is the sole member, registered to become a distributor for MonaVie. Their names appear on the List and their former “contract” with Quixtar was identified as the subject of the action Quixtar commenced against MonaVie for tortious interference, as articulated in the now

superseded First Amended Complaint. Quixtar filed a demand for arbitration against Mr. and Mrs. Huber in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Huber in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar's arbitration rules.

12. Plaintiffs Mark and Jennifer Paul are citizens of, and reside in, Lake Angelus, Michigan. Mr. and Mrs. Paul are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Mr. and Mrs. Paul registered to become distributors for MonaVie, which was later transferred to SunAndPalmTrees, LLC, of which they are the sole members. Their names appear on the List and their former "contract" with Quixtar was identified as the subject of the action Quixtar commenced against MonaVie for tortious interference, as articulated in the now superseded First Amended Complaint. Quixtar filed a demand for arbitration against Mr. and Mrs. Paul in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Paul in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar's arbitration rules.

13. Plaintiffs Larry and Martha Van Buskirk are citizens of, and reside in, Bath, Michigan. Mr. and Mrs. Van Buskirk are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Claro Enterprises, LLC, of which Mr. and Mrs. Van Buskirk are the sole members, registered to become a distributor for MonaVie. Mr. and Mrs. Van Buskirk's names appear on the List. Quixtar filed a demand for arbitration against Mr. and Mrs. Van Buskirk in JAMS, being JAMS Case No. 1100057932.

Quixtar also filed a Complaint against Mr. and Mrs. Van Buskirk in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar's arbitration rules.

14. Plaintiffs Matthew and Cheryl Abraham are citizens of, and reside in, Fenton, Michigan. Mr. and Mrs. Abraham are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Main Street Enterprises, Inc., a Michigan corporation of which Mr. Abraham is the sole owner, registered to become a distributor for MonaVie. Their names appear on the List and their former "contract" with Quixtar was identified as the subject of the action Quixtar commenced against MonaVie for tortious interference, as articulated in the now superseded First Amended Complaint. Quixtar filed a demand for arbitration against Mr. and Mrs. Abraham in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Abraham in Kent County Circuit Court, Michigan, Case No. 09-02440-CK to compel arbitration according to Quixtar's arbitration rules.

15. Plaintiffs Manase and Lisa Fotu are citizens of, and reside in, Alpine, Utah. Mr. and Mrs. Fotu are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Mr. and Mrs. Fotu registered to become distributors for MonaVie. Quixtar filed a demand for arbitration against Mr. and Mrs. Fotu in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Fotu in Kent County Circuit Court, Michigan, Case No. 09-02440-CK to compel arbitration according to Quixtar's arbitration rules.

16. Plaintiffs Terry and Marjorie Franks are citizens of, and reside in, Mansfield, Ohio. Mr. and Mrs. Franks are former Quixtar IBOs and are affiliated with TEAM. More than

six months after terminating their IBO distributorship, Kyah Group, LLC, of which Mr. Franks is the sole member, registered to become a distributor for MonaVie. Their former “contract” with Quixtar was identified as the subject of Quixtar’s tortious interference claim against MonaVie, as articulated in the now superseded First Amended Complaint. Quixtar filed a demand for arbitration against Mr. and Mrs. Franks in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Franks in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

17. Plaintiffs Michael and Violet Gowen are citizens of, and reside in, Plymouth, Michigan. Mr. and Mrs. Gowen are former Quixtar IBOs and are affiliated with TEAM. More than six months after terminating their IBO distributorship, Mr. and Mrs. Gowen registered to become distributors for MonaVie, first as individuals and subsequently through Alethos, LLC, of which they are the sole members. Their names appear on the List and their former “contract” with Quixtar was identified as the subject of Quixtar’s tortious interference claim against MonaVie, as articulated in the now superseded First Amended Complaint. Quixtar filed a demand for arbitration against Mr. and Mrs. Gowen in JAMS, being JAMS Case No. 1100057932. Quixtar also filed a Complaint against Mr. and Mrs. Gowen in Kent County Circuit Court, Michigan, Case No. 09-02440-CK, to compel arbitration according to Quixtar’s arbitration rules.

JURISDICTION AND VENUE

18. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-17 above as though fully set forth herein.

19. Subject matter jurisdiction exists in this Court pursuant to 28 U.S.C. § 1332(d).

20. There is an actual and justiciable case and controversy involving the Plaintiffs, Class Members and the Defendants as to which a judicial determination and injunctive relief is required. As is more fully explained in the succeeding paragraphs, although numerous federal courts have held that Quixtar's arbitration agreement and rules are unconscionable and/or unenforceable, Quixtar continues to aggressively compel – and will continue to compel in the future – Plaintiffs and Class Members to defend against Quixtar's claims in its “star chamber” arbitration proceedings. Further, the claims asserted in the arbitrations rely upon non-competition, non-solicitation and trade secret rules which were unilaterally enacted by Amway after Plaintiffs and many Class Members became IBOs, and which are otherwise overly broad, anticompetitive, and unenforceable as applied. Quixtar has commenced arbitrations against Plaintiffs and other TEAM-affiliated MonaVie distributors asserting violations of these unenforceable rules, and other Class Members have been told that they will be sued in arbitration unless they disassociate with TEAM.

21. Pursuant to 28 U.S.C. § 2201(a), this Court has authority to “declare the rights and other legal relations” of the parties that are raised in this Complaint. Further, under Fed. R. Civ. P. 65, this Court is empowered to grant Plaintiffs' request for temporary, preliminary and permanent injunctive relief.

22. Personal jurisdiction over Defendants is proper in this Court pursuant to Utah's long arm statute, Utah Code Ann. § 78B-3-201 *et seq.* and Fed. R. Civ. P. 4(k)(1)(A) because Quixtar and Amway transact business within the State of Utah, contract to supply goods in the State of Utah, and on other grounds. Quixtar and/or Amway have submitted to the jurisdiction of this Court in *MonaVie v. Quixtar, Inc.*, Case No. 2:08-cv-204, and have availed themselves of

this Court in commencing an action against *MonaVie, LLC*, a Utah limited liability company, in *Amway v. MonaVie, LLC*, Case No. 2:08-cv-209, which has been consolidated with Case No. 2:08-cv-204. Further, the assertion of personal jurisdiction over Defendants in this state comports with the United States Constitution.

23. Quixtar's action against MonaVie within the State of Utah arises out of the same acts and occurrences which are alleged herein.

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (c) because Defendants continuously and systematically conduct business in the District of Utah.

CLASS ACTION ALLEGATIONS

25. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-24 above as though fully set forth herein.

26. Plaintiffs plead on their own behalf and, pursuant to Fed. R. Civ. P. 23, as representatives of a class ("the Class").

27. The Class is defined as:

all individuals and/or entities affiliated with TEAM who are former Quixtar IBOs or whose spouse is a former Quixtar IBO and for whom Quixtar seeks to hold responsible for their spouse's actions as a Quixtar IBO, or individuals and/or entities whose name appears on a list of TEAM-affiliated former Quixtar IBOs that Quixtar's counsel provided to MonaVie's counsel on March 4, 2008 and March 5, 2008 and which was referenced in or identified in Amway's First Amended Complaint in *Amway v. MonaVie*, Case No. 08-cv-209, or who were identified in Amway's First Amended Complaint in that case, and: (1) who have registered, or whose spouse has registered, either directly or indirectly through an entity, to become a MonaVie distributor; or (2) who performs services, or whose spouse performs services, for a MonaVie distributor.

28. The size of the class, consisting of approximately 31,000 members, is so numerous that joinder of all Class Members would be impracticable.

29. The claims and defenses of the Plaintiffs are typical of the claims and defenses of the Class, and the Plaintiffs will fairly and adequately protect the interests of the Class. The Plaintiffs have no conflict with any other Class member and have retained competent counsel who are experienced in class action litigation, and have familiarity with the subject matter of this litigation.

30. Questions of law and fact common to the Class Members predominate over any questions affecting only individual members, and a class action is superior to other methods for the fair and efficient adjudication of the controversy. Common questions of law and/or fact relate to the interpretation and enforceability of Quixtar's arbitration agreement and other rules which Quixtar seeks to apply equally to Plaintiffs and Class Members. The common questions include the following:

- (a) Whether Quixtar's arbitration agreement applies to former IBOs.
- (b) Whether, given the Fifth Circuit's decision in *Morrison v. Amway Corp.*, 517 F.3d 248 (5th Cir. 2008), Quixtar is collaterally estopped from asserting the enforceability of its arbitration agreement.
- (c) Whether Quixtar's arbitration agreement is unenforceable because Quixtar maintains the unilateral right to amend the arbitration agreement.
- (d) Whether Quixtar's arbitration agreement is unenforceable because Quixtar's arbitration rules are substantively and procedurally unconscionable.
- (e) Whether the non-competition and non-solicitation rules, ROCs 6.5.4, 6.5.5 and related rules, are unenforceable because they are overly broad, not reasonably related to a legitimate business purpose and/or otherwise improper.
- (f) Whether the non-solicitation rule, ROC 6.5.5, as interpreted by Quixtar, is unenforceable.

- (g) Whether Quixtar sells products which are functionally interchangeable with products sold by MonaVie.
- (h) Whether the names and addresses of IBOs, and the relationships among IBOs in a line of sponsorship, are proprietary to Quixtar.

31. The prosecution of separate actions by or against Plaintiffs and the individual Class Members will create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish inconsistent and incompatible standards of conduct for Quixtar, for MonaVie, for Plaintiffs and for Class Members.

32. Further, Quixtar has acted or refused to act on grounds that apply generally to the Class as whole, so that final declaratory relief is appropriate respecting the Class as a whole. More specifically, Quixtar has taken inconsistent positions from one arbitration to the next, and from one case to the next. Because of the cloak of secrecy that shrouds Quixtar arbitrations, litigants in one arbitration are prohibited from learning of the evidence, rulings and results of other arbitrations, which allows Quixtar to re-assert in subsequent arbitrations, claims and legal positions that have been rejected in prior arbitrations.

33. The class action will not render this case unmanageable or otherwise thwart the ability of this Court to declare the rights and responsibilities of the parties as sought by the Complaint. Further, the same issues have occurred, are occurring, and have the potential to reoccur in individual actions between Quixtar, Plaintiffs and the Class Members throughout the country, and it is desirable to concentrate these questions in a single forum so that their resolution will have binding effect.

34. Individual Class Members do not have a particular interest in controlling the prosecution or defense of separate actions relative to the issues that are common to the Class, and will benefit from a global adjudication of these issues.

35. Notice to Class Members will be published by posting notice on the TEAM website, <http://www.the-team.biz>; and/or by e-mailing notice to the class members for whom an e-mail address exists and can be obtained; and/or by mailing notice via the United States Postal Service first class mail to the Class Members for whom a mailing address exists and can be obtained.

GENERAL ALLEGATIONS

36. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-35 above as though fully set forth herein.

A. THE IBO "AGREEMENT"

37. Quixtar sells household products through extensive networks of "independent business owners" ("IBOs") who are the predominant consumers of Quixtar's products. These networks, also called "down-lines," are largely composed of friends, relatives, neighbors, and acquaintances of the sponsoring IBOs.

38. IBOS are independent businesses. Quixtar explicitly disclaims any employee or agency relationship with these IBOs and describes them as "self-employed independent contractor[s] authorized by [Quixtar] to sell its products and register others who do the same." Quixtar's Rules of Conduct, Exhibit 1, at D2.

39. In addition to recruiting and sponsoring down-line IBOs, upline IBOs are required to train them. Rule of Conduct ("ROC") 5.3.3 provides that IBOs "must be able to train and

motivate the IBOs whom they have registered with a minimum of assistance from their first upline Platinum or above” and “[i]f the IBO is a member of an established business-building system, he or she may make arrangements for his or her IBOs to be trained and motivated by the activities and [Business Support Materials] of that system ...”

40. To fulfill this obligation, at all times relevant to this Complaint, when IBOs sign up with Quixtar they are also encouraged to participate in a tools and training organization that produces motivational business building tools and training in the form of books, videos, regular meetings and functions, and other forms of hands-on mentoring activities. Frequently, an IBO will sign up as a member of a tools and training organization when the IBO signs up with Quixtar.

41. In order to become an IBO, potential distributors must sign a registration form (“IBO Registration Form”) which contains, in the finer print, a purported agreement to abide by Quixtar’s ROC. The ROC is a compendium of rules in excess of fifty pages that is typically not available to the IBO at the time of signing.

42. Quixtar reserves to itself the sole right to adopt, amend, modify, supplement, or rescind any or all of these ROC. (*Id.* at D11, D42-43).

43. Quixtar’s unilateral right to amend the ROC and contract documents is repeated in the IBO Registration Form, which although modified from time to time, essentially states as follows:

You agree to comply with the Independent Business Ownership Plan, the IBO Rules of Conduct, including the Arbitration Agreement, and all regulations and procedures outlined in the QUIXTAR Business Reference Guide, which are specifically incorporated herein by reference. *The same may be amended from time to time*, and notice of any amendments will be published in official QUIXTAR literature and/or on the QUIXTAR Web site at www.quixtar.com.

IBO Registration Form, Exhibit 2.

44. Since mid-1997, after many of the Plaintiffs and Class Members became IBOs, Quixtar has included on the IBO Registration Form and in the ROC an arbitration provision which ostensibly incorporates thirteen single-spaced, two-column pages of arbitration rules.

45. The dispute resolution procedure ostensibly includes informal conciliation and three “formal conciliation steps” whereby the “parties” may submit their dispute for internal resolution by various subcommittees of Quixtar and the Board of the IBOAI, a trade association comprised of, and purportedly representing the interests, of IBOs. ROC 11.3–11.5. Disputes which are unresolved after the formal conciliation steps proceed to arbitration. ROC 11.5.

46. In 2004, Quixtar unilaterally amended the ROC to impose exceedingly broad and legally unenforceable non-competition, non-solicitation, and trade secret obligations upon its IBOs. These provisions did not appear in the IBO Registration Form and newly signed IBOs were not alerted to their existence. Nor was the insertion of these provisions into the ROC well-known to existing IBOs.

47. Even if the existence of these rules had been recognized and objected to by newly signed or existing IBOs, the rules were non-negotiable. Quixtar would not negotiate any aspect of the ROC or IBO Registration Form with individual IBOs. To the contrary, the IBO Registration Form and ROC constitute a contract of adhesion which was unilaterally created by Amway and offered to newly-signed and annually-renewing IBOs on a take it or leave it basis.

48. By the time these rules were enacted, many IBOs, including Plaintiffs and Class Members, were locked into their Quixtar business and had invested too much to “leave it.” They had devoted many long years to the development of their Quixtar businesses, having left learned

professions and other careers to pursue the Quixtar-touted dream of owning their own businesses. Too much time and money had been invested in the dream – which had become the only source of family income – to let it die. And as the facts recited in this Complaint show, Quixtar was not about to let its IBOs “take” their businesses, or their dreams, elsewhere.

B. THE CREATION OF TEAM

49. TEAM founders Orrin and Laurie Woodward and Chris and Terri Brady became Amway IBOs in 1993 and 1994, respectively. Mr. Woodward and Mr. Brady were classmates at the General Motors Institute in Flint, Michigan and interned together at AC Spark Plug. Each graduated with a degree in engineering. Mrs. Brady was also an engineer. Mrs. Woodward was an accountant. The Woodwards sponsored the Bradys in Amway.

50. Through hard work and persistence, the Woodwards and Bradys achieved some success within the first couple of years of becoming IBOs. Thereafter, however, growth leveled off and by the end of the decade, they were ready to quit.

51. In 1999, Amway introduced Quixtar as its Internet-based MLM and offered Amway IBOs the option to join Quixtar. Encouraged by this new opportunity, Mr. Woodward and Mr. Brady decided to continue in business as Quixtar IBOs and created a new approach to recruitment and business development dubbed the “TEAM approach.”

52. The TEAM approach emphasized the vertical growth of downlines, which allowed new IBOs to benefit more immediately from the collective recruitment/sales efforts of IBOs on their team. The results were phenomenal, and the Woodwards and Bradys were asked to share their business-building techniques with other Quixtar IBOs. This eventually led to the creation of “Team of Destiny,” later called “TEAM,” which Quixtar blessed and edified as a

motivational tools and leadership training organization designed to mentor and motivate IBOs to develop their businesses.

53. The Woodwards, Bradys and TEAM fast became rising stars among Quixtar IBOs. In November 2003, Ken MacDonald, former Managing Director of Quixtar, wrote a letter to the Woodwards, praising them for their leadership, innovation and positive influence on others. Mr. McDonald continued:

You and many other IBOs in the Team of Destiny organization – leaders such as Chris and Terri Brady and Tim and Amy Marks – are to be saluted for your success and achievements in this business. Your leadership, innovative thinking, and positive impact can be clearly seen in the ever-growing number of Quixtar-powered Independent Business Owners supported by TOD.

See, November 2003 MacDonald letter, Exhibit 3.

54. Buoyed by their success, Mr. Woodward frequently spoke of making Quixtar the “Wal-Mart of the Internet” and rallied his down-lines toward the goal of building – to a million people – the TEAM-affiliated group of Quixtar IBOs.

C. THE PUSH FOR REASONABLY PRICED PRODUCTS

55. Over time, however, it became apparent that the Quixtar business model was becoming overly dependent upon self-consumption. Exorbitant pricing made it nearly impossible for IBOs to sell Quixtar products to non-IBOs. The attrition rate for new IBOs was overwhelming.

56. Mr. Woodward, Mr. Brady and other IBO leaders voiced their concerns and sought to convince Quixtar of the need to add 15 to 20 competitively priced products to its product line-up. In about January 2005, Mr. Woodward was invited by other IBO leaders to join the IBOAI Board to more effectively assist with efforts to convince Quixtar of the need to

change its unworkable business model. At that time, the IBOAI was a trade group ostensibly designed as an IBO sounding board to interact with Quixtar on behalf of IBOs. High-level Quixtar managers and executives attended IBOAI meetings and interacted with IBOAI Board Members on a regular basis.

57. Product pricing was a huge issue for the IBOs. In November 2005, Mr. Woodward wrote a letter to Doug DeVos, President of Alticor, emphasizing the need for competitively priced products to create a good business opportunity for “First Circle” IBOs:

My ability to influence culture and lead people to truth depends directly upon our ability to help the “First Circle” (newest IBO) work. The First Circle must be able to buy good quality products at below market price and then turnaround and retail these products to develop a profitable business. If the First Circle does not find a good value on the products then we should expect a high attrition rate, which reduces our ability to influence and change culture.

Woodward Letter, Exhibit 4.

58. In the letter, Mr. Woodward emphasized what he and other IBO leaders had been telling Quixtar all along: that a majority of IBOs generate no product volume at all, not even purchases from their own business, because “they cannot reconcile in their own mind the buying of overpriced products.” *Id.* Mr. Woodward explained:

Randy Bancino’s main point of his presentation was that most IBO’s [sic] (90%) are not making money, and that a better retail business would generate more profit for the First Circle. I agree wholeheartedly, but we need products that are reasonable value propositions at retail in order to sell them. 70% of business owners in other networks make money because they have products capable of retailing at retail price. Without a proper pricing strategy, we will constantly register people and cycle them through the business as they realize the poor value proposition.

59. Mr. Woodward identified as one cause of the problem the 17% operating margin on Quixtar products, compared to an industry benchmark (Wal-Mart) of 3%:

I can understand why we are not competitive at the retail price if we continue to expect margins of almost 6 times the world's benchmark company! I am all for the Alticor companies making a great return, as long as the value proposition to the First Circle is in line. If not, then this is morally wrong and must be fixed, or I am misrepresenting the truth when I show the plan.

60. Exemplifying the words of Amway founder Rich DeVos that “the man who becomes a great leader usually has a respect for his followers which is as deep and real as their respect for him,” Mr. Woodward expressed his willingness to work together to “move this business beyond the problems that we currently face,” and the moral imperative that required them both to do the right thing, Mr. Woodward wrote:

If you told me my bonuses will have to be reduced in order to meet target costs, then I am prepared to discuss this option. For me, this is beyond a business discussion and has become a moral discussion. This is because I have leveraged my relationships and credibility with those of my team in order to generate product volume. I have tens of thousands of people who are counting on me to do right, and I must maintain their trust and my personal integrity.

61. Begging for swift action, Mr. Woodward concluded:

I promise if you do your part to fix the product pricing and the opportunity for the ‘First Circle,’ then I will do my part and, God willing, will put over 1 million people into our community, proudly driving traffic to your websites for product purchases ... I want to forge ahead with you to a fantastic future.

62. Other long-time IBO leaders were making the same points with Quixtar. For example, Billy Florence was pressing Quixtar to develop at least 20-25 value products that IBOs had continually requested. Prices needed to be fixed and all long-time IBOs knew it.

63. Seeking to move the process along by finding alternative sources of competitively priced retail products for Quixtar, IBO leaders personally financed the retention of Steven Rubow, a renowned industry retailing expert who arranged to have Quixtar executives meet with Topco, Inc., a cooperative of independent grocery chains in the United States, to discuss products

that Quixtar could purchase and sell at competitive prices. Quixtar vice-president Rob Davidson, however, rejected the opportunity that Topco represented, explaining that it did not provide for the “J Factor”, a 3X markup from cost for the VanAndel and DeVos families, owners of Alticor Corp., the parent company of Quixtar.

64. Quixtar retained consultants to study its business model. Not enough IBOs were making money in the business, and while Quixtar had historically counted on recruitment to drive business growth, it was now time to re-establish a business model which encompassed both retailing and recruiting. Quixtar had turned itself into a self-consumption business with few products that could be sold to non-IBOs, and new IBOs could not make money.

65. Regrettably, all that Quixtar did in response to the concerns expressed by IBO leaders was to tell IBOs it would do what was necessary to fix the business. Not only did Quixtar not act swiftly to respond to the IBOs’ concerns, it did not act at all. By May of 2007, legal actions against Amway had been instituted in the United Kingdom and India, and Amway had been sued by a class of IBOs in California on illegal pyramid allegations. *See Pokorny v. Quixtar*, United States District Court, Case No. 07-00201 (N.D. Calif.). Despite Quixtar’s repeated public and private denials, IBOs became concerned that the tidal wave of pyramid allegations belied Quixtar’s denials.

66. During this general time frame, Quixtar announced that it was changing its name back to Amway. The IBOs opposed the change because of the almost universal negative connotation that attached to the Amway name.

67. In response to pyramid allegations in the United Kingdom, Amway significantly reduced product pricing there.

68. Quixtar promised IBO leaders that it would present a proposed lineup of competitively-priced products in early August of 2007. But once again, Quixtar disappointed. No new products were presented, and protests about the name change were disregarded. Mr. Woodward, Mr. Brady and other IBO leaders thereafter felt they could no longer support the Quixtar business opportunity and sought to negotiate an amicable separation.

69. Mr. Woodward had been forthright in communicating his concerns to Quixtar Vice-President Jim Payne and corporate counsel Mike Mohr, and the moral imperative which permeated those concerns. Mr. Woodward had been assured that Quixtar would work toward an amicable resolution if Mr. Woodward felt compelled to leave. That assurance accorded with Mr. Woodward's understanding of Quixtar's "free enterprise" mantra; Amway founder Jay VanAndel had himself acknowledged that "a person who is not free to pick his job or occupation or to go into business for himself is not free."

70. As it turned out, however, "free enterprise" was simply a witticism Quixtar used to lure leaders into believing that their businesses were their own. It has since done everything possible to destroy not only the businesses but also the lives and friendships of those who dared to leave.

D. TERMINATION AND ENSUING LITIGATION

71. On August 9, 2007, following an unsuccessful attempt to negotiate a departure, Quixtar terminated its IBO contracts with Orrin and Laurie Woodward and Chris and Terri Brady.

72. Thereafter, Mr. Woodward, Mr. Brady, certain IBO leaders, and others affiliated with TEAM – as representatives of a class of similarly situated IBOs – commenced an action

against Quixtar in the United States District Court for the Northern District of California. *See Woodward v. Quixtar*, Case No. CV 07-CV-05194 (C.D. Cal. 2007) (hereinafter the “California Action”). The Complaint alleged that Quixtar operates as an illegal pyramid, rendering its IBO contracts unenforceable, including non-competition, non-solicitation, trade secret and arbitration provisions. The complaint also asserted that Quixtar’s arbitration provisions were substantively and procedurally unconscionable, and should not be enforced.

73. The following day, Quixtar filed a demand for arbitration in JAMS against the Woodwards and Bradys, only, seeking injunctive relief and significant damages. Quixtar alleged violations of Quixtar’s non-compete, non-solicitation and trade secret rules and asserted claims for breach of contract, tortious interference with contract, tortious interference with advantageous business relationships and misappropriation of trade secrets. All of the claims relied upon alleged violations of Rules 4.14, 4.27, 6.5, 6.5.3, 6.5.4 and 6.5.5 of the ROC, rules which did not exist when the Woodwards and Bradys became Amway IBOs.

74. Quixtar also commenced an action against the Woodwards and Bradys in the Kent County Circuit Court, Michigan (“Kent County Action”) seeking a temporary restraining order in aid of arbitration. The arbitration demand was attached to the publicly-filed Kent County complaint.

75. Quixtar simultaneously terminated its IBO contracts with the California Plaintiffs and their wives, including: William Florence, Peggy Florence, Florence Family Enterprises, Inc., Donald Wilson, Nancy Wilson, WOW International, Inc., Timothy Marks, Amy Marks, Chuck Cullen, Nancy Cullen, Kirk Birtles, Cassandra Birtles, Randy Haugen, Valorie Haugen, Freedom Associates, Inc. I, Freedom Associates, Inc. II, Jim Martin, Dolores Martin, Aron

Radosa, Mary Radosa, Chuck Goetschel, David Brandy, Benjamin J. Dickie, Bruce Gilbank, Jessilyn Gilbank and Mike Martenson.

76. That same day, Quixtar derided the Woodwards, Bradys and other TEAM members on its Alticor Media Blog in an article introduced by a large, boldfaced title which admonished “**Just go, Team.**” Quixtar described TEAM as “a disgrace to every person who’s ever tried to build a Quixtar or Amway business the right way” and called Mr. Woodward “a poster child for a long list of bad business practices that our critics hate about our company.” See Alticor Media Blog dated August 10, 2007, at <http://media.alticorblogs.com>, Exhibit 5.

77. Quixtar continued to perpetuate falsehoods against the terminated TEAM leaders through a continuing series of e-mails disseminated to IBOs through Quixtar Business Communications and other Internet postings. See Quixtar Business Communications dated August 9, 10 and 11, 2007, attached as Exhibit 6. Quixtar alleged that the Woodwards and the Bradys had formed a new MLM to market competing products. Quixtar also sought to halt attendance at TEAM meetings and to squelch the use of TEAM business support materials.

78. On August 16-17, 2007, Quixtar launched an onslaught of mass e-mails *threatening to terminate any IBO* that did not refrain from further involvement in TEAM. See Quixtar Business Communications dated August 16-17, 2007, Exhibit 7. Quixtar demanded that certain IBO leaders (and others) execute and affirm their allegiance to Quixtar and their rejection of TEAM. Quixtar Business Communication dated August 17, 2007, Exhibit 7. Quixtar’s obvious motive was to cut off revenue (and any source of defense costs) to TEAM and TEAM leaders.

79. Meanwhile, the plaintiffs in the California Action (hereinafter “California Plaintiffs”) filed a motion for provisional class certification and to enjoin the enforcement of the challenged contract provisions, including arbitration. Thereafter, on August 17, 2007, Quixtar amended its JAMS arbitration demand to name as additional respondents each of the terminated California Plaintiffs, their wives, and their business organizations, and filed a petition in the California Action to compel arbitration based upon the amended demand. In addition to the Woodwards and Bradys, the amended arbitration demand named as respondents: William Florence, Peggy Florence, Florence Family Enterprises, Inc., Donald Wilson, Nancy Wilson, WOW International, Inc., Timothy Marks, Amy Marks, Chuck Cullen, Nancy Cullen, Kirk Birtles, Cassandra Birtles, Randy Haugen, Valorie Haugen, Freedom Associates, Inc. I, Freedom Associates, Inc. II, Jim Martin, Dolores Martin, Aron Radosa, Mary Radosa, Chuck Goetschel, David Brandy, Benjamin J. Dickie, Bruce Gilbank, Jessilyn Gilbank and Mike Martenson. This arbitration is sometimes hereinafter referred to as the “Woodward Arbitration.”

80. Quixtar never attempted to add all of the California Plaintiffs to the Kent County Action, but told the California Court it was a parallel proceeding and moved to dismiss or stay the California Action on abstention grounds.

81. In addition to their motion to enjoin enforcement of the contract, including arbitration, the California Plaintiffs moved to stay the selection of an arbitrator until the propriety of arbitration had been decided and sent correspondence to JAMS objecting to the arbitration proceedings on various grounds, among them: that JAMS was operating in excess of its jurisdiction, that issues of arbitrability were poised for decision in the California proceeding, that JAMS should recuse itself as arbitration administrator, and that arbitrator selection should be

delayed until the propriety of arbitration had been determined. JAMS denied all requests and the arbitration respondents were forced to participate in arbitration, under protest, to avoid a default.

82. While the motions were pending in the California Action, Kent County Circuit Court Judge Paul Sullivan granted Quixtar's request for a preliminary injunction against the Woodwards and Bradys *without holding an evidentiary hearing*. The injunction prohibited the Woodwards and Bradys from using "*their* Line of Sponsorship to sell, distribute, promote competing products, services, or other ventures, or otherwise interfere with the business of Quixtar or its IBOs"; "soliciting, recruiting, or attempting to recruit other IBOs to Compete with Quixtar's business or take actions not in conformity with its Rules of Conduct"; and "disparaging or intentionally diminishing the reputation of Quixtar" ("Injunction").

83. In granting Quixtar's request for an injunction, Judge Sullivan expressed his belief that the parties' relationship was facially governed by a written contract defining the rights and responsibilities of each party "and the methods by which disputes" were to be resolved. Judge Sullivan *did not* decide whether the contract, or the arbitration provisions, were enforceable.

84. The Injunction did not expressly address TEAM or TEAM meetings. Nonetheless, in the ensuing days, Quixtar took the position that TEAM meetings were enjoined. Quixtar's obvious motive was to prohibit the Woodwards and Bradys from earning funds that were needed to defend themselves against Quixtar's allegations. The Woodwards and Bradys filed an Emergency Motion for Clarification and/or Rehearing, which prompted Judge Sullivan to amend the Injunction to expressly state that the preliminary injunction *did not preclude the holding of any TEAM leadership, educational and motivational meetings*. The propriety of the

Injunction, which caused significant harm to the Woodwards and Bradys, remains the subject of a pending appeal in the Michigan Court of Appeals.

85. Less than a month after the Injunction was entered, Quixtar again attempted to cut off the Woodwards and Bradys' ability to earn a livelihood. It moved to hold the Woodwards, Bradys and TEAM in contempt of the Injunction. The motion was timed to interfere with an October 19, 2007 national TEAM meeting in Louisville, Kentucky which over 20,000 people were expected to attend. To that end, Quixtar urged the Court to immediately find contempt based upon affidavits Quixtar submitted with its motion, and to deny the Woodwards' and Bradys' request for an evidentiary hearing. The Kent County Court rejected Quixtar's approach as a violation of due process and scheduled an evidentiary hearing.

86. By the time of the hearing, it became quite apparent that Quixtar's theories about TEAM had changed. Rather than assert that Mr. Woodward and Mr. Brady had created a new MLM, Quixtar now attempted to argue that TEAM was itself an MLM or a seller of competing products, and that the Woodwards' and Bradys' affiliation with TEAM violated the Injunction. TEAM was likewise alleged to have violated the Injunction.

87. After receiving testimony and examining all of the evidence and legal arguments, the Court concluded that a violation of the Injunction had not been established and that there was no basis for canceling TEAM's Louisville meeting. From the bench, the Court stated that it had not "heard anything in the course of this hearing that suggests to me that defendants or TEAM are doing anything necessarily improper." *See* Exhibit 8, Excerpt of October 17, 2007 Hearing Transcript at 232. The Court further opined that the fact that current or former Quixtar IBOs

would be attending the Louisville meeting did not mean the Injunction would be violated. *Id.* at 234.

88. The Court's written opinion was issued on November 8, 2007 and stated in part: "[A]fter considering the evidence and arguments presented by both sides, the Court finds that plaintiff has failed to establish by clear and unequivocal evidence that defendants, or those acting in concert with them, violated the preliminary injunction." *See* Exhibit 9, Nov. 8 Opinion at 10.

89. Underlying this ruling were four critical findings of fact by the Court. *First*, Quixtar attempted to prove that "TEAM had transformed itself into an entity which competes with Quixtar." *Id.* at 7. But the Court rejected that assertion, finding that **"there is no basis to conclude that TEAM has transformed itself into an enterprise which is in competition with [Quixtar]. The majority of the evidence on this issue, which [Quixtar] has been unable to refute, is that TEAM is running in basically the same fashion as it did before the parting of the ways between the named defendants and [Quixtar]."** *Id.* (emphasis added).

90. *Second*, Quixtar attempted to prove that "defendants and TEAM have directly violated the injunction by encouraging Quixtar IBOs to disregard the order and the Quixtar Rules of Conduct ["ROC"] and join a competing enterprise." *Id.* at 4. **But the Court held that there was no evidence of concerted action by the defendants and TEAM to solicit Quixtar IBOs.** *Id.*

91. *Third*, Quixtar attempted to prove that "defendants have utilized the Quixtar Line of Sponsorship ["LOS"] . . . to promote TEAM functions and compete with" Quixtar. *Id.* at 6. The Court rejected this claim: **"From the evidence presented at the hearing, the Court cannot conclude that defendants, or others acting in concert with them, inappropriately**

used the Quixtar LOS". *Id.* (emphasis added). Further, the Court concluded: "The evidence presented was that TEAM was built on meetings and recruitment, not by the use of [Quixtar's] LOS." *Id.*

92. *Finally*, Quixtar attempted to prove that the Woodwards, the Bradys and TEAM had encouraged Quixtar IBOs to join a competing enterprise by submitting evidence on the number of IBO resignations that Quixtar received in August and October 2007. *See* Exhibit 8, October 15 Transcript at 68-70. The Court rejected this assertion, concluding that the resignations were prompted by Quixtar's threats and acts of intimidation, the IBOs' loyalty to TEAM leaders, family relationships and friendships, and the IBOs' dissatisfaction with product pricing and the impending name change. The Court explained:

The fact of the matter is that evidence was presented showing that *there were many reasons* that significant numbers of TEAM members may have chosen to resign from Quixtar between the months of August and October. In August 2007, 15 to 16 top TEAM members were terminated by [Quixtar]. The testimony established that there is *strong loyalty* among the legs of the TEAM leaders. This rings especially true considering the *downlines often or typically consist of family and close friends*. *It is highly conceivable that this loyalty caused a domino effect of resignations once the leaders were terminated*. There was also testimony, which was confirmed by Mr. VanderVen, that there were IBOs who were *dissatisfied with the pricing of [Quixtar's] products*, as well as the recent decision to *reincorporate the Amway name into [Quixtar's] business*. *Finally*, and importantly, *[Quixtar] took some direct actions against TEAM and its IBOs which resulted in a feeling of intimidation*. *Following the termination of Mr. Woodward and Mr. Brady, [Quixtar] released a statement titled, "Just Go Team."* Unfortunately for [Quixtar], many IBOs who were associated with TEAM apparently took the hint and did just that. [Quixtar] also sent an email to its IBOs after the break-up between plaintiff and Mr. Woodward and Mr. Brady, placing them on notice that the "sale, distribution, and/or promotion of any Team-related business support materials" would violate the ROC. This correspondence also required that the IBOs sign and return a statement that they would comply with the Rules of Conduct and no longer promote the use of TEAM BSM; the failure to do so would result in suspension of the IBO. *As many IBOs also had a loyalty to TEAM members, they felt that they were being threatened by Quixtar and therefore chose to associate solely with TEAM.*

Exhibit 9, Nov. 8 Opinion at 5 (emphasis added).

93. Although the contempt hearing fully exposed the fallacy of Quixtar's claims against the Woodwards, Bradys and TEAM, it did not deter Quixtar from continuing to assert in the ensuing months the very same claims in multiple pending arbitrations and other litigation forums.

**E. CONTINUING LITIGATION IN KENT COUNTY,
NEVADA, UTAH AND CALIFORNIA.**

94. While the contempt proceedings were concluding in Kent County, at Quixtar's urging and despite recognizing the inconsistent positions Quixtar had taken with respect to the identity of issues in the California and Kent County actions, the California Court dismissed the California Action on *abstention* grounds. The Court observed that Quixtar had persuaded the Michigan court *not to stay* the Michigan action by alleging differences in the issues presented in that case, but argued that the California Court should dismiss or stay the case because it is was "nearly identical to the Michigan action." Nonetheless, the Court granted the abstention motion.

95. Because of the abstention ruling, the California Court denied as moot Quixtar's motion to compel arbitration and the California Plaintiffs' motion to enjoin arbitration. Thus, the Court did not reach the arguments raised by the California Plaintiffs regarding the unconscionability and invalidity of the arbitration provisions.

96. Desiring to multiply its assault, on October 23, 2007, Quixtar filed a Complaint against Signature Management Team, LLC, d/b/a TEAM in the United States District Court for the District of Nevada (Case No. 3:07-cv-00505) ("Nevada Complaint"), which was later amended to include additional parties. The Nevada Complaint asserts violation of the Lanham Act, trade secret misappropriation, tortious interference with existing contracts, tortious

interference with advantageous business relations, and seeks a declaratory judgment regarding TEAM's claims in a Complaint TEAM had previously filed in Collins County, Texas. Quixtar seeks damages and injunctive relief, relies upon the same theories that were rejected at the contempt hearing, and duplicates the claims asserted in the Woodward Arbitration.

97. On January 25, 2008, just three weeks after arguing in an appellate brief filed with the Michigan Court of Appeals that the Injunction was "moot" because it would "expire by its express terms on February 9, 2008 ...," Quixtar filed a motion in the Kent County Action to extend the extant Injunction. Over the vehement opposition of the Woodwards and the Bradys, and *without an evidentiary hearing or a bond*, the Court entered an Order extending the Injunction until March 25, 2008 so Quixtar could make its request to extend the injunction to the Arbitrator. A challenge to the order extending the Injunction, which has caused significant damage to the Woodwards and Bradys, is pending in the Michigan Court of Appeals.

98. Following completion of the evidentiary hearing and receipt of the arbitrator's ruling, the Woodwards and the Bradys registered to become MonaVie distributors.

99. In the meantime, Quixtar had learned that many of the TEAM-affiliated former IBOs had joined MonaVie through New Horizons, LLC, a Georgia company, and that the Woodwards and Bradys had stated their intent to join MonaVie in the future.

100. Quixtar could not let all of these people exercise their right to earn a living. After all, they may earn money to use to defend themselves against Quixtar's never-ending attack. Consequently, on March 4, 2008 and March 5, 2008, Quixtar's counsel Tim Delaney e-mailed to MonaVie's counsel, Graden Jackson, a list of approximately 31,000 individuals whom Quixtar asserted to be former IBOs affiliated with TEAM. *See, e.g.,* Complaint at ¶21, *Mona Vie, LLC v.*

Quixtar Inc. (“MonaVie Complaint”), Case No. 2:08-cv-00204, U.S. District Court for the District of Utah, Central Division, attached as Exhibit 10.

101. The list included a “Tolled” designation adjacent to certain names, which was intended to signify that the former IBOs’ six-month non-compete agreement with Quixtar had been “tolled” and remained in force (the reasons were not specified). Delaney threatened that the TEAM-affiliated former IBOs were prohibited by non-compete agreements from signing up as MonaVie distributors.

102. In response, and as recited by MonaVie, MonaVie questioned both the existence and enforceability of the non-competition and non-solicitation covenants and recited that each TEAM-affiliated distributor had expressly certified that he or she did not enroll with MonaVie in violation of ‘any non-competition, non-solicitation, or confidentiality agreement entered into with Amway or any other organization or entity.’” MonaVie Complaint at ¶25.

103. On March 14, 2008, Tim Delaney and Michael Mohr, Quixtar’s General Counsel, made another call to Mr. Jackson, threatening to sue unless MonaVie terminated the TEAM-associated distributors. Continuing Quixtar’s pattern of threats and intimidation, Mr. Mohr scurrilously attacked some of the Plaintiffs and Class Members, and accused MonaVie of “feeding the beast,” i.e., enabling the TEAM-affiliated distributors to derive a source of income with which to defend themselves, and Mohr could not allow that. *Id.* at ¶26. Mohr threatened “that [Quixtar] intended to immediately file suit against MonaVie for tortious interference with contractual relations unless MonaVie terminated each of the distributorships” of its TEAM-related distributors. *Id.* at ¶26.

104. As explained above, MonaVie thereafter filed a declaratory judgment action in this Court seeking a declaration that the non-compete, non-solicitation and arbitration provisions of the IBO agreement were invalid.

105. The following day, Quixtar filed an action in this Court against MonaVie and certain of its distributors, asserting tortious interference against MonaVie, and false advertising claims against MonaVie and the distributor-defendants. *See* Complaint, *Quixtar v. MonaVie*, Case No.2:08-cv-00209. The two cases, which remain pending, have since been consolidated.

106. In a First Amended Complaint, Quixtar attached two lists of over 40,000 IBOs as to whose contracts MonaVie allegedly interfered. One list included over 32,000 names of TEAM-affiliated former Quixtar IBOs. The other list identified over 12,000 individuals who were affiliated with one of the named defendants, Brig Hart. The First Amended Complaint also specifically identified over 200 contracts.

107. More recently, Quixtar filed a Second Amended Complaint identifying 20 IBO contracts MonaVie is alleged to have interfered with, including the “contracts” of the following Plaintiffs and Class Members: Orrin and Laurie Woodward, Christopher and Terri Brady, Timothy and Amy Marks, Gregory Johnson, Dennis Smith, Gerald and Polly Harteis, Curtis and Deborah Spolar, Dean and Teresa Frey, George and Jill Guzzardo, William and Jacqueline Lewis, and Douglas and Sheryl Stroh.

108. The Second Amended Complaint alleges that MonaVie’s interference caused the 20 IBOs to breach the non-compete, non-solicitation, and trade secret provisions of the Quixtar contract and seeks the same recovery Quixtar is seeking against Plaintiffs, Class Members, and TEAM in secret arbitrations and court cases throughout the country. *See Amway v. MonaVie*,

LLC, Case No. 08-cv-00204, Second Supplemental and Amended Complaint at 93, 96-102. Exhibit 11.

109. The issues raised by Quixtar's tortious interference claim are the same issues that exist in the Woodward Arbitration, and upon information and belief, in an arbitration Quixtar commenced against Brig Hart, another former Quixtar IBO, not affiliated with TEAM, that is now a MonaVie distributor. Yet, Quixtar refuses to disclose – and has moved to quash subpoenas demanding – pleadings, rulings and discovery generated in the Woodward Arbitration and the Brig Hart arbitration, all of which would be relevant to the overlapping claims Quixtar asserts against MonaVie in the Utah Action.

110. Quixtar has also refused to disclose the arbitrator's rulings in the arbitration against Brig Hart, in which, upon information and belief, Quixtar asserted the same violations of the very same non-compete, non-solicitation, and trade secret provisions that comprise the basis for Quixtar's tortious interference claim against MonaVie. Brig Hart moved to confirm the arbitration award in federal court, indicating a likelihood that Quixtar's rules were held unenforceable in that proceeding. That ruling was requested by the parties in the Woodward Arbitration and by Judge Jenkins in the Utah Action, as well as the parties in the Utah Action, who served discovery requests on Quixtar and subpoenas on attorneys for the arbitration respondents. Quixtar refused to produce the materials and moved to quash the subpoenas.

111. Former Quixtar IBOs who have become TEAM-affiliated MonaVie distributors have been told that they will be sued if they remain with TEAM.

F. NEW ARBITRATIONS

112. As part of its litigation strategy, Quixtar began to subpoena in the Nevada Action, TEAM-affiliated IBOs (who were not parties to the Nevada Action) to produce documents and give deposition testimony. Over 45 subpoenas were issued on a single day.

113. Just a few months later, Quixtar subpoenaed many of the very same TEAM-affiliated non-parties to again produce documents and give testimony, this time in the Utah Action.

114. Subsequently, Quixtar served many of the subpoenaed parties with JAMS arbitration demands accompanied, in some instances, by the filing of complaints in court. These actions are strategically calculated by Quixtar to create hysteria among Class Members and to cause them to terminate their affiliation with TEAM and MonaVie, so as not to be the next victim of Quixtar's abusive litigation tactics.

115. On March 6, 2009, Quixtar filed in Kent County Circuit Court a complaint for declaratory relief and to compel arbitration against Plaintiffs George and Jill Guzzardo, Mark and Rita Haas, Mark and Anna Huber, William and Jacqueline Lewis, Mark and Jennifer Paul, Curtis and Deborah Spolar, Douglas and Sheryl Stroh, Larry and Martha VanBuskirk, Matthew and Cheryl Abraham, Manase and Lisa Fotu, Terry and Marjorie Franks, Dean and Teresa Frey, Michael and Viola Gowen, and Gerald and Paulette Harteis.

116. Quixtar simultaneously filed a demand for arbitration against these Plaintiffs (hereinafter "Guzzardo Arbitration") seeking injunctive relief and significant damages. The claims asserted in the Guzzardo Arbitration are nearly identical in substance to the claims asserted in the Woodward Arbitration, the Nevada Action, and the Utah Action, and rely upon

the same or similar factual allegations. Quixtar alleges the very same violations of Quixtar's non-compete, non-solicitation and trade secret rules for the benefit of TEAM and MonaVie, Rules 4.14, 4.27, 6.5, 6.5.3, 6.5.4 and 6.5.5 of the ROC. Quixtar also asserts additional claims.

117. All of the arbitrations and court cases Quixtar has commenced against TEAM, TEAM-affiliated IBOs, and MonaVie allege the very same violations of the non-competition, non-solicitation and trade secret provisions of the ROC, arise out of the same set of alleged facts and circumstances, assert the same or similar claims, predicate liability on the same alleged acts of the same group of TEAM-affiliated Class Members, and seek the same duplicative onerous forms of relief and significant damage awards designed to put Plaintiffs and Class Members out of business.

118. Upon information and belief, Quixtar has commenced numerous arbitrations against other former IBOs as well which rely upon the very same non-competition, non-solicitation, trade secret and arbitration provisions that are challenged here. Additionally, Quixtar has sought orders staying or dismissing litigation and compelling arbitration in actions former IBOs have commenced against Quixtar to enjoin enforcement of the non-competition, non-solicitation, trade secret and arbitration provisions of the ROC, among other claims.

119. Upon information and belief, putative Class Members have been told that they will also be sued if they do not terminate their relationships with TEAM and MonaVie.

COUNT I

DECLARATORY JUDGMENT THAT THE ARBITRATION AGREEMENT DOES NOT APPLY TO FORMER IBOs

120. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-119 above as though fully set forth herein.

121. The Quixtar arbitration rules do not authorize arbitration claims against former IBOs.

122. The arbitration rules only refer to “IBOs.” An arbitration cannot proceed against someone who is not an “IBO” as defined by the ROC.

123. Rule 2.3 defines “IBO” as “individual(s) operating an IB pursuant to a contractual relationship with Quixtar, Inc., unless otherwise specified.”

124. Quixtar clearly knew how to draft language expressly making a particular rule applicable to former IBOs. For example, Rule 6.5 says “current and former IBOs must not use the Line of Sponsorship...”

125. Also, Rule 6.5.2 says: “For purposes of this Rule 6.5, “IBO” means an IBO who is either currently registered or has been registered at any time within the past two calendar years.”

126. By explicitly referring to former IBOs when it wanted to expand a rule to cover former IBOs, Quixtar recognized that just referring to “IBOs” did **not** encompass former IBOs.

127. That former IBOs are not encompassed in the ADR and arbitration rules is further illustrated by Quixtar’s subsequent amendment to the arbitration rules to add that they apply to former IBOs as well as IBOs. The new Amway Global Rules state: “This Rule 11 applies, without limitation, to any claim or dispute against an IBO, former IBO or any such IBO’s officers, directors, agents, or employees....”

128. The new Amway Global Rules do not apply to Plaintiffs and Class Members, and language similar to that in the new Amway Global Rules does not appear in the rules that apply to Plaintiffs and Class Members.

129. As former IBOs, Plaintiffs and Class Members are not subject to Quixtar's arbitration agreement and cannot be compelled to arbitrate.

COUNT II

DECLARATORY JUDGMENT THAT QUIXTAR IS COLLATERALLY ESTOPPED FROM ENFORCING ITS ARBITRATION AGREEMENT AGAINST PLAINTIFFS AND MEMBERS OF THE CLASS

130. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-129 above as though fully set forth herein.

131. In *Morrison v. Amway*, the Fifth Circuit Court of Appeals held that Amway's arbitration provision is illusory and unenforceable because Amway maintains a unilateral right to amend it.

132. *Morrison v. Amway Corp.* collaterally estops Quixtar from enforcing its arbitration agreement against Plaintiffs and Class Members.

133. Quixtar is the successor-in-interest to Amway, a defendant in *Morrison*.

134. The enforceability of Amway's arbitration program was litigated to a final judgment in *Morrison*.

135. Amway's motions for rehearing and rehearing *en banc* were denied in *Morrison*, and Amway did not seek certiorari to the United States Supreme Court.

136. Amway's right to unilaterally amend the arbitration agreement was the factual basis for the decision in *Morrison*.

137. Quixtar, through Amway, has admitted that the unilateral right to amend the arbitration agreement was the factual basis for the decision in *Morrison*.

138. In Amway's rehearing petition in *Morrison*, Amway repeatedly emphasized that the holding in *Morrison* was based on Quixtar's unilateral right to amend:

The opinion addressed only the enforceability of the arbitration agreements and held that they were illusory under Texas law *because there was supposedly no express exemption in the arbitration provision prohibiting Amway from unilaterally modifying the arbitration program.* (Op.20n.12)

Brief for Panel Rehearing by Appellee Amway Corp. at 6, *Morrison v. Amway Corp.*, No. 06-20138 (5th Cir. Feb. 20, 2008) (emphasis added), attached as Exhibit 12

According to the Panel, "nothing in any of the relevant documents *precludes amendment to the arbitration program*" *unilaterally by Amway, which the Panel held makes the arbitration program "illusory and unenforceable."* (Op.19,20)

Id. (emphasis added).

The Panel unquestionably based its holding on Amway's perceived ability to unilaterally modify, amend, or even rescind the arbitration program. Indeed, the Panel emphasized its belief that Amway had such powers on three additional occasions:

"[A]mway's] right of unilateral amendment [to the arbitration program] extends to providing for (and, by necessary implication, to modifying or repealing) arbitration." (Op.18)

"Here . . . there *is* an express reservation by Amway of the right to change the [arbitration] rules . . ." (Op.17n.10(emphasis in original).

"There is no express exemption of the arbitration provisions from Amway's ability to unilaterally modify all rules, and the only express limitation on that unilateral right is published notice." (Op.12)

Id. at 6-7, n.6 (emphasis added).

139. The same arbitration agreement that was held unenforceable in *Morrison* is the subject of the present complaint.

140. At a hearing in *Simmons v. Quixtar*, 2008 U.S. Dist. LEXIS 52535 (E.D. Texas July 9, 2008), Quixtar's attorney *admitted* that the rule which recited Amway's unilateral right to amend had not changed from the rule considered in *Morrison*. See, Tr. at 27-29, Exhibit 13.

141. Quixtar maintains the unilateral right to amend the arbitration agreement which is the subject of this action, as recited above.

142. The legal standards which governed the decision in *Morrison* are the same here.

143. Quixtar has repeatedly argued that Michigan law governs the enforceability of its arbitration agreement.

144. Amway argued that Michigan law governed the issues in *Morrison*.

145. Even though Plaintiffs reserve their individual rights to argue that the law of their home states apply in individual actions, to the extent Michigan law governs here, the Fifth Circuit concluded in *Morrison* that the applicable legal standards were the same in Texas and Michigan.

146. In *Morrison*, the Fifth Circuit stated that it was deciding the validity of the arbitration agreement under Texas law, which was the law of the forum, "there having been no showing that the law of any other arguably more appropriate state materially differs in respect to the present issue." 517 F.3d at 254.

147. In another forum, Quixtar has admitted that Michigan law is the same as Texas law on the issue of illusory contracts.

148. The *Morrison* decision was held to be dispositive of the enforceability of Quixtar's arbitration agreement in *Simmons v. Quixtar*, 2008 U.S. Dist. LEXIS 52535 (adopting the Magistrate Judge's R&R).

149. In an appeal brief in *Simmons*, Quixtar stated that “there is no conflict” between Michigan and Texas law on this issue. See Quixtar’s Appeal Brief in *Simmons*, at 15, n.2, excerpts attached as Exhibit 14.

150. Further, during the hearing on Quixtar’s motion for reconsideration in *Simmons*, Quixtar’s counsel admitted that “the Fifth Circuit accurately states the law of illusory contracts.” See *Simmons* Tr. at 23. Exhibit 13.

151. Quixtar is therefore collaterally estopped from asserting the enforceability of its arbitration agreement.

COUNT III

DECLARATORY JUDGMENT THAT QUIXTAR’S ARBITRATION AGREEMENT IS UNENFORCEABLE AND UNCONSCIONABLE

152. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-151 above as though fully set forth herein.

153. Numerous courts across the country, in addition to *Morrison*, have held that Quixtar’s arbitration agreement is unenforceable and/or unconscionable. They include the following:

(a) *Pokorny v. Quixtar*, a case between various IBOs and Quixtar, in which the United States District Court for the Northern District of California held that Quixtar’s arbitration rules rendered the arbitration agreement procedurally and substantively unconscionable. See, *Pokorny v. Quixtar*, 2008 U.S. Dist. LEXIS 28439 (N.D. Cal. Mar. 31, 2008).

(b) *Simmons v. Quixtar*, No. 4:07cv389 (E.D. Texas May 23, 2008)(Bush, J.), a case in which several IBOs involved in an arbitration with Quixtar moved to dismiss the arbitration based on *Morrison*. Finding *Morrison* controlling, the Magistrate Judge issued a recommendation that the arbitration agreement be deemed unenforceable. That recommendation was adopted by United States District Court Judge Michael Schneider on July 8, 2008.

(c) *Nitro Distributing, Inc v. Alticor*, No. 03-3290-CV-W (W.D. Mo Sept. 16, 2005) (Dorr, J.), finding Quixtar’s arbitration agreement procedurally and substantively unconscionable.

(d) *Stewart & Associates v. Quixtar*, No. 05-3440-CV-S (W.D Mo Nov. 20, 2006) (Dorr, J.), reaffirming that the “take or leave it” nature of the arbitration agreement rendered it procedurally unconscionable and finding that the arbitrator selection process and the use of JAMS as the administrator and the neutral was substantively unconscionable (and would be severed).

(e) *McCrone v. Quixtar*, No. 1:07CV2737 (N.D. Ohio Feb 21, 2008)(Lioi, J.), following *Stewart*.

154. The basis for the decisions in *Morrison* and *Simmons* – Quixtar’s unilateral right to amend – is equally applicable here. Quixtar maintains a unilateral right to amend the arbitration agreement, rendering the “contract” illusory for lack of mutuality of obligation, unconscionable, and unenforceable as a matter of law.

155. Quixtar’s arbitration agreement is also unconscionable for the reasons set forth in *Pokorny*, *Nitro*, and *Stewart*.

156. Procedural unconscionability exists because Plaintiffs and Class Members had no ability to negotiate the terms of their IBO contracts and were faced with a take it or leave it proposition.

157. Quixtar’s unequal bargaining power made it impossible for Plaintiffs and Class Members to reject the contract terms.

158. The arbitration agreement is a contract of adhesion.

159. Quixtar’s arbitration rules are substantively unconscionable and do not provide a fair forum within which to litigate a dispute with Quixtar.

160. Quixtar’s “star chamber” arbitration rules do not provide the speedy, efficient, less expensive alternative to litigation that arbitration is intended to achieve.

161. To the contrary, Quixtar-style arbitration eliminates all of the safeguards of litigation – open forum, jury of peers, rule of law, evidentiary reliability, reasonable limits on discovery – but fails to provide any of the anticipated benefits.

162. Quixtar’s unilaterally-imposed rules allow Quixtar to abuse the arbitration process and to bankrupt its opponents in proceedings that dwarf litigation. The absence of administrative restraint on the conduct of arbitration has permitted Quixtar to entangle its opponents in costly and excessive discovery designed to unleash a war of attrition.

163. The substantive unconscionability of Quixtar’s arbitration program is exemplified in the following ways.

**Quixtar’s Unilateral Right to Amend the Rules and
Its Close Relationship With JAMS**

164. The ROC do not provide for an impartial arbitration forum. To the contrary, arbitration is to be conducted according to rules *prescribed by* Quixtar, ROCs 11.5.1 and 11.5.2, which can be changed at any time.

165. Under the ROC, arbitration is to be administered by Quixtar’s designee, JAMS. ROC 11.5.5.

166. Quixtar has a close and long-standing relationship with JAMS, and arbitrators are admonished that “nothing in [the] Rules shall be construed in any way that limits [Quixtar’s] pre-existing rights to administer, modify, or enforce the IBO Plan, the Rules of Conduct, or any other Rule or contract relating to an IB.” ROC 11.5.1.

167. ROC 11.5.1 favors Quixtar, and might be viewed as requiring an arbitrator to adopt Quixtar’s interpretation of the ROC although, as the drafter of the ROC, the law requires that the ROC be construed against Quixtar.

168. The arbitrator selection process is equally unfair. ROC 11.5.14 provides for JAMS' neutral arbitrators to attend an "orientation" presented by Quixtar and the IBOAI, and ROC 11.5.17 requires JAMS to explain to the parties Quixtar's and the IBOAI's reasons for encouraging the use of arbitrators who have attended the orientation. The disadvantages of selecting a trained neutral is not explained and only upon objection does a party receive an alternative list of untrained neutrals.

169. In *Nitro, supra*, the Court described the orientation as including information about Amway's founders, Amway's corporate culture, and probable topics of disputes, as well as assurances that Amway is not a "pyramid scheme" and that the business is legitimate. It was clear to the *Nitro* court that the training "was designed to produce a very favorable view of Defendants." *Nitro*, 2005 U.S. Dist. LEXIS 46777 at *38-39.

170. A party to a dispute may, upon proper notice, request that an arbitrator be selected from a slate of JAMS neutrals who have not attended the Quixtar orientation. ROC 11.5.14, 11.5.17.B. However, this latter slate is not drawn from the pool of JAMS arbitrators in general, but rather from an appointed group of JAMS arbitrators. *See* ROC 11.5.14. Further, higher fees are imposed if non-oriented neutrals are appointed.

Quixtar's Abusive Confidentiality Tactics

171. Despite the duplicative and overlapping nature of the arbitrations and court proceedings Quixtar has initiated over the past 18 months, Quixtar has relied upon its unilaterally-enacted confidentiality rules to shroud each proceeding under a cloak of secrecy so litigants in one forum are prohibited from learning of the evidence, rulings, and results of the others. *See* ROC 11., 11.5 and 11.5.31.

172. Quixtar has extended this cloak of secrecy to federal and state court litigation, obtaining in some cases protective orders which have sealed the entire docket from public view. Such orders have been entered over the strenuous objection of Quixtar's opponents.

173. Quixtar has used such orders to block the flow of information, particularly adverse documents, testimony and rulings, from its opponents in parallel litigation. Such tactics have enabled Quixtar to maintain the strategic advantage of having access to discovery and evidence that its opponents do not have. Quixtar has repeatedly used documents to depose a witness in one proceeding that – unbeknownst to the witness or his lawyer – were produced in another.

174. Quixtar has also served discovery demands in one proceeding to obtain discovery for use in another proceeding after the discovery deadline in the later proceeding has passed.

175. Controlling the flow of information also allows Quixtar to continue to advance in one proceeding a claim or legal position that has been rejected in another proceeding, leading to unnecessary and costly re-litigation of issues and disparate, inconsistent and inequitable results. Arbitration confidentiality restrictions currently prohibit Plaintiffs and Class Members from learning the details regarding these inconsistencies.

176. Similarly, although the tortious interference claim Quixtar asserts against MonaVie in the Utah Action raises issues that are identical to the issues in the Woodward Arbitration and, upon information and belief, in an arbitration Quixtar commenced against Brig Hart, Quixtar has refused to disclose to the Defendants in the Utah Action or to the Court any rulings the arbitrators may have rendered in those proceedings. Quixtar has raised its confidentiality rule as the basis for its adamant refusal to produce any arbitration pleadings,

rulings or discovery, despite the willingness of Quixtar's opponents to waive confidentiality restrictions. Further, Quixtar moved to quash subpoenas issued in the Utah Action to obtain these materials. Quixtar refused a specific request from Judge Jenkins for the Brig Hart ruling. Upon information and belief, Quixtar has also denied requests made in other proceedings for rulings in arbitration.

177. The secrecy rules hinder Class Members' ability to elicit witnesses on their behalf and precludes class actions.

178. Further, secrecy gives Quixtar an unfair advantage in selecting arbitrators. When IBOs are selecting from the JAMS-provided list of potential arbitrators, ROC 11.5.17 prohibits JAMS from disclosing the disposition of any Quixtar matter handled by the proposed arbitrators. This gives Quixtar the unfair advantage of knowing how proposed arbitrators have ruled in prior proceedings, information that IBOs are barred from obtaining.

179. The impact of Quixtar's confidentiality rules has been exacerbated by an action filed against certain IBO leaders by the Quixtar-controlled IBOAI Board. At the inception of this dispute in August 2007, the IBOAI commenced an action against Orrin Woodward, Chris Brady, Billy Florence, Randy Haugen, Don Wilson and Chuck Goetschel and obtained an injunction requiring them to return allegedly confidential information relevant to the claims and defenses in the Woodward Arbitration, the Guzzardo Arbitration, and the Nevada Action.

180. The effect of the IBOAI action has been to deprive these IBO leaders of the evidence necessary to defend themselves. Quixtar and IBOAI use confidentiality to limit the IBOs' use of IBOAI documents to defend themselves, but Quixtar has access to these documents.

Lack of Precedential Effect and No Reasoned Opinions

181. ROC 11.5.48 provides that an arbitration award “shall have no precedential value with regard to similar issues in future cases.”

182. This rule permits Quixtar to enforce against other IBOs, rules that have been held unenforceable, and encourages Quixtar to multiply the proceedings to maximize its chances of obtaining a favorable outcome in one of several simultaneous parallel proceedings.

183. Exacerbating the inequity of this rule, ROC 11.5.47 has been interpreted by arbitrators as precluding them from stating the reasons for a ruling unless all parties to the arbitration agree. Quixtar never agrees to a reasoned opinion.

Loser Pays

184. ROC 11.5.48 requires the arbitrator to impose attorneys fees, arbitration fees and costs in favor of the prevailing party.

185. Obviously designed to intimidate IBOs with fear of financial ruin, the effect of the rule is to deter IBOs from even attempting to pursue or defend their rights under Quixtar’s rigged arbitration system.

The Unlimited Magnitude and Expense of Arbitration

186. The expansive discovery and massive expense of Quixtar-style arbitration has led one federal court in Michigan to term the Woodward Arbitration “a hydra-headed monster” that bears little resemblance to the purposes intended to be achieved by the Federal Arbitration Act. The Court expressed that it had “never seen anything like this,” other than in the most complicated of securities cases. Although declining to decide the validity of Quixtar’s arbitration agreement, the Michigan Court expressed “serious doubt” as to its enforceability. The Michigan

Court further recognized that the arbitration Quixtar was seeking to compel was not accomplishing the goals of arbitration and appeared to be a “war of attrition.” Indeed, the Michigan Court expressed “shock” as to how the arbitration had been conducted, and found that it was “undermining the purposes of the Federal Arbitration Act and the whole purpose of going to arbitration.” *See* Tr. at 26-27, 42-45, 61-62, attached as Exhibit 15

187. The lengthy arbitration schedule and essentially unlimited discovery in the Woodward Arbitration and others, has permitted Quixtar’s army of lawyers to inundate Quixtar’s opponents with incessant, insatiable discovery demands and motion practice.

188. Contrary to the discovery limitations that a court would impose, in the arbitrations Quixtar is not restrained from causing hundreds of depositions to be taken, and hundreds of thousands of documents to be produced.

189. The manner in which Quixtar conducts arbitrations makes a mockery of the arbitration process and is contrary to the purpose of the arbitration alternative.

190. Upon information and belief, millions of dollars have been expended defending the Woodward Arbitration to date, with more to follow.

191. Plaintiffs and Class Members face similar unconscionable arbitrations and exorbitant defense costs.

192. Further, because of the illegal nature of Quixtar’s operation, the IBO agreement and the ROC are void and unenforceable.

193. Absent the intervention of this Court, Plaintiffs and Class Members will incur an unrelenting expenditure of time and money litigating identical claims in multiple forums pursuant to unconscionable rules with no end in sight.

COUNT IV

TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTION AGAINST ENFORCEMENT OF QUIXTAR'S ARBITRATION AGREEMENT

194. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-193 above as though fully set forth herein.

195. Over the objections of Plaintiffs and Class members, Quixtar and JAMS are proceeding aggressively with arbitrations against TEAM-affiliated IBOs in serial proceedings which assert the same claims, rely upon the same factual allegations and seek the same duplicative recovery.

196. Plaintiffs and Class Members have opposed motions to compel arbitration, moved to dismiss arbitrations, and/or demanded JAMS stand down, stay arbitrations and/or hold proceedings in abeyance pending a final resolution of the question of arbitrability. JAMS has not responded favorably to these demands.

197. Plaintiffs and Class Members will be irreparably harmed if they are forced to participate in a financially ruinous arbitration program that federal courts throughout the country have held to be unconscionable and unenforceable and which bears no resemblance to the purposes sought to be achieved by the Federal Arbitration Act. Plaintiffs and Class Members will be unable to recover the devastating costs in defending against Quixtar's unconscionable arbitration proceeding should the arbitration agreement ultimately be held to be unenforceable. Thus, Plaintiffs have no adequate remedy at law.

198. To more fully understand the travesty that will result if Quixtar is permitted to continue its war of attrition upon Plaintiffs and Class Members, one need look no further than the ruinous ordeal imposed upon the *Morrison* plaintiffs, who attempted to resist Quixtar's

arbitration process shortly after it was inserted into the IBO agreement. The *Morrison* plaintiffs were forced to endure three and a half years in Quixtar's star chamber arbitration proceedings, to the tune of many millions of dollars, only to have the Fifth Circuit, *ten years after the original suit was filed*, summarily vacate the Arbitrator's \$7,000,000 fee-shifting award because of the patent unenforceability of the arbitration agreement. Many of the plaintiffs had to declare bankruptcy along the way, and the surviving plaintiffs went back to federal court to litigate their claims anew.

199. The entry of an injunction is necessary to preserve the status quo so this Court can determine whether the arbitration agreement is enforceable. In other cases, Quixtar has recognized the utility of deciding the arbitrability issue before proceeding to litigate the underlying claims. In *Nitro*, *Pokorny* and *Simmons* – all of which resulted in unfavorable rulings to Quixtar – the district courts *granted* Quixtar's request to stay the litigation pending its appeal. Quixtar argued that if the appellate courts ruled that the arbitration agreement was enforceable, then the parties would have wasted enormous resources litigating the underlying case in court. Certainly, the harm is even greater here, where Plaintiffs and Class Members with limited resources are being forced to arbitrate in a proceeding that Quixtar controls.

200. Further, the fear and intimidation created by the spectra of Quixtar's unrestrained arbitration strategy has disrupted the businesses of TEAM-affiliated MonaVie distributors and will cause irreparable harm if allowed to continue.

201. The relief Quixtar seeks against Plaintiffs and Class Members is the total destruction of businesses Plaintiffs and Class Members have built over the course of their lives.

If Quixtar obtains such relief, even on an interim basis, it will be impossible to rebuild them. The consequences will be irremediable and irreparable.

202. Plaintiffs and Class members have no adequate remedy at law. In the absence of an order enjoining Quixtar from enforcing its arbitration agreement and rules against Plaintiffs and Class Members while this Court decides whether the arbitration agreement is enforceable, Plaintiffs and Class Members will be forced to participate in costly arbitrations that could lead them to the brink of bankruptcy or risk default. Millions of dollars have been spent thus far on the attorneys fees, arbitration fees, case management fees and other expenses incurred in defense of the Woodward Arbitration. The expense of the protracted arbitration proceedings in *Morrison* forced plaintiffs into bankruptcy. *See Morrison v. Amway*, U.S. Bankruptcy Court, Southern District of Texas, Adversary Case No. 08-03260.

203. Absent injunctive relief, Plaintiffs' and Class Members' rights and obligations may be irrevocably adjudicated in an unlawful arbitration, causing irreparable harm and damage to Plaintiffs and Class Members.

204. A high likelihood of success on the merits exists because, by its terms, the arbitration agreement does not apply to former IBOs. Further, numerous federal courts considering the same challenges to enforceability that are asserted here held the agreement unenforceable.

205. The Fifth Circuit's decision in *Morrison v. Amway Corp.*, 517 F.3d 248 (5th Cir. 2008) collaterally estops Quixtar from enforcing the arbitration agreement. *See also, Pokorny v. Quixtar, Inc.*, 2008 U.S. Dist. Lexis 28439 (N.D. Cal. Mar. 31, 2008) (unpublished); *Simmons v. Quixtar, Inc.*, 2008 U.S. Dist. LEXIS 52535 (E.D. Tex. July 8, 2008) (unpublished); *Nitro*

Distributing, Inc. v. Alticor, No. 03-3290-CV-W (W.D. Mo. Sept. 16, 2005) (unpublished);
Stewart & Assoc. v. Quixtar, No. 05-3440-CV-S (W.D. Mo Nov. 20, 2006) (unpublished);
McCrone v. Quixtar, No. 1:07CV2737 (N.D. Ohio 2008).

206. Quixtar will not be harmed if it is enjoined from enforcing its arbitration agreement and rules. Indeed, Quixtar has argued on several occasions that proceedings should be stayed until the enforceability of arbitration has been decided.

207. Enjoining Quixtar from enforcing arbitration will not harm the public interest. Quixtar arbitrations do not serve the public interest and do not further the goals of the Federal Arbitration Act. For example, one federal judge remarked that the Woodward Arbitration had become “a hydra-headed monster” that bears little resemblance to the purposes intended to be achieved by the Federal Arbitration Act. The Court expressed that it had “never seen anything like this,” other than in the most complicated of securities cases, and the arbitration was not accomplishing the goals of arbitration. *See* Tr. at 26-27, 42-45, 61-62, attached as Exhibit 15.

208. Further, because of the illegal nature of Quixtar’s operation, the IBO agreement and the ROC are void and unenforceable.

209. The public interest will be served by preserving the status quo until this Court decides, once and for all, the important issues raised by the Complaint. Arbitrability will otherwise continue to arise in case after case, each of which will spawn lengthy appeals and likely remands and retrials.

COUNT V

DECLARATORY JUDGMENT THAT THE NAMES AND ADDRESSES OF IBOs AND THE RELATIONSHIPS BETWEEN IBOs IN THE QUIXTAR LINE OF SPONSORSHIP ARE NOT PROPRIETARY TO QUIXTAR

210. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-209 above as though fully set forth herein.

211. Quixtar's claims for breach of contract, tortious interference and misappropriation of trade secrets relating to the line of sponsorship in the Woodward Arbitration, the Nevada Action, the Utah Action, and the Guzzardo Arbitration, are based upon the assertion that the names and addresses of Quixtar IBOs, as well as the relationship between them in a line of sponsorship, are proprietary to Quixtar. This is a new, invented spin on ROC 4.27.1, a rule Quixtar implemented in 2004. Quixtar has never represented this rule to apply to the names and addresses of IBOs or the relationships between IBOs. This same issue is likely to arise in future arbitrations against Class Members.

212. In fact, neither the names and addresses of Quixtar IBOs, nor the relationship between them, is a trade secret. Historically, this has always been the IBO's independent business information.

213. For decades, IBOs have recruited and registered the IBOs in their downlines, recorded their names and addresses, placed them in a line of sponsorship, then shared that information with Quixtar.

214. Quixtar does not recruit IBOs. Nor does Quixtar provide IBOs with the names of potential recruits. A former IBO crystallized this latter point in a January 23, 2008 letter to Quixtar, stating:

Since when, and we both know it was when our IBO list went online, has the organization of people that we, being my wife & I built now become yours? I didn't see anyone in the car with us, nor at any of the meetings, or putting any of your dollars into, nor building relationships with any of these people, nor anyone at anytime at all contacting them or helping them 'build a business.' You were and have always been the SUPPLIER. We, and it goes back to the founding owners, were the face side that built "our" team . . .

See Delin letter to Quixtar dated January 23, 2008, attached as Exhibit 16

215. Until the mid-1990s, Amway only sold products to higher level IBOs known as "Directs" and to "Warehouse Ordering Distributors" or "WOD," which were lower level IBOs whose upper level Directs permitted them to directly order and receive shipments.

216. Directs were afforded autonomous control over their downlines. They tabulated the product order forms they received from their downlines, ordered the product from Amway, received shipment, warehoused the products, computed payments, and arranged for distribution. They also tallied downline purchases and computed – and paid – downline bonuses.

217. These tasks required the compilation and organization of a significant amount of information, all of which was necessary to the conduct of the Directs' independent businesses.

218. Well before the age of the Internet, some Directs who had responsibility for large "Lines of Affiliation" had commissioned – at significant expense – the development of software such as "AmEasy" and devised ways for computers to communicate with one another to simplify the process of product ordering and information gathering. This included the creation of computer programs which delivered customized shopping list order forms to the telephone or computer of each downline IBO (based on the IBOs' prior purchases).

219. All of this went on behind the scenes – Amway had no part in the creation or development of any of these processes.

220. Significantly, Amway had no information about the Directs' downline IBOs, other than their name, address and social security number – information Amway received if and when the Direct gave Amway a carbon copy of the IBO registration form.

221. For decades, Amway conducted its business in this manner, *without any of the information it now claims to be invaluable and proprietary*. The Directs were the business leaders, in charge of every aspect of the business.

222. Amway, through Quixtar, made a grab for the Directs' independent business information when it created Quixtar and moved to e-commerce in about 1999.

223. In 2004, Quixtar unilaterally declared certain of its LOS to be its proprietary, trade secret information – only available for IBO use on a limited basis. *See* Rule 4.27.1 (the “Data Management Rule”).

224. All of this information existed for years without the confidentiality restrictions of Rule 4.27.1.

225. Rule 4.27.1 does not confer after-the-fact trade secret status on information that was accumulated by Plaintiffs and Class Members and in place without any disclosure restrictions before its enactment.

226. New IBOs are typically friends, family members and acquaintances of the sponsoring IBO. Quixtar has admitted that the names of families, friends, acquaintances and church members, as well as the relationships among them, are not covered by ROC 4.27.1. But because Quixtar has no legitimate claims, it is now shamelessly arguing that it owns the relationships developed by the IBOs, the independent business owners.

227. Plaintiffs and Class Members know who is in their downline as a result of working and meeting with them.

228. Quixtar did not find and recruit persons into the downlines of Plaintiffs and Class Members. All of the IBOs in the downlines were recruited to Quixtar by other sponsoring IBOs in the downlines. Each sponsoring IBO knows the people he sponsored and each of those people knows the people they sponsored. Each level has rights superior to Quixtar in the next level, and each level has personal contact information that is unrelated to Quixtar's proprietary information.

229. Even absent its prior admissions and statements, Quixtar's unilateral declaration that the names and addresses of IBOs and the relationships between them in a line of sponsorship is proprietary is not sufficient to create a trade secret.

230. To constitute a trade secret, Quixtar must have provided the purportedly proprietary information *to IBOs* in confidence, among other criteria. Information Quixtar *receives from* IBOs cannot be a trade secret.

231. Further, to maintain trade secret status, the confidentiality of the information must be maintained. The names and addresses of IBOs and the relationships between them in a line of sponsorship is not confidential. It is well known. Indeed, Quixtar publicizes the names and addresses of IBOs, along with the business development milestones they achieve.

232. Quixtar publishes the names of IBOs who achieve business development milestones, known as new pin levels, in its "Amagram" and "Achieve" magazines, which makes the information public, not proprietary. This pin information is publicly available online in comprehensive lists. *See e.g.*, www.amwaywiki.com. Other publicly-available information concerning IBOs includes background on the major Quixtar Lines of Sponsorship (source:

www.amquix.info), a spreadsheet containing extensive information on over 700 IBOs (source: www.amquix.info), and background on diamond-level IBOs who are affiliated with the WorldWide DreamBuilders organization (source: www.quixtarwiki.com; www.wwdb.biz). Publicly available information does not qualify as confidential proprietary or trade secret information.

233. A list of customer names compiled from personal and public sources is not a trade secret.

234. Further, because of the illegal nature of Quixtar's operation, the IBO agreement and the ROC are void and unenforceable.

COUNT VI

DECLARATORY JUDGMENT THAT QUIXTAR'S NON-COMPETITION AND NON-SOLICITATION RULES ARE UNENFORCEABLE

235. Plaintiffs incorporate the introductory paragraphs and paragraphs 1-234 above as though fully set forth herein.

236. The Guzzardo Arbitration, the Woodward Arbitration, the Nevada Arbitration and the Utah Action each assert claims based upon the same alleged acts of the same group of TEAM-affiliated Class Members, which are alleged to violate Quixtar's non-competition and non-solicitation rules.

237. Quixtar's non-competition and non-solicitation rules are not mentioned in the contract signed by IBOs, but are buried in over 50 pages of rules that are typically not available to the IBO at the time of signing.

238. ROC 6.5.4 states:

Every IBO agrees not to Compete, directly or indirectly, with the business of the Corporation in the U.S., Canada, and all offshore markets operating under the Quixtar Independent Business Owner Compensation Plan during the six-month period following (a) the voluntary or involuntary resignation, non-renewal, or termination of that IBO's independent business, or (b) any violation by the IBO of this Subsection 6.5.4, whichever is later.

239. Rule 6.5.1 defines "compete" to mean "to own, manage, operate, consult for, be employed by, or participate as an independent distributor in (a) any other direct sales program using a multilevel or 'network' marketing structure, or (b) any other enterprise that markets, through independent distributors, products or services functionally interchangeable with those offered or marketed by" Quixtar.

240. ROC 6.5.2 defines an IBO, "[f]or purposes of this Rule 6.5." to mean "an IBO who is either currently registered or has been registered at any time within the past two calendar years."

241. The geographic scope of ROC 6.5.4 extends throughout the United States, Canada, and "all offshore markets operating under the Quixtar Independent Business Owner Compensation Plan."

242. Thus ROC 6.5.4 broadly prohibits the sale of competing products or participation in any other MLM – regardless of the products its sells - anywhere in the world that Quixtar conducts business.

243. ROC 6.5.4 is overbroad and unreasonable.

244. ROC 6.5.4 is not reasonably related to, or supported by, a legitimate business purpose.

245. ROC 6.5.4 is not necessary to protect Quixtar's purported "confidential, proprietary and trade secret information." As discussed above, the names and addresses of IBOs, and the relationships between them, are not trade secrets.

246. To the extent other information qualifies as a trade secret and ROC 4.27.1 is enforceable for that purpose, ROC 4.27.1 gives Quixtar all the protection it needs and Rule 6.5.4 is unnecessary for that purpose.

247. ROC 6.5.4 is not supported by a just and honest purpose, and does nothing more than restrain competition. Protection from competition is not a legitimate basis for a restrictive covenant.

248. ROC 6.5.4 is injurious to the public and is not reasonable.

249. Quixtar's non-solicitation rule is ROC 6.5.5, which states:

Every IBO agrees not to encourage, solicit, or otherwise attempt to recruit or persuade any other IBO to Compete with the business of the Corporation.

250. ROC 6.5.5 and other non-solicitation provisions are not reasonably related to, or supported by, a legitimate business purpose.

251. Solicitation is not defined in the ROC.

252. Under the law, solicitation is only direct personal persuasion which is initiated by the persuader and focused on a particular individual, rather than to the public generally.

253. In its attacks on Plaintiffs and Class Members, Quixtar has interpreted ROC 6.5.5 and other non-solicitation rules broadly to include passive actions, which are not directed to a particular individual, and which do not involve direct personal persuasion, such as responding to a question, speaking at a public meeting, or making an announcement on an Internet blog.

254. Posting an announcement to the public on an Internet blog is not solicitation.

- 255. Responding to a question about future plans is not solicitation.
- 256. Speaking at a meeting is not solicitation.
- 257. Former IBOs who desire to follow their leaders out of loyalty is not solicitation.
- 258. Further, because of the illegal nature of Quixtar's operation, the IBO agreement and the ROC are void and unenforceable.

REQUEST FOR RELIEF

Wherefore, Plaintiffs and Class Members request the following relief:

- A. That the Court determine that this action may be maintained as a class action under Fed R. Civ. P. 23, that Plaintiffs be appointed class representatives, and that Plaintiffs' counsel be appointed as counsel for the class.
- B. That an order be entered certifying a class defined as follows:

all individuals and/or entities affiliated with TEAM who are former Quixtar IBOs or whose spouse is a former Quixtar IBO and whom Quixtar seeks to hold responsible for their spouse's actions as a Quixtar IBO, or individuals and/or entities whose name appears on a list of TEAM-affiliated former Quixtar IBOs that Quixtar's counsel provided to MonaVie's counsel on March 4, 2008 and March 5, 2008 and which was referenced in or identified in Amway's First Amended Complaint in *Amway v. MonaVie*, Case No. 08-cv-209, or who were identified in Amway's First Amended Complaint in that case, and: (1) who have registered, or whose spouse has registered, either directly or indirectly through an entity, to become a MonaVie distributor; or (2) who performs services, or whose spouse performs services, for a MonaVie distributor.
- C. That judgment be entered in favor of Plaintiffs and Class Members which declares:

- i. That Quixtar's arbitration agreement does not apply to former Quixtar IBOs, including but not limited to Plaintiffs and Class Members;
 - ii. That Quixtar is collaterally estopped from enforcing its arbitration agreement against Plaintiffs and Class Members;
 - iii. That Quixtar's arbitration agreement is unenforceable and unconscionable;
 - iv. That the names and addresses of IBOs and the relationships between them are not trade secrets proprietary to Quixtar.
 - v. That the non-solicitation and non-compete covenants in the ROC are not enforceable.
 - vi. That the non-solicitation and non-compete covenants in the ROC, as interpreted by Quixtar, are not enforceable.
 - vii. That the act of posting an announcement to the public on an Internet blog, responding to a question about future plans, and speaking at a meeting do not constitute solicitation.
- D. That an order be entered temporarily, preliminarily and permanently, enjoining Defendants, their affiliates, successors, transferees, assignees, subsidiaries, parent corporations, officers, directors, partners, agents, attorneys and employees, and all other persons acting on their behalf, together with all persons acting in concert with them, from enforcing the arbitration agreement and arbitration rules against Plaintiffs and Class Members.

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