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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

Jeff Pokorny and Larry Blenn on behalf of)
 themselves and those similarly situated,)

Plaintiffs,

v.

Quixtar, Inc., et al,

Defendants.

CASE NO. C 07-00201 SC

**DECLARATION OF ROBERT
 FITZPATRICK IN SUPPORT OF
 PLAINTIFFS' OPPOSITIONS TO (1)
 QUIXTAR'S MOTION TO DISMISS OR
 STAY AND COMPEL COMPLIANCE WITH
 DISPUTE RESOLUTION AGREEMENT; (2)
 BRITT DEFENDANTS' MOTION TO
 DISMISS AND COMPEL COMPLIANCE
 WITH DISPUTE RESOLUTION
 AGREEMENT AND JOINDER IN
 DEFENDANT QUIXTAR, INC.'S MOTION
 RE: SAME; AND (3) DEFENDANTS JAMES
 AND GEORGIA PURYEAR AND WORLD
 WIDE GROUP, LLC'S MOTION IN
 SUPPORT OF JOINDER IN QUIXTAR,
 INC.'S AND BRITT'S MOTION TO DISMISS
 OR STAY LITIGATION AND COMPEL
 COMPLIANCE WITH DISPUTE
 RESOLUTION AGREEMENT**

CLASS ACTION

Date: April 27, 2007

Time: 10:00 a.m.

Room: 1, 17th Floor

Judge: Honorable Samuel Conti

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DECLARATION OF ROBERT FITZPATRICK

I, Robert Fitzpatrick, declare under penalty of perjury that the foregoing is true and correct:

1. I write in support of the Plaintiffs' opposition to Defendants' motion to compel compliance with the Defendants' system of Conciliation and Arbitration.

2. I have researched and written about the multi-level marketing business model and the operations of Amway (now called Quixtar in North America) for more than 12 years. I am the co-author of the book, *False Profits*, which has been featured and referenced in newspapers, magazines and in national news shows many times, including an interview on *CBS 60 Minutes* in a 1999 exposé of the multi-level marketing company, International Heritage Inc. International Heritage was sued by the SEC and its founder was criminally prosecuted and convicted of fraud and sentenced to 10 years in prison.

3. I have served as consultant and expert witness in more than a dozen state and federal court cases involving multi-level marketing companies, including Amway and Quixtar. In this capacity, I have been retained by the United States Dept. of Justice and by several state Attorneys General. I organized and serve as president of the first consumer advocacy and education organization, Pyramid Scheme Alert, focused on multi-level marketing and pyramid schemes. I have personally conferred and corresponded with thousands of consumers worldwide who were solicited to join multi-level marketing companies, many in Amway or Quixtar. I have been a featured presenter at the annual conferences of the National Association of Consumer Protection Investigators and the Association of Certified Fraud Specialists on the subject of distinguishing pyramid schemes from legitimate direct selling companies.

4. In 2005, I was invited to speak at an international conference on pyramid schemes attended by central bankers of five South Asian countries and hosted by the Central Bank of Sri Lanka in Colombo, Sri Lanka. I assisted the government of Sri Lanka in writing its first anti-pyramid scheme law. I provided extensive consulting services to the Pan Pacific Direct Selling Institute in China, which assisted the government of the People's Republic of China in writing that country's first law to regulate multi-level marketing. I conduct ongoing research and analysis in this field.

5. I have 25 years experience as a consultant, writer, and analyst of distribution business models and the relationships between suppliers and independent distributors. I served as executive director of distributor trade associations in three industries. I have been the featured speaker at national conferences and provided consulting services to Hewlett Packard, Fuji Film, Epson America, among many others. I currently write monthly columns for two national trade publications addressing trends and dynamics of wholesale distribution models. I have attended annual national conferences of the National Association of Wholesalers and regularly read the professional literature in the field.

6. Based on my analysis of Quixtar and the related Kingpin "tools" business of selling and distributing books, tapes and seminars to Quixtar recruits (IBOs), I characterize the business models of both organizations as pyramid sales schemes that are inherently deceptive, unfair and harmful.

7. To reach this conclusion, among other things, I examined the published data from Quixtar


1 regarding its commission payouts in recent years. Applying this data to a statistical sample of
 2 distributors revealed that 99.4% of the all IBOs earned on average just \$13.41 per week –
 3 before product purchases, all business expenses and taxes. This average income is far less than
 4 the costs of the business, resulting in *99% of victims of Quixtar making no net profit*. Fewer
 5 than 1 person in 10,000 are at the "Diamond and above" levels, the upper ranks of the Quixtar
 6 chain that every new recruit is urged to aspire to. *See Exhibit 1.*

8. The massive loss rates among Quixtar victims that are revealed in Quixtar's own data are
 5 the inevitable mathematical result of the endless chain business model. In this model, the
 6 success of the IBO is based on continuous recruiting of additional distributors (IBOs), who are
 7 induced to make monthly purchases for their own consumption, rather than on making retail
 8 sales in the open marketplace. In the recruitment model, only those participants at the top
 9 levels of the pyramid can earn true profits, since the source of a participant's real income is the
 10 expenditures of individuals below them on the pyramid, and only a small percentage can be in
 11 those top positions. The untenable model results in approximately 70% of IBOs quitting
 12 Quixtar within the first year. The mission of this deceptive business model is to continuously
 13 enroll losing investors (IBOs) and replace them as they suffer losses and quit the program.

9. Millions of ordinary Americans as well as people from many other countries have been
 10 targets of Quixtar's pyramid recruitment campaign. They are lured by claims and promises of a
 11 unique and extraordinary new income opportunity. The complex pay plan that concentrates
 12 commission payment at the top levels of the recruitment chain is seldom understood or even
 13 known by many new recruits. They are uninformed about the loss rates and dropout rates
 14 among distributors (IBOs). Virtually none has knowledge of the profits and ownership patterns
 15 related to the Tools businesses.

10. I have reviewed lists of the participants in the Quixtar Conciliation and Arbitration process,
 11 including the members of the Independent Business Owners Association International and the
 12 members of the Hearing and Disputes Committee. *See Exhibits 2 & 3.* These materials reveal
 13 that many of these participants are high level Quixtar recruiters¹, owners of Kingpin tools
 14 companies, and the primary beneficiaries of the Quixtar business model, which the Plaintiffs
 15 charge is an illegal pyramid scheme. Among the participants in the Quixtar hierarchy I have
 16 learned about in my research of multi-level marketing and who also have official roles in the
 17 Conciliation and Arbitration process are Jody Victor, Don Held, Joe Markiewicz, Randy
 18 Haugen, Don Wilson and Danny Snipes.

19 Dated: April 6, 2007

Signed: 

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21 Robert Fitzpatrick
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27 ¹ Even without formal discovery, a search of corporate records reveals that at least six out of the eight Hearing
 28 Panel members own "tools and function" businesses and eight out of the twenty IBOA International Board
 members own "tools and function" businesses. *See Exhibits 2 and 3.*