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13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 ORRIN WOODWARD, BILLY
18 FLORENCE, DON WILSON, FRED
19 HARTEIS, TIM MARKS, CHUCK
20 CULLEN, KIRK BIRTLES, RANDY
21 HAUGEN, CHRIS BRADY, JIM
22 MARTIN, ARON RADOSA, CHUCK
23 GOETSCHER, DAVID BRANDY,
24 BENJAMIN L. DICKIE, BRUCE
25 GILBANK, AND MIKE
26 MARTENSEN, on behalf of themselves
27 and those similarly situated;

23 Plaintiffs,

24 v.

25 QUIXTAR, INC., a corporation;
26 Defendants.

Case No. CV 07-

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

CLASS ACTION

28 Plaintiffs Orrin Woodward, Billy Florence, Don Wilson, Fred Harteis, Tim Marks,

1 Chuck Cullen, Kirk Birtles, Randy Haugen, Chris Brady, Jim Martin, Aron Radosa,
2 Chuck Goetschel, David Brandy, Benjamin L. Dickie, Bruce Gilbank, and Mike
3 Martensen, on behalf of themselves and those similarly situated (collectively "Plaintiff
4 Class"), in their Complaint against Defendant Quixtar, Inc. ("Quixtar"), state as follows:
5

6 I. PRELIMINARY STATEMENT

7 1. Quixtar knows its products are priced so high they cannot be sold and yet it
8 continues to recruit distributors in a concerted effort to enrich the founding families at the
9 expense of the rank and file simply trying to earn a living. Quixtar holds itself out as a
10 legitimate, multi-level home-based business opportunity, but in fact operates as an illegal
11 pyramid recruitment scheme. Quixtar leads participants to believe that they can build a
12 viable business retailing Quixtar products; but once the participants sign up and pay their
13 initial investment into the pyramid, it quickly becomes evident that Quixtar's products
14 cannot be retailed because they are hopelessly overpriced. Quixtar knows its products are
15 nearly impossible to sell, and that its business opportunity is therefore not viable except as
16 an illegal recruitment pyramid. Nevertheless, Quixtar imposes and enforces on its
17 distributors (termed "independent business owners" or "IBOs" by Quixtar) a strict
18 noncompetition agreement that effectively prevents the IBOs from leaving Quixtar to
19 pursue other, legitimate business opportunities. Quixtar thereby traps its IBOs into its
20 illegal pyramid. So long as Quixtar is able to enforce the noncompete, these IBOs have
21 no choice but to continue purchasing and consuming overpriced Quixtar products and
22 recruiting new victims into the pyramid scheme, since that is the only way to make money
23 with the Quixtar business opportunity.
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1 2. Plaintiffs do not seek damages against Quixtar, or to shut Quixtar down.
2
3 Rather, Plaintiffs merely seek a judicial declaration that the noncompetition and non-
4 solicitation provisions of the uniform Quixtar distributor agreement are unenforceable as a
5 matter of law, so those Plaintiffs who so choose will be able to extricate themselves from
6 continued forced participation in Quixtar's illegal pyramid scheme and pursue legitimate
7 business opportunities instead.
8

9 **II. PARTIES, JURISDICTION, VENUE AND APPLICABLE LAW**

10 3. Plaintiff Orrin Woodward is a citizen of Michigan, residing in Grand Blanc.
11 Orrin Woodward entered into the Quixtar uniform distributor contract in 1993.
12

13 4. Plaintiff Billy Florence is a citizen of Georgia, residing in Athens. Billy
14 Florence entered into the Quixtar uniform distributor contract in 1974.
15

16 5. Plaintiff Don Wilson entered into the Quixtar uniform distributor contract.
17

18 6. Plaintiff Fred Harteis is a citizen of Pennsylvania, residing in Harrisburg.
19 Fred Harteis entered into the Quixtar uniform distributor contract.
20

21 7. Plaintiff Tim Marks is a citizen of Michigan, residing in Fenton. Tim Marks
22 entered into the Quixtar uniform distributor contract in 1999.
23

24 8. Plaintiff Chuck Cullen is a citizen of Michigan, residing in Wixom. Chuck
25 Cullen entered into the Quixtar uniform distributor contract.
26

27 9. Plaintiff Kirk Birtles is a citizen of Michigan, residing in Grand Blanc. Kirk
28 Birtles entered into the Quixtar uniform distributor contract in 2001.

1 10. Plaintiff Randy Haugen is a citizen of Utah, residing in Ogden. Randy
2 Haugen entered into the Quixtar uniform distributor contract.

3
4 11. Plaintiff Chris Brady entered into the Quixtar uniform distributor contract in
5 1994.

6
7 12. Plaintiff Jim Martin is a citizen of Michigan, residing in Chesterfield. Jim
8 Martin entered into the Quixtar uniform distributor contract.

9
10 13. Plaintiff Aron Radosa is a citizen of Michigan, residing in Midland. Aron
11 Radosa entered into the Quixtar uniform distributor contract in 2001.

12 14. Plaintiff Chuck Goetschel is a citizen of California, residing in Los Angeles.
13 Chuck Goetschel entered into the Quixtar uniform distributor contract.

14
15 15. Plaintiff David Brandy is a citizen of Florida, residing in Naples. David
16 Brandy entered into the Quixtar uniform distributor contract in 2005.

17 16. Plaintiff Benjamin L. Dickie is a citizen of Michigan, residing in Grand
18 Blanc. Benjamin L. Dickie entered into the Quixtar uniform distributor contract in 2001.

19
20 17. Plaintiff Bruce Gilbank is a citizen of California, residing in Los Angeles.
21 Bruce Gilbank entered into the Quixtar uniform distributor contract.

22
23 18. Plaintiff Mike Martensen entered into the Quixtar uniform distributor
24 contract.

25
26 19. Defendant Quixtar is a corporation organized under the laws of the state of
27 Virginia, with its principal place of business in the state of Michigan, and doing business
28 regularly throughout the United States, including in the state of California. Quixtar is the

1 successor-in-interest of the Amway Corporation (“Amway”), which did business in the
2 state of California and in this County.

3
4 20. This Court has original jurisdiction over this matter pursuant to Title 28,
5 United States Code, Section 1332(d)(2), as this is a civil class action in which Plaintiff X
6 (California) and Quixtar (Michigan, Virginia) are citizens of different states and the
7 matter in controversy exceeds the value of \$5,000,000, exclusive of costs and interest. “In
8 actions seeking declaratory or injunctive relief, it is well established that the amount in
9 controversy is measured by the value of the object of the litigation.” *Cohn v. Petsmart,*
10 *Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (quoting *Hunt v. Wash. State Apple Adver.*
11 *Comm’n*, 432 U.S. 333, 347 (1977)). The Plaintiffs seek to enjoin Quixtar from enforcing
12 its distributor contracts, including the attendant noncompetition and nonsolicitation
13 clauses. If the Court were to grant the injunctive relief demanded in the Complaint, the
14 costs of compliance by Quixtar would be in excess of \$5,000,000. Additionally, the value
15 of the injunction to the Plaintiffs is the value they would receive from being able to pursue
16 competing interests for a six-month period once they leave Quixtar. The value of this
17 free-market competition for the Plaintiffs exceeds \$5,000,000 in the aggregate.
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20
21 21. Jurisdiction is proper over Quixtar, because Quixtar at all relevant times has
22 been engaged in continuous and systematic business in this State and has designated
23 agents for service of process in this State. The actions giving rise to this lawsuit were
24 taken by Quixtar at least in part in California. Plaintiff X is a citizen of California.
25 Pursuant to Title 18, United States Code, Section 1965(a) and (b), Quixtar is subject to
26 this Court’s jurisdiction in that it “transacts affairs” in the Central District of California
27
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1 and "the ends of justice require that other parties residing in any other district be brought
2 before the Court, the Court may cause such parties to be summoned, and process for the
3 purpose may be served in any judicial district of the United States by the marshal thereof."

4
5 22. Venue is proper in this Court under Title 28, United States Code, Section
6 1391(a), because: Plaintiff X resides in Los Angeles, California; a substantial part of the
7 events giving rise to the claims herein occurred in California; and a substantial part of the
8 property that is the subject of this action is located in California.
9

10 23. The law of the fifty United States is similar on all issues present in this
11 complaint. The Plaintiffs lead with California law, as California is the venue for this
12 litigation, and also cite to Michigan law, as Plaintiffs understand Michigan law will be
13 favored and argued by Quixtar.
14

15 **III. FACTUAL BACKGROUND**

16

17 **A. The Legacy Of Amway**

18 24. Founded in 1959 by Jay Van Andel and Richard DeVos, Amway operated
19 as a multi-level marketing company selling laundry detergents and cleaning products.
20

21 25. Amway's first products were L.O.C. Multi-Purpose Cleaner and SA8
22 Laundry Detergent. These home care products became big sellers that could be viably
23 retailed not only to other Distributors, but to consumers outside of the Amway
24 organization. Within a few short years, the company had more than 700 employees, over
25 200 exclusive products, and more than 100,000 Distributors. In the early 1970s Amway's
26 retail sales reached \$100 million. By 1974, that figure had grown to \$210 million. Not
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28

1 only were the distributors proving to be a great marketing device for the company, but the
2 products were priced competitively and selling in the retail market. The founding
3 families, were making a fortune.
4

5 26. The founding Van Andel and DeVos families derived so much wealth from
6 Amway that they were listed in Forbes magazine list of the wealthiest Americans in the
7 early 1980s; for nearly one quarter of a century, they have maintained a fleet of private
8 luxurious jets. Forbes.com lists Richard DeVos as the 73rd richest person in America,
9 with a net worth of \$3.5 billion derived from Alticor. Additionally, in 1994, one
10 publication placed both Richard DeVos and Jay Van Andel in the top 10 wealthiest
11 Americans. In that publication, both Richard DeVos and Jay Van Andel were said to be
12 worth \$4.5 billion each.
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15 27. Many attribute the success of the early Amway products to a combination of
16 reasonable pricing, "concentrated" formulas (which made comparisons to the typical, non-
17 concentrated products nearly impossible), and a market conducive to door-to-door sales.
18 The founding families based the company on products that everyone needed, everyone
19 bought, and anyone could sell, and then they delivered it to the consumer's doorstep.
20 People raved about the products. The SA8 was such a clean laundry detergent that it
21 actually cleaned out laundry machines while washing the clothes. Manufacturers of
22 laundry machines and repairmen alike recommended that their customers use the Amway
23 SA8. Another unique feature of SA8 was that it was biodegradable. It would take another
24 four or five years before Proctor and Gamble would develop biodegradable detergents.
25 However, once competitors began to market other biodegradable detergents, Amway
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1 failed to adjust to the competition and SA8 was priced out of the market. Likewise, the
2 Liquid Organic Concentrate or L.O.C. Multi-Purpose Cleaner could clean anything. It
3 was marketed by taking shoe polish off of a white cloth with just a dab. The difference
4 between the Amway products and the rest of the market was easily discernable to the
5 public.
6

7
8 28. Moreover, Amway, which stands for the American Way, was a wholesome
9 company with a stellar reputation. The company was founded on the values of “freedom,
10 opportunity, reward, and hope,” the Amway mantra as coined by Richard DeVos. [See
11 *e.g.*, Ex. , Lewis Aff. ¶ 6 (stating “I wanted to be free. I wanted to own my own business
12 that had unlimited potential. I also wanted to be involved with a moral and ethical
13 business.”).]
14

15 29. This reputation began its considerable decline in 1982, when the television
16 programs “60 Minutes” and “Phil Donahue” ran broadcasts disparaging the Amway
17 business model as fraudulent. One long-time IBO commented that he lost half of his
18 business in the eight months following these broadcasts. It would be at least two years
19 before consumers would regain any confidence in the Amway business opportunity.
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22 30. By the late 1990s, the retail prices of Amway’s products had increased
23 substantially in relationship to the consumer marketplace, while trends in retailing (*e.g.*
24 the growth of Wal-Mart) were lowering retail margins and prices for consumers. When
25 large super-center retailers such as Wal-Mart moved into urban areas in the 1990s, the
26 retail market was forever changed. Through the addition of low cost competition, margins
27 were reduced and prices began to drop. Prices of Amway products, on the other hand,
28

1 gradually and continuously increased to keep up with inflation and the income needed to
2 pay bonuses to distributors and continue to enrich Amway's owners. Moreover, the
3 concentration and uniqueness of Amway's products were lost as the market began
4 developing broader arrays of products to match demand.
5

6 31. As a result of these trends, Amway's products became increasingly difficult
7 to retail. By the middle to late 1990's, Amway's products were almost completely non-
8 sellable. Because Quixtar's products are unmarketable, financial gains to Quixtar
9 distributors are primarily dependent upon the continued, successive recruitment of other
10 participants who purchase Quixtar products in order to qualify for commissions. Instead
11 of selling the products to people unrelated to Quixtar, distributors personally consumed
12 them or discarded those they did not use. [Ex. 4, Reed Aff. ¶ 49 (stating that he purchased
13 products and gave them away); Ex. 5, Radosa Aff. ¶ 49 (affirming "I had to sell my
14 products at loss in order to move some excess inventory").] This is known as "internal
15 consumption." In other words, distributors buy products they normally would not in order
16 to qualify for bonuses in the business. [Ex. 1, Woodward Aff. ¶¶ 29-30.]
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20 32. Accompanying the upstart of Amway was the rise of the Amway Distributor
21 Association ("ADA"), a trade association for the Amway distributors founded by Richard
22 DeVos and Jay Van Andel and nine members. The concept of the ADA was fueled by a
23 desire to have an independent board of distributors that would work closely with Amway
24 by representing the entire field of distributors to Amway. However, in 1982, the founding
25 families became disenchanted with the ADA when they were denied the right to hand-
26 pick the members of the board. DeVos and Van Andel abandoned the board and Amway
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28

1 severed its ties. The ADA became antagonistic to Amway and was forced to fund itself
2 for the first time since its inception.

3
4 33. In the late 1980s, the new COO of Amway, Tom Eggleston, renegotiated a
5 contract with the ADA board. The deal reunited the board with Amway while still
6 allowing it to be an independent representative of the distributors. Amway initially
7 funded the activities of the ADA and the IBOs elected the board members. Furthermore,
8 the board agreed to turn over its list of names of all members of the ADA to Amway to
9 keep records of all IBOs. The agreement between Amway and the board has been
10 renewed periodically and changed to account for Amway's name changes. The Amway
11 ADA has thus evolved into the Quixtar IBOAI, or Independent Business Owners
12 Association International Board. Currently, IBOAI is the entity responsible for
13 representing Quixtar's IBOs before Quixtar.

14
15
16 34. After 1995, the IBOAI began pressuring Amway to start an e-commerce
17 business. Discussions escalated until the IBOAI threatened to start up an e-commerce
18 business with or without Amway. Amway embraced the threat and took over the project
19 to create an internet-based retail business. Amway wanted to incorporate the e-commerce
20 business into the Amway distributor business, but the IBOAI believed that the reputation
21 of Amway had so disintegrated that a new business necessitated a new name. The IBOAI
22 knew younger prospects and participants would be first to access the e-commerce business
23 and wanted to ensure an equally fresh face for the old door-to-door, soap-selling business.

24
25 35. In 1999 Amway launched a sister-company called Quixtar, the e-commerce
26 company. Access Business Group, LLC ("Access") was created as the manufacturer of
27
28

1 the products sold by both Quixtar and Amway. Alticor, Inc. ("Alticor") was created as the
2 parent holding company of Quixtar, Amway and Access. Alticor is owned by the DeVos
3 and Van Andel families.
4

5 36. Amway touted Quixtar as its chance to make a second, and this time good,
6 first impression on the network marketing industry in the United States and created new
7 products, with a fresh plan for success.
8

9 37. Though the Quixtar business was designed to be a new and separate
10 company, it adopted Amway's business model with the addition of the e-commerce
11 business.
12

13 38. Once Quixtar was created, IBOs could choose whether they wanted to take
14 part in the Amway business or the Quixtar business at the time they signed their IBO
15 Agreements. However, by 2001, so many IBOs were choosing Quixtar over Amway that
16 the company elected to shut down Amway operations in the United States. Amway still
17 operates throughout many countries in the world. Quixtar, however, has become the
18 operational version of Amway in the United States.
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21 39. Today Quixtar has diversified into various product markets, adding new
22 product lines and new components to old product lines. Quixtar sells vitamins, cosmetics,
23 hair care, water filters, cookware, and home care products through a network of
24 distributors, or IBOs. Across the board, these products are overpriced. IBOs have been
25 complaining to Quixtar since at least 1997 that their products are not sellable.
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1 40. While an analysis of Quixtar products by market analyst Topco confirms
2 that Quixtar products are of a high quality, these same products are also priced very high.
3
4 W. Steven Rubow, a respected expert in the field of market research, observed the Quixtar
5 business model and confirmed that the products are priced well above the competition:

6 While the product quality has remained quite high over the years, retails for
7 competing items have been driven significantly lower over those years. The
8 result is that the value for Amway products is lower, i.e. consumers must
9 pay more for the Amway products compared to other brands available in
other distribution channels than they once did.

10 Mr. Rubow concludes that exorbitant prices will collapse the Quixtar business model at
11 the expense of the IBOs:

12
13 If success is to be measured by such typical measures as sales growth, same-
14 distributor sales growth, repeat sales, sales beyond the initial IBO, and IBO
15 turnover, then it is my opinion that the current Amway/IBOAI business
model is not likely to succeed very much longer.

16 41. The vast majority of the Quixtar products are priced substantially above the
17 retail marketplace and are thus not sellable in the retail market. [Ex. 1, Woodward Aff. ¶
18 20.] The Topco Report found that, of items comparable in formulation to Quixtar
19 products, consumers would save between 5% and 35% by choosing other products instead
20 of Quixtar products.
21

22 42. Compounding the significance of these high prices is the fact that the
23 environment in which Quixtar operates has changed significantly since the founding of
24 Amway. More products are available to consumers at more locations. Retail transactions
25 have become more convenient than ever. Additionally, consumers have many ways to
26 research different products and their prices, and can easily compare a wide range of
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28

1 choices over the internet. These increased efficiencies in the retail market have led
2 inexorably to higher quality products sold at lower prices. Quixtar, however, has
3 remained a notable exception.
4

5 43. Quixtar only exists on the backs of its distributors. Quixtar's prices have
6 increased so much in relation to ordinary retail prices that its products cannot be sold to
7 outside consumers. [Ex. 6, Spiewak Aff. ¶ 20 (stating "For most of my time as a
8 distributor, I retailed nothing due to product prices").] The vast majority of "sales" by
9 Quixtar are actually to the distributors themselves. [Ex. 7, Marks Aff. ¶¶ 27-28.] In fact,
10 a 2006 report prepared by Quixtar states that only 3.4% of its total volume comes from
11 those who do not participate in Quixtar's compensation plan.
12
13

14 44. Even worse, Quixtar is having a difficult time marketing its products to its
15 IBOs. [Ex. 8, Dickie Aff. ¶ 8.] People sign up for the Quixtar business opportunity but
16 never purchase anything because they cannot justify spending so much money on
17 Quixtar's products.
18

19 45. At one point, Quixtar started a "Members" program where someone could
20 sign up with Quixtar to purchase the products at the IBO or "wholesale" price. [Ex. 8,
21 Dickie Aff. ¶ 8.] The Members could not qualify for bonuses, but they did receive other
22 perks in addition to the IBO prices. Essentially, this system would allow a consumer of
23 Quixtar products to purchase directly from the company and avoid the retail markup price
24 that comes from purchasing the products from an IBO. The program was a failure and
25 had to be terminated because few people signed up to take advantage of the "price
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1 breaks.” Even when offering wholesale pricing, Quixtar had a difficult time establishing
2 and retaining customers.

3
4 46. Quixtar’s IBOs begged the company to reevaluate its products and prices,
5 and institute a new system that would allow IBOs to sell products in the retail
6 marketplace. Quixtar heard the complaints, secretly acknowledged that its products are
7 not viable for retailing, but for years responds with one hollow, false promise: “We’re
8 working on it.”
9

10 47. At a Diamond Meeting of the Company Internet Services in 1997 or 1998, a
11 price discussion ensued regarding the price of the Amway dog food. When asked why the
12 dog food was so expensive, an Amway representative stated that Amway does not look at
13 the marketplace to determine what a competitive retail price should be. Instead, the
14 Amway representative stated that the products are priced at the IBO cost. Essentially, the
15 Amway representative was suggesting that the IBO cost, considered the “wholesale” cost,
16 is actually the retail price. Thus, IBOs attempting to resell the dog food would have to
17 sell it at cost, foregoing any profit, in order to be competitive.
18
19

20 48. In April of 2000, the IBOAI conducted a “Confidential Competitive
21 Analysis” of the Quixtar products. The IBOAI compared the Quixtar products with three
22 competitive market leaders in each type of product and a cost per unit of measurement
23 was established to fairly compare the products. In almost every item, the Quixtar products
24 were substantially overpriced in comparison to the three industry leaders. In response,
25 Quixtar promised to “work on it.”
26
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1 49. In May 2005, the IBOAI recommended that Quixtar bring in a group of
2 young IBOs, in their twenties and thirties, to discuss pricing issues. This demographic
3 had consistently complained about the Quixtar product prices. Quixtar itself selected a
4 group of the best and brightest young IBOs and flew them to Michigan for a meeting.
5 Quixtar set up a presentation so that the young IBOs could see a screen of options in front
6 of them and then press a button to register and compute their choices. The basic question
7 for each product-type was, "How much do you or your friends spend on, e.g., shampoo
8 per month?" The results showed that people of this age group typically spent less in one
9 product category than the cost of one Quixtar product in the same category. Quixtar
10 acknowledged the results to the IBOAI and promised: "We're working on it."

11
12
13 50. Quixtar's Second-in-Charge Randy Bancino commissioned an analysis and
14 report from McKinsey Consultants regarding whether Quixtar products were overpriced
15 and not sellable. The McKinsey Report was prepared 2005, and its findings were
16 presented to the entire IBOAI Board along with various Quixtar representatives. The
17 McKinsey Report showed that there were very few retail customers buying Quixtar
18 products, and that hardly anyone was selling the Quixtar products at retail. [Ex. 6,
19 Spiewak Aff. ¶ 48 (affirming "I gave away products to charitable organizations because I
20 was unable to sell products at the suggested retail price").] It was a glaring confirmation
21 that Quixtar as a business was failing.
22
23
24

25 51. On February 27, 2007, a member of the IBOAI, sent a lengthy email to the
26 Chairman of the IBOAI Board, stating that the founding families were unapologetically
27 profiting from the failed efforts of the IBOs:
28

1 I was invited to the board meeting for one day in that fall of 2005 when the
2 McKinsey report came out. [President of Alticor] Doug [DeVos] and
3 [Chairman of the Board of Alticor] Steve [Van Andel] were in the room
4 with us and the report confirmed what we in the field already knew. People
5 aren't making money, the products are overpriced, and the negative on the
6 web isn't going away....There seems to be an enormous profitability to the
7 [founding] families yet [experienced, high level] Emeralds and Diamonds
8 are selling stuff off and going back to work.

9 52. Members of the IBOAI Board have, on multiple occasions since, requested,
10 in writing, copies of the McKinsey Report. Sharon Grider, legal counsel for Quixtar, has
11 denied the request, stating that no such report exists in writing.

12 53. The founding families hear the complaints and ignore them. To confirm
13 that the founding families, and top tiers of the pyramid, fully understood the problems
14 with Quixtar's product pricing, Orrin Woodward, an IBOAI Board member, sent a follow-
15 up letter to Doug DeVos, explaining that even the wholesale prices were too high and not
16 competitive:

17 Since 1994, I have consistently been in the living rooms of this country
18 representing this business plan to people, an average of 25 times per month.
19 The number one objection I deal with night in and night out is the price of
20 the products. I have repeatedly had people conduct price comparisons on
21 identical products, and we lose *every* time...If you take away signup volume
22 ... we will find that a majority of the IBOs are doing almost no volume.
23 Why won't they even buy products from their own business? The answer is
24 that they cannot reconcile in their own mind the buying of overpriced
25 products. Furthermore, if it doesn't make sense to buy the products at the
26 *wholesale* price, what chance do we have to sell products at *retail*?

27 [Ex. 1, Woodward Aff. ¶¶ 34-39 & Ex. B.]

28 54. The IBOAI knows IBOs are not selling Quixtar products. In a subsequent
presentation to the IBOAI Board, Orrin Woodward stated that the aforementioned letter to
Doug DeVos was his attempt to bring the moral dilemma of knowingly selling over priced

1 products to the upper echelons of Quixtar. "This was an attempt to help with constructive
2 change to improve product pricing and business growth, but actually hurt our working
3 relationship with Quixtar." Not only did Quixtar turn a blind eye to the problem, it
4 shunned criticism.
5

6 55. Unable to persuade Quixtar, Orrin Woodward focused his attention on
7 persuading the IBOAI – the body that represents all IBOs to Quixtar. In a letter sent to all
8 IBOAI Board Members on February 11, 2006, Orrin Woodward stated that everyone,
9 including Quixtar, knows Quixtar's products are overpriced by at least 15%:
10

11 Very few in Quixtar are selling products currently due to Greg's statement
12 at the board meeting of 15% price overage across the board on
13 products....The Quixtar critics began with a simple truth: the products are
14 overpriced. Then they deduced that the systems are used to manipulate
15 people into buying products that they would not normally buy...Since Greg
16 has stated our products are overpriced, we have a moral responsibility to fix
17 this, or else we have given the moral authority to our critics....Let's start
with product pricing since this is where our critics started and where
Quixtar, Board leaders and all IBOs are in agreement.

18 [Ex. 1, Woodward Aff. ¶¶ 41-43 & Ex. C.]

19 56. The IBOs have thus been informing both the IBOAI and Quixtar for years
20 that product pricing is a significant problem for the distributors. Quixtar has also
21 acknowledged the pricing issues with various Board members in multiple meetings.
22 Nonetheless, Quixtar has done nothing to address the problem, but continues to give its
23 usual answer, "We're working on it."
24

25 57. Quixtar has regularly but secretly acknowledged that its products are
26 overpriced and not saleable. On April 3, 2006, Orrin Woodward emailed Rob Davidson,
27 Quixtar's Vice President of Sales and Marketing and Second-in-Charge, and stated, "The
28

1 Team is going crazy with XS and Protein Bars due to competitive price and value. WE
2 NEED MORE COMPETITIVELY PRICED PRODUCTS.” Rob Davidson responded by
3 saying that “we will own the pricing issues of products...”
4

5 58. However, neither Rob Davidson nor Quixtar took any affirmative action to
6 produce saleable products. In early 2007, during a Legal and Ethics Committee meeting,
7 the committee, including Rob Davidson and Sharon Grider, General Counsel for Quixtar,
8 began a discussion of product pricing. The discussion became heated and Rob Davidson
9 exploded, “I got it, I got it, the prices are too expensive! So what are you going to do
10 about it?” [Ex. 9, Brady Aff. ¶¶ 52-55.]
11
12

13 59. President Doug DeVos and Chairman Steve Van Andel recently held a
14 private executive meeting in June 2007. Mr. DeVos conceded what Quixtar and its
15 distributors have known for years: that Quixtar needed to take responsibility and lower the
16 prices of its products to be competitive. Mr. DeVos announced that a new committee was
17 formed to find 15 to 20 inexpensive, marketable, saleable products to sell through Quixtar.
18 Additionally, Mr. DeVos announced that Quixtar would have new retail products in the
19 health and beauty product lines that he promised would be great sellers. All of Quixtar is
20 painfully aware that its products are overly priced and not sellable. After years of
21 prodding, complaining, and begging, Mr. DeVos’s promise holds little hope for the IBOs.
22
23

24 60. It has been widely understood in Quixtar for years that the IBOs buy
25 Quixtar products mostly to earn commissions or bonuses. [Ex. 10, Birtles Aff. ¶ 21; Ex.
26 11, Gregorski Aff. ¶ 49 (conceding “I bought an excessive amount of products to reach a
27 bonus level...”).] On more than one occasion, Quixtar representatives have stated, in the
28

1 presence of Mr. DeVos and Mr. Van Andel, that the company knows IBOs purchase just
2 enough product to qualify for their commission bracket, and then they go to Wal-Mart to
3 purchase the rest of the items they need. Neither Mr. DeVos nor Mr. Van Andel have
4 ever corrected the Quixtar representative.
5

6 61. Quixtar's best efforts fail to produce retailers. In the summer of 2006,
7 Quixtar began a program called "Learning Lab." The function of Learning Lab was to
8 take a group of motivated leaders and give them special training about how to sell the
9 Quixtar products to bona fide customers. The goal was to prove the retailability of the
10 products and to create a successful selling model. This group of people was given all of
11 the tools and support necessary to create an army of distributors who could actually sell
12 the Quixtar products. Results were initially due in October 2006. However, in October,
13 Quixtar stated that the results were still inconclusive and promised the results in February
14 2007. At that meeting, the IBOAI was again informed that there were no results, which
15 Quixtar then promised to reveal the next month. At the March 2007 meeting, there were
16 still no results available. By June 2007, the Board once again requested the results of
17 Learning Lab. Quixtar's response was "what Learning Lab?" Suffice it to say that the
18 Learning Lab program has not succeeded in its stated goal of creating a successful selling
19 model.
20
21
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23

24 62. Quixtar never produced the results because even the most well-trained IBOs
25 cannot retail Quixtar's overpriced products. [See also Ex. 12, Jones Aff. ¶ 49 (stating "I
26 was formerly a salesman and was unable to retail the products").]
27
28

1 **B. The Jay Factor: Profitability Favored In Lieu Of Saleability**

2 63. The reason Quixtar does not price more of its products in line with retail
3 competitors because this practice would cut the profits flowing to Quixtar's founding
4 families.
5

6 64. In March of 2004, Claire Zevalkink, Quixtar's head of marketing, explained
7 Quixtar's product pricing constraints and recognized that the complaints about product
8 pricing have been heard:
9

10 I think you'll be pleased to hear that we have re-examined the XS Sports
11 drink pricing. We agree with the concern raised in Biz Ops that the drink in
12 particular is a sore point if not priced more competitively, especially as we
13 come to recognize the role this XS sports nutrition category can play in
prospecting with new IBOs.

14 Our goal with the sport drink U.S. pricing, was to squeeze everything we
15 could on the pricing end, while still holding a 1:1 BV:IBO cost ratio for
16 IBOs (PV:BV remains at standard approved ratio). We've decreased the
17 IBO cost as much as possible, which quite frankly cuts Quixtar contribution
18 margin almost to break-even. (Please understand that IBO cost typically
needs to cover cost of bonus, landed cost of product, distribution to service
centers, operating overhead, fixed costs, contribution margin.) The result is
a retail much closer to Gatorade's national average.

19 Thus, Quixtar acknowledges that product prices could be greatly reduced and Quixtar's
20 profit margin would still be positive.
21

22 65. The founding families require a margin widely referenced as the "Jay
23 Factor," so named after founder, Jay Van Andel, the person responsible for building into
24 the Quixtar system margin requirements as opposed to volume requirements. It is widely
25 known that the founding families' cut is prioritized above the retail price. Quixtar
26 executives acknowledge that the Jay Factor is currently: cost x 3 = IBO or "wholesale"
27
28

1 price. The IBOAI and most IBOs have realized for years that the Jay Factor must be
2 accounted for in every transaction.

3
4 66. Access manufactures all Quixtar products. Access is owned by Alticor, as
5 are Amway and Quixtar. Alticor is owned by the founding families. The Jay Factor, the
6 profit margin required by the founding families, is actually built into the pricing of the
7 products at the manufacturing level. Rather than allowing Quixtar to determine a viable
8 retail price for the products it sells, Alticor and/or the founding families determine retail
9 prices by roughly tripling Access's production costs for the products that Alticor requires
10 Quixtar to retail.
11

12
13 67. In December 2005 at an Achievers Q-12 event in Dallas, Texas, Billy
14 Florence, then-President of the IBOAI, talked for about an hour to Doug DeVos, President
15 of Alticor and member of the founding families, in the ballroom after the event. Mr.
16 Florence informed Mr. DeVos that Quixtar needed to lower the prices of its products.
17 Earlier that day, Mr. Florence had accompanied Don Wilson and David Vanderveen to
18 Wal-Mart to look at prices. Mr. Vanderveen is an expert in marketing and is co-owner of
19 XS Energy Drink, which is Quixtar's number one product. Mr. Vanderveen stated that
20 Quixtar products had a 3 to 1 markup over manufacturing costs. Mr. Florence explained
21 to Mr. DeVos that the IBOs could not retail a product already priced significantly higher
22 than comparable retail products. Mr. DeVos confirmed that 35% of product pricing is
23 required to cover "field expense." Field expense is all of the IBO payments, bonuses, and
24 trips paid by Quixtar. Mr. Florence offered that the IBOs could be persuaded to receive
25 smaller bonuses, with a reduced PV per item, to help create retail saleability if the
26
27
28

1 founding families would also reduce their margins. Mr. DeVos told Mr. Florence that he
2 would have to look into the matter and revisit the margins required by the founding
3 families. No action was ever taken, presumably because the Jay Factor is fixed.
4

5 68. By January 2006, when Billy Florence was the outgoing President of the
6 IBOAI, Mr. Florence had a conversation with Jim Payne, Quixtar's Managing Director
7 and First-in-Charge, to underscore the reality that the IBOs needed saleable products
8 because Quixtar's current product line was not selling due to pricing. Mr. Payne stated
9 that "this is not the business we are in." Mr. Payne stated that Quixtar was not in "the
10 retail business." Mr. Payne told Mr. Florence that Quixtar would never be able to
11 compete in the retail market because the multi-level marketing system required higher
12 margins. Mr. Florence responded to Mr. Payne that if this was the case, then Quixtar was
13 operating an illegal pyramid scheme. Mr. Payne changed the subject.
14
15

16 **C. Quixtar Advises IBOs To Self Consume Instead Of Retail**
17

18 69. Instead of focusing on reducing prices across the board on products, Quixtar
19 has resorted to marketing the products solely to its distributors. In fact, Quixtar's IBOs
20 have resorted to marketing internal consumption to their downlines. One IBO provided
21 his downline with lists of products they should purchase for their own use in order to turn
22 their home into a "300 PV Home." [Ex. 7, Marks Aff. ¶ 37 & Ex. A.] A "PV" is a point
23 system used by Quixtar to determine distributor bonuses. Quixtar distributors are
24 instructed to not waste their times selling the Quixtar products to retail consumers,
25 because it simply cannot be done.
26
27
28

1 **D. The Nature Of Classic, Illegal Pyramid Schemes**

2 70. An illegal pyramid scheme is characterized by the payment of money to a
3 company in exchange for: a) the right to sell a product, and b) the right to receive rewards
4 for recruiting others to join the scheme, independent from the sale of products to the
5 ultimate users. *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff'd mem.*
6 *sub nom., Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978). Essentially, participants are
7 duped into believing they are buying into a legitimate business opportunity to sell a
8 product but, in reality, the profits are derived almost solely from money advanced by new
9 recruits inducted into the scheme.
10

11
12 71. Since the products are unmarketable to those not participating in Quixtar's
13 comp plan, the sole way to make money, is for an IBO to continually recruit new
14 distributors who are also willing to buy and self-consume, or discard, the Quixtar
15 products. This fact alone renders Quixtar a classic recruitment pyramid scheme.
16

17
18 72. “Like chain letters, pyramid schemes may make money for those at the top
19 of the chain or pyramid, but ‘must end up disappointing those at the bottom who can find
20 no recruits.’” *Webster v. Omnitrition Int’l Inc.*, 79 F.3d 776, 781 (9th Cir. 1996) (quoting
21 *In re Koscot Interplanetary, Inc.*, 86 F.T.C. at 1181). “Pyramid schemes are said to be
22 inherently fraudulent because they must eventually collapse.” *Omnitrition*, 79 F.3d at
23 781, (citing *S.E.C. v. International Loan Network, Inc.*, 968 F.2d 1304, 1309
24 (D.C.Cir.1992)).
25
26
27
28

1 73. In Quixtar, the founding families comprise the top tiers of the pyramid and
2 make great profits at the expense of the bottom of the pyramid. This fact alone explains
3 why they are unwilling reconsider the pricing of Quixtar's line of overpriced products.
4

5 74. The Ninth Circuit has adopted the *Koscot* standard, holding that the
6 "satisfaction of the second element of the *Koscot* test is the *sine qua non* of a pyramid
7 scheme: 'As is apparent, the presence of this second element, recruitment with rewards
8 unrelated to product sales, is nothing more than an elaborate chain letter device in which
9 individuals who pay a valuable consideration with the expectation of recouping it to some
10 degree via recruitment are bound to be disappointed.'" *Omnitrition*, 79 F.3d at 782.
11 "[T]he operation of a pyramid scheme constitutes fraud..." *Id.*
12

13
14 75. The *Omnitrition* test is widely followed throughout the country.
15

16 **E. Quixtar Operates As An Illegal Pyramid Scheme, Violates *Amway***

17 76. In the late 1970s, the Federal Trade Commission ("FTC") began looking at
18 Amway's business model to determine whether it was operating as an illegal pyramid
19 scheme. Because the company was still producing products capable of being sold in the
20 retail market, the FTC ruled in 1979 that Amway was not a pyramid scheme. *In re*
21 *Amway Corp.*, 93 F.T.C. 618 (1979).
22

23 77. The FTC ruled that Amway was not a pyramid scheme because it adopted,
24 and ostensibly enforced, certain rules designed to avoid the *Koscot* characteristics of an
25 illegal pyramid scheme. *Amway*, 93 F.T.C. at *108. The FTC held that Amway and other
26 multi-level marketing companies could avoid the designation of "pyramid scheme" by
27
28

1 adhering to the “initial investment” rule; the “70%” rule; the “buyback” rule; and the “10
2 customer” rule. *Id.* The FTC also stated that Amway had to not only incorporate the rules
3 into its policies, but also had to enforce these rules. Failure to comply with these rules
4 would render Amway an illegal pyramid.
5

6 78. Although the Quixtar company has changed dramatically in the last 25
7 years, it has continued to cloak itself in the legitimacy supposedly conferred by the FTC’s
8 order. Under this shroud, Quixtar has been able to avoid detection of its operation as an
9 illegal pyramid scheme while completely disregarding the rules of both the FTC and the
10 courts.
11

12 79. Today Quixtar does not enforce any of these rules.
13

14 **The Initial Investment Rule**

15 80. Pyramid schemes require an initial payment by a new recruit in exchange
16 for the right to a) sell products, and b) receive rewards for recruiting other participants
17 into the scheme, unrelated to the sale of products to the ultimate user.
18

19 81. In *Amway*, the FTC found that there was no “investment in inventory”
20 required of new distributors. Instead, the FTC found that a new distributor only needed to
21 purchase a sales kit of literature for \$15.60. *Amway*, 93 F.T.C. at *107. Compared to the
22 \$5,000 required in *Koscot*, 86 F.T.C. at 1179; the \$1,950 in *Ger-Ro-Mar, Inc.*, 84 F.T.C.
23 95, 108-10 (1974); and the \$4,500 in *Holiday Magic, Inc.*, 84 F.T.C. 748 (1974), the
24 \$15.60, with a promise of reimbursement if a distributor left Amway, was persuasive
25 evidence to the FTC that Amway was not a pyramid scheme. *Amway*, 93 F.T.C. at *107.
26
27
28

1 82. Today Quixtar's stated initial sign-up fee is \$48.00. In practice, however,
2 new distributors are "encouraged" to make a significant "investment in inventory" at the
3 time they sign up for the business opportunity and within the first year of operating as a
4 Quixtar IBO. Seeking to turn a profit, IBOs inevitably buy products they normally would
5 not buy at prices they normally would not pay in order to ascend the performance charts.
6 It is widely acknowledged by Quixtar that IBOs buy just enough product to "hit their
7 pins." This minimum but functionally necessary product purchase qualifies as an initial
8 investment under *Amway*.
9

10
11 83. In 1996 the Ninth Circuit revisited the rules on pyramid schemes in the
12 *Omnitrition* case. In particular, the Court held that Omnitrition operated as an illegal
13 pyramid scheme because distributors had to purchase and convince three other recruits to
14 purchase a certain amount of product in order to advance or receive any benefit from the
15 system. *Omnitrition*, 79 F.3d at 780. The court elaborated:
16
17

18 A participant must pay a substantial amount of money to Omnitrition in the
19 form of large monthly product orders. In exchange for these purchases, the
20 supervisor receives the right to sell the products and earn compensation
21 based on product orders made by the supervisor's recruits. This
22 compensation is facially 'unrelated to the sale of product to ultimate users'
23 because it is paid based on the suggested retail price of the amount ordered
24 from Omnitrition rather than based on actual sales to consumers. On its
25 face, Omnitrition's program appears to be a pyramid scheme. Omnitrition
26 cannot save itself simply by pointing to the fact that it makes some retail
27 sales.
28

29 *Id.* Quixtar has a similar structure. Distributors can only earn money when they self-
30 consume Quixtar's products and when they recruit new IBOs to do the same. [See
31 generally, Ex. 13, Militello Aff.; Ex. 14, Morgan Aff.; Ex. 15, Powers Aff.; Ex. 16, Paul
32

1 Aff.; Ex. 17, Abraham Aff.; Ex. 18, Darkangelo Aff.; Ex. 19, Cullen Aff.; Ex. 20, Freeze
2 Aff.; Ex. 21, Huber Aff.; Ex. 22, Martin Aff.]

3 4 **The Buyback Rule**

5 84. The FTC described the buyback rule as “Amway, the Direct Distributor or
6 the sponsoring distributor will buy back any unused marketable products from a
7 distributor whose inventory is not moving or who wishes to leave the business... Amway
8 enforces the buy-back rule.” *Amway*, 93 F.T.C. at *26.

9
10 85. Quixtar’s Buy-Back Rule (Rules of Conduct 5.3.6) provides:

11
12 IBOs are required to purchase back from any of their personally registered
13 IBOs who are resigning their IB, upon their request, any unused, currently
14 marketable products and/or currently marketable literature and
15 merchandising or business-building aids...The IBO shall offer to repurchase
16 said products, literature, and merchandising or business-building aids at a
17 price mutually agreeable to the departing IBO.

18 86. Quixtar does not enforce its buyback policy. The very language of
19 Quixtar’s Buy-Back Rule leaves the burden on upline IBOs with more seniority,
20 experience, and knowledge of the process to purchase the products from the more junior
21 IBO for an agreed upon price. The lower level IBO therefore finds himself at the mercy
22 of the upline distributor who has a financial incentive to lowball the buyback rate.

23 87. Moreover, Quixtar’s Buy-Back Rule only applies to resigning IBOs. Should
24 an IBO purchase too much of a product or be generally unhappy with the product, the
25 IBOs ability to obtain a refund is entirely at the discretion of Quixtar: the IBO has no
26 formal recourse. Quixtar’s stated rule does not comply with *Amway*.
27
28

1 88. There is no requirement in the rules that Quixtar itself buyback any product.
2
3 Therefore, there is no guarantee that an IBO who is pushed by his upline to inventory load
4 could return the products. This lack of guarantee violates the *Amway* buyback rule. In
5 practice, most products sold to distributors are never bought back by Quixtar.

6 89. Quixtar violates the buyback rule.
7

8 **The Ten Customer Rule**

9 90. The *Amway* ten customer rule stated that “distributors may not receive a
10 performance bonus unless they prove a sale to each of ten different retail customers during
11 each month...The ten customer rule is enforced by Amway and the Direct Distributors.”
12 *Amway*, 93 F.T.C. at *26. “‘Pyramid’ sales plans based on inventory loading or
13 headhunting fees create an incentive for recruiting rather than selling products to
14 consumers... Amway’s ten customer rule deters inventory loading by sponsoring
15 distributors.” *Id.* at *58.
16
17

18 91. Quixtar’s Member/Client Volume Rule provides:
19

20 In order to obtain the right to earn a Performance Bonus on down-line
21 volume during a given month, an IBO must: (a) make not less than one sale
22 to each of 10 different retail customers (e.g., Members or Clients); or (b)
23 have at least 50 PV of sales to any number of retail customers; or (c) have
24 \$100 at Member/Client Volume Cost. Member/Client Volume Rule Cost
25 shall mean the published IBO cost for all items or any orders sold to a
26 Member or Client, or the actual price paid to Partner Stores by Members or
27 Clients. If applicable, Partner Store member/Client Volume Rule Cost is
28 applied in the month when the Corporation credits Partner Store Volume to
 an IBOs business.

 The Rules of Conduct define the terms “member” and “client” as:

 Member: ‘A registered customer who, for an annual fee, may purchase

1 products and services at preferred pricing and receive other member
2 benefits, including Q-Credits Points.'

3 Client: 'A retail customer who, by being registered with Quixtar, is allowed
4 to purchase directly.'

5 Quixtar's stated rule thus does not even require that IBOs sell products to retail customers
6 who do not participate in the Quixtar bonus plan in order to qualify for a bonus.

7 92. Not only does Quixtar fail to enforce the *Amway* Rule, Quixtar actually
8 approves of the practice that sales to other Quixtar affiliates will qualify a distributor for
9 bonuses. [See generally, Ex. 23, Rau Aff.; Ex. 24, Granger Aff.; Ex. 25, D. Abraham
10 Aff.; Ex. 26, Cuellar Aff.; Ex. 27, Foos Aff.; Ex. 28, Williams Aff.; Ex. 29, Gowen Aff.]
11

12 93. Not only does Quixtar's business plan fail to require its distributors to sell
13 products to "retail" customers, as that term was used by the FTC in *Amway*, Quixtar does
14 not even enforce its own bastardization of the ten customer rule. Rule 4.22 gives
15 distributors three options to meet Quixtar's retail requirement: a) sell products to ten
16 customers, b) sell 50 PV to any number of customers, or c) sell \$100 of product. Nearly
17 all distributors opt for option b, because Quixtar allows distributors to self-report their
18 compliance. [Ex. 9, Brady Aff. ¶¶ 57-60 & Ex. H.]
19
20

21 94. Quixtar does not enforce the FTC's ten customer rule or its own retail sales
22 rule. In an email to Billy Florence and the other IBOAI Board Members, Sherri Brewer, a
23 Quixtar employee, outlines Quixtar's position on the rule:
24

25 One of the first items on your agenda for Monday is discussion of the Retail
26 Sales Rule. We have had numerous discussions with Jody and Billy on this
27 but wanted to bring everyone up to date. These discussions lead to [a]
28 review of several options.

1 We used the attached grid to analyze the effect of the various options.

2 Numbers to remember:

3 Out of approximately 1,000,000 IBOs, 687,000 don't sponsor
4 234,000 sponsor but don't receive a bonus from downline
5 129,000 receive a bonus from downline volume....

6
7 If you follow the left hand side of the grid, we are attempting to measure
8 impact on:

9 the 129,000

10 the 1 million less 129,000

11 Quixtar (programming difficulty/expense)

12 Legal/Regulatory/Image Risk

13 The scale for degree of impact is reflected along the bottom.

14 Please take this opportunity to fill in your opinion of the degree of impact
15 prior to our discussion.

16 We will walk through the grid quickly as a part of our discussion on
17 Monday. We have reviewed the options numerous times and our last go-
around had us leaning toward Option 4.

18 The options referred to by Ms. Brewer include 1) "Status Quo;" 2) "Assume compliance
19 with purchase of 50 PV;" 3) "Assume compliance with purchase of 50 PV + xx (average
20 consumption);" 4) "IBOs with bonus from downline must comply with RSR;" 5)
21 "Provisional IBO;" 6) "Assume compliance for those with bonus from downline + 50 PV
22 in purchases;" and 7) "Everyone complies w/ RSR." From the email, Quixtar was leaning
23 toward option four, that only "IBO's with bonus from downline must comply with RSR."
24 The FTC in *Amway* had option seven in mind: "Everyone complies w/ RSR."
25

26
27 95. Quixtar does not comply with either the FTC's ten customer rule or its own
28 retail sales rule.

1 96. President Doug DeVos himself has stated at IBOAI Board meetings that
2 "Quixtar is an internal consumption company," not a retail sales company.

3
4 97. Quixtar requires its distributors to purchase 100 PV of products to qualify
5 for "Quixtar Business Incentive" bonuses. 100 PV is roughly equal to \$260. A distributor
6 is not required to purchase a minimum quote to qualify for downline bonuses, but these
7 bonuses are determined by the product purchases of the distributor's downline. Thus,
8 because Quixtar's overpriced products are not sellable to anyone except distributors who
9 are buying to qualify for bonuses, Quixtar distributors' earnings are a direct function of
10 how much product they and their downline consume. The more internal consumption and
11 the larger the downline, the higher the bonus. [See generally, Ex. 30, Zentner Aff.; Ex.
12 31, Russell Aff.; Ex. 32, Cordes Aff.; Ex. 33, Mossner Aff.; Ex. 34, Raatz Aff.; Ex. 35,
13 Brandy Aff.] This is how Quixtar has evolved from a sales business into an illegal
14 internal-consumption recruiting pyramid.
15
16

17
18 98. Quixtar is aware of, approves, promotes, and facilitates the systematic
19 noncompliance with the FTC's *Amway* rules. These rules were designed to give a
20 company a concrete way to avoid being deemed an illegal pyramid scheme. Quixtar's
21 cavalier approach to these rules, while advertising the company's legitimacy by flashing
22 the 1979 *Amway* decision, flies in the face of lawful business practices. Quixtar operates
23 an illegal pyramid scheme and has duped countless distributors into a no-win situation at
24 great financial and personal costs.
25
26

27 99. Quixtar recruits people to become distributors, entices them to purchase
28 Quixtar products through materially false statements and omissions, and then distributes

1 the proceeds of product sales to participants based almost exclusively on the participant's
2 recruitment of new victims, rather than on the retail sales of products.
3

4 100. Quixtar requires all of its IBOs to sign an annual renewal agreement that
5 incorporates Quixtar's current Rules of Conduct.
6

7 101. At some midpoint throughout the course of many distributor's contracts,
8 Amway/Quixtar added a provision requiring all distributors to henceforth engage in the
9 company's custom tailored "alternate dispute resolution" (ADR) process.
10

11 102. Quixtar imposed this custom ADR process in response to lawsuits and
12 complaints from distributors. Quixtar's goal with its ADR process was to impose a series
13 of hurdles to its Rules of Conduct to silence grievances, grind down those IBOs not easily
14 silenced with delay and expense, and prevent the justice system from peering into
15 Quixtar's business practices.
16

17 103. Paramount to the dispute resolution procedure is the confidentiality
18 provision, which prevents a distributor from disclosing to any person other than someone
19 directly involved any aspect of the claim, the evidence, or the resolution. This veil of
20 secrecy is important to shield Quixtar from well-deserved legal ramifications.
21

22 104. The first stage of the dispute resolution process is for the IBO to discuss the
23 problem with the alleged offender. Should this step fail, an IBO is required to contact the
24 Business Conduct and Rules Department who will repeat the discussions of step one with
25 both the complaining IBO and the offender. This second step requires that a Hearing
26
27
28

1 Panel meet with both parties and try to mediate the dispute. These two steps are deemed
2 “informal” conciliation. Should they both fail, formal conciliation must proceed.

3
4 105. Formal conciliation requires the complaining IBO to file a Request for
5 Hearing Panel Form (O-5996) with the Business Conduct and Rules Department. Once
6 received, the Department will schedule the matter for the next Hearing Panel session,
7 which is only held three times per year. The complaining IBO is “encouraged” to be
8 present at the session but must pay for his own costs for travel, food, accommodations,
9 and other expenses.

10
11 106. When an IBO confronts the corporation Quixtar, the Arbitration Proceeding
12 is stacked in the corporation’s favor. When this situation arises, the Hearing Panel
13 prepares for the session by reviewing a file developed by Quixtar itself. At the conclusion
14 of the session, the Hearing Panel recommends a resolution to Quixtar. Quixtar will then
15 make a final decision and “may accept, reverse, or modify” the decision of the Panel.

16
17 107. Should this overwhelmingly one-sided conciliation process fail and the
18 complaining IBO still have enough money to proceed, the IBO is required to tee up
19 arbitration. The IBO must file a demand for arbitration, in triplicate, setting forth the
20 names, addresses, and telephone numbers of the parties; state the controversy; detail the
21 amount in controversy; explain the remedy sought; and choose a hearing location. In the
22 meanwhile, the IBO also needs to mail a copy of the demand to each affected party and
23 pay the arbitrator’s fees and expenses. Like the conciliation process, the arbitration is
24 cloaked in secrecy.
25
26
27
28

1 108. Arbitration must be conducted in accordance with Quixtar's Rules of
2 Conduct before a JAMS arbitrator trained, indoctrinated, and hand-selected by Quixtar.
3 The stated duty of the Quixtar arbitrator is to enforce the Rules of Conduct, created by
4 Quixtar.
5

6 109. Should a distributor gain any false confidence that Quixtar's alternate
7 dispute resolution process could ever produce a fair result, the Rules of Conduct give
8 Quixtar the unilateral ability to modify the arbitration provision at anytime. "[T]he
9 corporation reserves to itself the sole right to adopt, amend, modify, supplement or rescind
10 any or all of these Rules." In fact, after one lawsuit, Quixtar added a very expensive
11 alternative to the JAMS trained arbitrator. A complaining IBO may now pay extra for the
12 privilege of arguing before a neutral arbitrator.
13
14

15 110. Quixtar's unilateral right to modify the alternate dispute resolution process
16 makes the arbitration provision substantively unconscionable.
17

18 111. Quixtar's alternate dispute resolution process is expensive, time consuming,
19 and hopelessly tipped in favor of Quixtar. It operates to wear down complaining
20 distributors and avoid the detection of its unlawful business practices.
21

22 112. Furthermore, Quixtar's dispute resolution process only governs Rules
23 violations. Quixtar has not promulgated a Rule of Conduct that prevents itself from
24 operating as an illegal pyramid scheme. Thus, this dispute falls outside of Quixtar's
25 alternate dispute resolution system. Moreover, Quixtar's alternate dispute resolution
26 system is not designed for class actions. There are no provisions in the Rules of Conduct
27
28

1 that could instruct a Quixtar-approved arbitrator to determine for a class of distributors
2 seeking injunctive relief whether Quixtar is operating illegally.

3
4 113. Quixtar's alternate dispute resolution system is inapplicable to this matter.

5
6 114. Noncompetition/nonsolicitation rules enslave consumers. Only three years
7 ago, Quixtar added a noncompetition clause to all of its distributor contracts. The Non-
8 Competition and Anti-Raiding provision prohibits Quixtar IBOs from participating in any
9 other multi-level marketing business or any other enterprise that markets, through
10 independent distributors, products "functionally interchangeable" with those offered by
11 Quixtar. The noncompetition provision has a duration of six months following any
12 voluntary or involuntary termination of an IBO's business. There is no geographical
13 limitation. The nonsolicitation or "Anti-Raiding" portion of the Rule prohibits IBOs from
14 soliciting any other Quixtar IBO from competing with Quixtar, including an IBOs own
15 downline which typically consists of family, friends, and personal contacts that the IBO
16 has recruited into Quixtar through his own efforts, and by virtue of his pre-existing
17 relationships.
18
19

20
21 115. Quixtar enforces the noncompetition rule by providing that any violation of
22 the noncompetition provision will warrant "an award of injunctive relief, including a
23 temporary restraining order and/or a preliminary injunction, specific performance, and
24 damages including costs, attorneys' fees, and disgorgement of all profits made as a result
25 of such unauthorized activity." A violation of any Rule of Conduct, including the
26 noncompetition, will land an IBO in front of the Quixtar conciliator, followed by the
27 Quixtar arbitrator, both sworn to uphold the Rules of Conduct, as created by Quixtar.
28

1 Thus, there is no way for an IBO to avoid the exact punishment drafted by Quixtar as Rule
2 6.5.10.
3

4 116. A Quixtar IBO desiring to leave Quixtar in order to pursue a legitimate
5 multi-level business opportunity (*e.g.* one that does not rely on internal consumption and
6 is not an illegal pyramid scheme) is effectively prevented from doing so by the
7 noncompetition provision, which prevents the IBO from practicing his livelihood for six
8 months; and by the nonsolicitation provision, which prevents the IBO from utilizing his
9 own network of family, friends, and other personal contacts to build a downline if those
10 contacts have been previously used to build the IBO's Quixtar downline.
11

12
13 117. The Quixtar business model is brilliant if you are a member of the DeVos or
14 Van Andel families. Elevate the price of all products to gain an alarmingly high profit
15 margin for the company. Market the company as a business opportunity, promising retail
16 saleability, to get unsuspecting distributors to purchase products at exorbitant prices while
17 investing their time and energies promoting the business opportunity. Offer monetary
18 rewards to incentivize distributors to recruit new distributors who also buy the company's
19 products. Teach all distributors to consume the products that cannot be sold, which is all
20 of the products. Trap the distributors, a.k.a. the consumers, from leaving the company
21 with a noncompetition clause. Penalize those who attempt exodus with heavy-handed
22 sanctions imposed by the only judge in town, Judge Quixtar. In this manner, Quixtar has
23 created an army of IBOs who are effectively trapped in Quixtar's system, forced to buy
24 and consume outrageously priced products, and recruit new victims as the only means of
25
26
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28

1 avoiding financial loss, because leaving Quixtar is rendered impossible by the
2 noncompetition and nonsolicitation rules.

3
4 **F. Class Action Allegations**

5 118. This action is brought by Plaintiffs, pursuant to Federal Rule of Civil
6 Procedure 23, as a class action.

7
8 119. Plaintiffs seek relief on behalf of themselves and a nationwide class of all
9 U.S. citizens who are current Quixtar distributors or are otherwise subject to Quixtar's
10 noncompetition and nonsolicitation rules (the "class"). Excluded from the class are the
11 employees, family members, and affiliates of Quixtar.

12
13 120. The members of the class number in the thousands and joinder of all class
14 members in a single action is impracticable.

15
16 121. There are questions of law and/or fact common to the class, including but
17 not limited to:

- 18
19 a. Whether Quixtar is or was operating an unlawful pyramid scheme;
20
21 b. Whether distributors paid money to Quixtar in exchange for 1) the right
22 to sell a products and 2) the right to receive, in return for recruiting
23 others into the program, rewards unrelated to the sale of the product to
24 retail consumers;
25
26 c. Whether distributors were required to make an initial investment in
27 inventory into the pyramid scheme;
28
d. Whether Quixtar enforced the buy-back rule;

- e. Whether Quixtar enforced the ten customer rule;
- f. Whether Quixtar omitted to inform Plaintiffs and the Plaintiff Class that they were entering into an illegal pyramid scheme where the overwhelming majority of participants lose money;
- g. Whether Quixtar operates illegally;
- h. Whether the Plaintiffs' purpose for entering into the uniform distributor contracts with Quixtar has been frustrated.
- i. Distribution unconscionable.

122. These and other questions of law and/or fact are common to the class, and predominate over any question affecting only individual class members.

123. The Plaintiffs' claims are typical of the claims of the class in that Plaintiffs are distributors for Quixtar and are prevent from leaving Quixtar in favor of pursuing a legitimate multi-level marketing business opportunity due to Quixtar's noncompetition and nonsolicitation rules.

124. The Plaintiffs will fairly and adequately represent the interests of the class in that Plaintiffs' claims are typical of those of the class and Plaintiffs' interests are fully aligned with those of the class. The Plaintiffs have retained counsel who is experienced and skilled in complex class action litigation.

125. Plaintiffs seek to certify a class pursuant to F.R.C.P. 23(b)(1)(B) or 23(b)(2), which provide:

1 (b) CLASS ACTIONS MAINTAINABLE. An action may be maintained as
2 a class action if the prerequisites of subdivision (a) are satisfied, and in
3 addition:

4 (1) the prosecution of separate actions by or against individual members
5 of the class would create a risk of

6 * * *

7 (B) adjudications with respect to individual members of the class which
8 would as a practical matter be dispositive of the interests of the other
9 members not parties to the adjudications or substantially impair or impede
10 their ability to protect their interests; or

11 * * *

12 (2) the party opposing the class has acted or refused to act on grounds
13 generally applicable to the class, thereby making appropriate final injunctive
14 relief or corresponding declaratory relief with respect to the class as a whole

15 126. Class action treatment is superior to the alternatives, if any, for the fair and
16 efficient adjudication of the controversy alleged herein, because such treatment will
17 permit a large number of similarly-situated persons to prosecute their common claims in a
18 single forum simultaneously, efficiently, and without unnecessary duplication of evidence,
19 effort, and expense that numerous individual actions would engender.

20 127. Specifically, as set forth below, Plaintiffs merely seek a determination that
21 Quixtar's uniform distribution contracts, including the noncompetition, arbitration,
22 confidentiality, and data management provisions, are unenforceable as a matter of law.
23 Such a determination can be made on a class-wide basis because Quixtar's distribution
24 contracts are uniform, and the reasons for declaring them unenforceable stem from
25 Quixtar's conduct, not the Plaintiffs' conduct.
26
27
28

1 128. The Plaintiffs know of no difficulty likely to be encountered in the
2 management of this action that would preclude its maintenance as a class action.
3

4 IV. CLAIMS FOR RELIEF

5 FIRST CLAIM FOR RELIEF

6 **Declaratory judgment that Quixtar's uniform distribution contracts, including the**
7 **noncompetition, arbitration, confidentiality, and data management provisions, are**
8 **unenforceable due to illegality**

9 129. Plaintiffs incorporate all prior paragraphs as though fully set forth herein.
10

11 130. Plaintiffs became Quixtar IBOs, and agreed to submit to Quixtar's Rules of
12 Conduct, based on the premise that Quixtar offered a legitimate business opportunity.
13

14 131. In reality, Quixtar is not a legitimate business opportunity because it is
15 operating as an illegal recruitment pyramid scheme.

16 132. Plaintiffs paid money to Quixtar in exchange for a right to a) sell products,
17 and b) receive rewards based upon the recruitment of other distributors, unrelated to the
18 sale of products.
19

20 133. Quixtar violates all of the *Amway* rules established by the FTC to align
21 Amway/Quixtar with lawful business practices. Quixtar knows that it violates the *Amway*
22 rules and has disregarded this fact for years.
23

24 134. The only way to make money in Quixtar is to recruit new distributors
25 because the Quixtar products are not sellable.
26
27
28

1 135. Although on their face the Plaintiffs' distribution contracts may be lawful,
2 the intention of the contracts is to facilitate an unlawful result, *i.e.* to fuel Quixtar's illegal
3 pyramid scheme.
4

5 136. A contract that is lawful on its face but nonetheless is part of a scheme to
6 bring about an unlawful result is unenforceable as a matter of law, as contrary to public
7 policy. *E.g. Homami v. Iranzadi*, 211 Cal.App.3d 1104, 1109, 260 Cal.Rptr. 6, 9 (1989)
8 (a contract "which is made for the purpose of furthering any matter or thing prohibited by
9 statute, or to aid or assist any party therein, is void."); *Meek v. Wilson* 283 Mich. 679,
10 688, 278 N.W. 731, 735 (1938) ("Contracts which tend to bring about results which the
11 law seeks to prevent are unenforceable.").

12
13
14 137. All fifty states in the United States recognize and apply the basic common
15 law rule of refusing to enforce contracts that are designed to bring about an illegal result.
16

17 138. Plaintiffs are effectively trapped by the noncompetition Rule into continued
18 and unwilling participation in Quixtar's illegal pyramid scheme.

19
20 139. Quixtar relies on the noncompetition Rule to perpetuate its illegal pyramid
21 scheme by preventing IBOs from leaving Quixtar for other, legitimate business
22 opportunities.

23
24 140. The fact that Quixtar uses the noncompetition and nonsolicitation provisions
25 of the contracts to effectively force its distributors to continue their participation in an
26 illegal pyramid scheme is particularly repugnant to public policy; so these specific
27 provisions are particularly entitled to be deemed void due to illegality.
28

141. Plaintiffs are entitled to a declaration by the Court that Quixtar is operating as an illegal pyramid scheme and thus the distribution contracts, including the noncompetition and nonsolicitation provisions of the contracts, between Plaintiffs and Quixtar are unenforceable because they are an integral part of an illegal pyramid scheme and contrary to public policy. Plaintiffs are further entitled to preliminary and permanent injunctive relief restraining Quixtar from enforcing its noncompetition and nonsolicitation rules against those IBOs who wish to leave Quixtar.

SECOND CLAIM FOR RELIEF

Declaratory judgment that Quixtar's uniform distribution contracts, including the noncompetition, arbitration, confidentiality, and data management provisions, are unenforceable due to frustration of purpose

142. Plaintiffs incorporate all prior paragraphs as though fully set forth herein.

143. Plaintiffs entered into a uniform distributor contract with Quixtar with the intent to earn money through the presumably legitimate business opportunity offered by Quixtar.

144. Quixtar knows and has known that recruits seek to pursue a legitimate business opportunity through Quixtar, and do not seek to participate in an illegal pyramid scheme.

145. Legitimate sales-based network marketing businesses require participants to sell products to consumers outside of the network for a profit.

146. Quixtar knows, and has known since the *Amway* decision of 1979 that in order for a sales-based network marketing business to be legitimate and not an illegal

1 pyramid, its participants must sell products to consumers outside of the network for a
2 profit.

3
4 147. Quixtar knows, and has known since the *Amway* decision of 1979 that to the
5 extent that the money paid to distributors as commissions or bonuses comes from the
6 distributors themselves through their own purchases and internal consumption of the
7 products, then the network business is merely transferring money from new recruits to
8 older participants, and is therefore operating as a pyramid scheme.

9
10 148. Quixtar knows and has known for years that its products are overpriced, and
11 cannot be sold to consumers outside of the network of Quixtar participants.

12
13 149. Quixtar therefore knew at the time each current distributor signed up or
14 renewed his Quixtar contract that it was not offering the legitimate business opportunity
15 that the distributor expected and was signing up for.

16
17 150. The Plaintiffs' purpose for entering into their uniform Quixtar distributor
18 contracts have been frustrated by Quixtar's decision to secure profits for its founding
19 families by pricing its products so high as to render them unsellable to consumers outside
20 the Quixtar network, a decision that has turned Quixtar from a legitimate network
21 marketing opportunity into an illegal pyramid scheme.

22
23 151. The inability to sell the Quixtar products to retail customers was not
24 reasonably foreseeable at the time the contracts were initially made. The Plaintiffs would
25 not have agreed to participate in the Quixtar network marketing business if they could
26 have foreseen that the business was not capable of operating legitimately due to the
27
28

1 impossibility of selling Quixtar's overpriced products to consumers outside the Quixtar
2 network. Furthermore, the Plaintiffs would not have agreed to participate in Quixtar if
3 they could have foreseen the tactics employed by the company to drastically alter the
4 contract over the renewal periods. Plaintiffs would not have agreed to participate in
5 Quixtar had they known that Quixtar would threaten to take their business away in the
6 event Plaintiffs did not consent to the contractual changes.
7

8
9 152. The inability to sell Quixtar products is not the fault of the Plaintiffs.
10 Quixtar has priced its products well above similar retail products for the purpose of
11 increasing its own profitability. Distributors and members of the IBOAI had tried for
12 years to get Quixtar to change its product pricing so as to improve the ability of
13 distributors to sell products to consumers outside the Quixtar network. No amount of
14 work or complaining on behalf of the Plaintiffs was successful in reducing the price of the
15 Quixtar products or making the products more saleable.
16

17
18 153. Plaintiffs did not assume the risk of being unable to sell the Quixtar
19 products in the contract. The inability to retail Quixtar products is not caused by any lack
20 of effort or skill by Quixtar's distributors, but by Quixtar's unilateral pricing decisions.
21

22 154. The Plaintiffs' distribution contracts are at least partially executory, in that
23 they contemplate an ongoing and future sales relationship between Quixtar and the
24 Plaintiffs, and specifically impose continuing obligations of noncompetition and
25 nonsolicitation.
26
27
28

1 155. To the extent Plaintiffs were even aware of Quixtar's adhesive introduction
2 of the noncompetition and nonsolicitation rules or knowingly consented to such rules,
3 Plaintiffs only did so based on the reasonable belief that Quixtar was offering, and
4 Plaintiffs were entering into, a legitimate and viable network marketing business
5 opportunity.
6

7
8 156. It is now impossible for the Plaintiffs to earn money by legitimately selling
9 Quixtar products. The only way for Plaintiffs to make money is by illegally recruiting
10 new distributors, and earning bonuses on the internal consumption of this downline – a
11 classic illegal pyramid.
12

13 157. The essential purpose of the contracts has been frustrated and Plaintiffs are
14 entitled to have the noncompetition provisions declared unenforceable and voidable.
15

16 158. All fifty states in the United States have similar laws voiding contracts
17 based upon the frustration of purpose present in this case. Common law recognizes that a
18 contract will be deemed unenforceable due to frustration of purpose under these
19 circumstances. *E.g. 20th Century Lites, Inc. v. Goodman*, 64 Cal.App.2d Supp. 938, 941
20 (1944); Restatement of the Law of Contracts, § 288; *Liggett Restaurant Group, Inc. v.*
21 *City of Pontiac*, 260 Mich.App. 127, 134-35 (2003).
22

23 159. Plaintiffs are entitled to a declaratory judgment from this Court stating that
24 the purpose of the Plaintiffs' distribution contracts with Quixtar has been frustrated, and
25 therefore the Plaintiffs' uniform contracts, including the noncompetition, arbitration,
26 confidentiality, and data management provisions of the contracts, with Quixtar are
27
28

1 voidable. Plaintiffs are further entitled to preliminary and permanent injunctive relief
2 restraining Quixtar from enforcing the frustrated contracts with the Plaintiffs, plus such
3 other relief as may be available.
4

5 **V. DEMAND**

6 WHEREFORE, Plaintiffs demand judgment against Defendant Quixtar as follows:
7

- 8 • For a declaration that the distribution contracts between Plaintiffs and Quixtar, and the
9 noncompetition and nonsolicitation provisions in particular, are unenforceable due to
10 illegality and/or frustration of purpose;
- 11 • For a preliminary and permanent injunction restraining Quixtar from enforcing or
12 attempting to enforce the noncompetition and nonsolicitation provisions of the uniform
13 distribution contracts between the Plaintiffs and Quixtar;
- 14 • For recovery of reasonable attorneys' fees and costs incurred in connection with this
15 action; and
- 16 • For such other and further relief as may be available at law or equity, and that the
17 Court deems appropriate.

18 **VI. JURY DEMAND**

19 Plaintiffs demand a jury trial on all issues and claims so triable.
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1 DATED this 9th day of August 2007.

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