

	)	
FEDERAL TRADE COMMISSION, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
EQUINOX INTERNATIONAL CORPORATION, <u>et al.</u> ,	)	
	)	
Defendants.	)	
	)	CV-S-99-0969-JBR-RLH
	)	
GLENN LOWRANCE, ANNETTE REAGOR,	)	ORDER PRELIMINARILY
ANNE KEHLER, MARTIN KEHLER, and	)	APPROVING STIPULATED
LISA FUOG,	)	FINAL JUDGMENT AND
	)	CLASS ACTION
Intervenors,	)	SETTLEMENT AND SETTING
v.	)	FAIRNESS HEARING
	)	
BILL GOULDD, <u>et al.</u> ,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Federal Trade Commission (“FTC” or “Commission”) and the States of Hawaii, Maryland, Nevada, North Carolina, Pennsylvania and South Carolina commenced this action on August 3, 1999, with the filing of a Complaint for Permanent Injunction and Other Equitable Relief and an *Ex Parte* Application for a Temporary Restraining Order (“TRO”) and Other Equitable Relief. The Court entered a TRO with asset freeze and receivership provisions on August 5, 1999. On September 14, 1999 following a three-day hearing, the Court entered an order partially granting the Plaintiffs’ Motion for a Preliminary Injunction. South Carolina withdrew from the action in November 1999. On November 19, 1999, the FTC and the

remaining , state plaintiffs, joined by the states of Michigan, Tennessee and Virginia (collectively “Government Plaintiffs”), filed their First Amended Complaint for Permanent Injunction and Other Equitable Relief.

The First Amended Complaint charges Defendants Equinox International Corporation (“Equinox”), Advanced Marketing Seminars, Inc. (“AMS”), BG Management, Inc. (“BGM”) and Bill Gould (collectively “Defendants”) with violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and violations of State statutes dealing with securities, deceptive trade practices, false advertising, pyramid schemes and licensing requirements. Hawaii Revised Statutes § 485-1 et seq., of the Hawaii Uniform Securities Act; the Maryland Securities Act, Md. Code Ann., Corps. & Ass’ns §§ 11-101 et seq. (1993 Repl. Vol. and Supp. 1999), and the Maryland Multilevel Distribution Companies Law, Md. Code Ann., Bus. Reg. §§ 14-301, et seq. (1998); the Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901 et seq., and the Michigan Franchise Investment Law, Mich. Comp. Laws § 445.1501 et seq., of which the Pyramid Promotion Act, Mich. Comp. Laws § 445.1528, is a part; the Nevada Revised Statutes 598.0915(11), 598.0923(2), 598.110 and 207.171; the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1 et seq., and the North Carolina Pyramid and Chain Schemes Act, N.C. Gen. Stat. § 14-291.1; the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq., as amended; the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 et seq., the Virginia Consumer Protection Act, Va. Code §§ 59.1-196 through 59.1-207, as amended, and the Virginia Pyramid Statute, Va. Code §§ 18.2-239 through 18.2-240.

On January 7, 1997, Intervenor Glenn Lowrance, Annette Reagor, Anne Kehler, Martin Kehler and Lisa Fuog filed a class action against Bill Gould, Equinox, AMS, and Marc Accetta in the district court of Lubbock County, Texas (“Texas court”), alleging claims under the Nevada Deceptive Trade Practices Act and the federal Securities Act of 1933. The Texas court granted Intervenor’s motion for class certification, certifying a class consisting of the following:

All persons and entities (excluding Defendants Equinox International Corporation, Bill Gould, Marc Accetta, and Advanced Marketing Seminars, Inc., any trusts or other entities that Defendants control; and Defendants’ respective officers, directors, and affiliates and members of their immediate families) who became Equinox International Corporation independent distributors between January 1, 1991 and January 7, 1997.

The class action was subsequently dismissed from the Texas court, pursuant to an Agreed Dismissal Order, so that it could be refiled in Clark County, Nevada. On November 12, 1999, the Court granted Intervenor’s motion to intervene in this action and to pursue on behalf of the class the claims alleged in Intervenor’s second amended petition.

On February 11, 2000, the Court entered an order provisionally certifying a non-mandatory class under Fed. R. Civ. P. 23(b)(3). The Court noted therein that such class certification was provisional and that it may be altered or amended at any time before a decision on the merits. The Court also approved the dissemination of class notice. The deadline for opting out of the class was March 31, 2000.

Government Plaintiffs and Intervenor (collectively “Plaintiffs”), and Defendants have agreed to the entry of a Stipulated Final Judgment and Class Action Settlement, the terms of

which are set forth below, to resolve all matters of dispute between them in this action. Based on the extensive record in this case and the Court's familiarity with the dispute between the parties, the Court hereby enters this Order preliminarily to approve the terms of the Stipulated Final Judgment and Class Action Settlement, to schedule a fairness hearing on the Stipulated Final Judgment and Class Action Settlement, and to provide guidance to the parties as to their rights and responsibilities pending the fairness hearing and final approval of the Stipulated Final Judgment and Class Action Settlement.

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**PRELIMINARY APPROVAL OF
STIPULATED FINAL JUDGMENT**

Pursuant to Fed. R. Civ. P. 23(e), the Court finds the terms and conditions of this Stipulated Final Judgment and Class Action Settlement ("Order") to be fundamentally fair, adequate, reasonable and free from collusion. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 - 27 (9th Cir. 1998) (affirming final approval of class settlement); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (affirming final approval of class settlement in pyramid scheme case). The Court therefore preliminarily approves the following terms and conditions of this Order, as to which all parties have agreed.

I. General Terms

- A. This Court has jurisdiction over the subject matter and the parties.
- B. Venue is proper as to all parties in the United States District Court for the District of Nevada.

C. The First Amended Complaint and the Complaint in Intervention filed with leave of the Court on April 19, 2000, state a claim upon which relief may be granted against the Defendants under the acts and statutes set forth above.

D. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

E. Plaintiffs and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them arising from the First Amended Complaint and Intervenors' Complaint in Intervention in this action, up to the date of entry of this Order.

F. Plaintiffs and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Parties agree that nothing herein shall preclude any party from seeking appellate review of any proceeding to enforce this Order, but agree not to challenge or contest, in any manner, the validity of this Order in such a proceeding. Defendants further waive and release any claim they may have against the Plaintiffs, their employees, representatives or agents and the Receiver as of the date of entry of this Order.

G. The Plaintiffs, all members of the class the Intervenors represent, the Receiver and their affiliates, affiliated companies, subsidiaries, employees, servants, officers, directors, agents, attorneys, heirs, personal representatives, predecessors, successors, and assigns, past and present (hereafter collectively referred to as "Plaintiff Releasers"), for and in consideration of the agreements set forth in this Order, the sufficiency of which is hereby acknowledged, do hereby release, acquit, and forever discharge the Defendants and their

affiliates, affiliated companies, subsidiaries, employees, servants, officers, directors, agents, attorneys, heirs, personal representatives, predecessors, successors, and assigns, past and present (hereafter collectively referred to as “Equinox Releasees”), from any and all civil claims, including but not limited to contingent claims, counterclaims, cross-claims, third-party claims, liabilities, demands, losses, judgments, actions, suits, causes of action, accountings, rights, damages, punitive damages, and interests, direct or derivative, nominally or beneficially, possessed or claimed, known or unknown, suspected or unsuspected, choate or inchoate, and whether or not Equinox Releasees or any of them are at fault, that Plaintiff Releasors had, now have, may have at any time in the future, or claim to have or have had and that relate to the causes of action set forth in *Federal Trade Commission, et al., vs. Equinox International Corporation, et al.*, Case No. CV-S-99-0969-JBR-RLH (United States District Court for the District of Nevada), or that could have been set forth in this action, for or by reason of any cause, matter, or thing whatsoever from the beginning of the world through and including the date of this Order.

Any person or entity released by the foregoing may plead this release as a complete defense and bar to any action, claim, or demand brought in contravention hereof.

Each of the undersigned Plaintiff Releasors has entered into this release freely and voluntarily, with no duress or coercion (as those terms are defined by law), after consulting with counsel and receiving counsel’s explanation of each of the terms of the release. The Plaintiff Releasors appreciate and understand the terms of this release.

H. Defendants and their affiliates, affiliated companies, subsidiaries, employees, servants, officers, directors, agents, attorneys, heirs, personal representatives,

predecessors, successors, and assigns, past and present (hereafter collectively referred to as “Equinox Releasors”), for and in consideration of the agreements set forth in this Order, the sufficiency of which is hereby acknowledged, do hereby release, acquit, and forever discharge the Plaintiffs all members of the class the Intervenor represent, the Receiver and their affiliates, affiliated companies, subsidiaries, employees, servants, officers, directors, agents, attorneys, heirs, personal representatives, predecessors, successors, and assigns, past and present (hereafter collectively referred to as “Plaintiff Releasees”), from any and all civil claims, including but not limited to contingent claims, counterclaims, cross claims, third-party claims, liabilities, demands, losses, judgments, actions, suits, causes of action, accountings, rights, damages, punitive damages, and interests, direct or derivative, nominally or beneficially, possessed or claimed, known or unknown, suspected or unsuspected, choate or inchoate, and whether or not Plaintiff Releasees or any of them are at fault, that Equinox Releasors had, now have, may have at any time in the future, or claim to have or have had that relate to the causes of action set forth in *Federal Trade Commission, et al., vs. Equinox International Corporation, et al.*, Case No. CV-S-99-0969-JBR-RLH (United States District Court for the District of Nevada), or that could have been set forth in this action, for or by reason of any cause, matter, or thing whatsoever from the beginning of the world through and including the date of this Order.

Any person or entity released by the foregoing may plead this release as a complete defense and bar to any action, claim, or demand brought in contravention hereof.

Each of the undersigned Equinox Releasors has entered into this release freely and voluntarily, with no duress or coercion (as those terms are defined by law), after consulting with

counsel and receiving counsel's explanation of each of the terms of the release. The Equinox Releasors appreciate and understand the terms of this release.

I. Defendants have agreed that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

J. By entering into this Order, Defendants do not admit liability or wrongdoing.

K. Entry of this Order is in the public interest.

L. The parties agree that this action is appropriate for a mandatory settlement class and that this settlement is fair.

II. Definitions

For the purposes of this Order, the following definitions apply:

A. "Gould" means Bill, also known as William, Gould, individually, and as an officer of the Corporate Defendants. "Corporate Defendants" means Equinox International Corporation, Advanced Marketing Seminars, Inc., BG Management, Inc., their subsidiaries or affiliates, and all other corporations or business entities owned or controlled by any of the Corporate Defendants.

B. "Multi-level marketing program" means any marketing program in which participants pay money to the program promoter in return for which the participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant's downline, tree, cooperative, income center, or

other similar program grouping; (2) sell goods or services; and (3) receive payment or other compensation, in whole or in part, based upon the sales of those in the participant's downline, tree, cooperative, income center or similar program grouping.

C. "Pyramid scheme" means a sales scheme, Ponzi scheme, chain marketing scheme, or other marketing plan or program in which participants pay money or valuable consideration to the company in return for which they receive: (1) the right to sell a product or service; and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of products or services to ultimate users. For the purposes of this definition, "sale of products or services to ultimate users" does not include sales to other participants or recruits in the multi-level marketing program or to participants' own accounts.

D. "Assets" means all real and personal property of any Defendant or held for the benefit of any Defendant, or in which any Defendant has any legal or equitable interest, or right or claim to, including all assets held by any Related Entities as defined in Subsection II.E , below, including but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

E. "Related Entities" means all entities related to any Defendant, of whatever form, including but not limited to, corporations, proprietorships, trusts, partnerships, limited partnerships or limited liability companies that hold any assets for or for the benefit of any Defendant. These entities specifically include, but are not limited to: (1) the Bill Gould 1994 Living Trust; (2) JLS Services, Inc.; (3) the Bill Gould Charitable Remainder Trust; (4) Cashco, FLP; (5) Eagle Aircraft Services, FLP; (6) Four Seasons Adventures, FLP; (7) Pure Water, FLP;

(8) Rocky Mountain Holdings, FLP; (9) Royal Palms Holdings, FLP; (10) AMSCO Holdings, FLP; (11) Summit Multi-Media, FLP; (12) International Purity Corp.; (13) IP, FLP; (14) Four Seasons Adventures, LLC; (15) Franco, LLC; (16) Patcor, LLC; (17) EQ Futures, LLC; (18) Pure Water, LLC; (19) Rocky Mountain Holdings, LLC; (20) AMSCO Holdings, LLC; (21) Summit Multi-Media, LLC; (22) Royal Holdings, LLC; (23) Sandhill, LLC; and (24) Stellar Communications.

F. “Receiver” means Robb Evans, the receiver previously appointed by the Court in this matter as a Temporary Receiver over the Corporate Defendants, and appointed as a Full Equity Receiver by the Court in this Order.

G. “Receivership Estate” includes all assets of the Corporate Defendants and all Related Entities, as well as all current assets of Gould, except as specifically provided for in Section VIII, below.

III. Permanent Ban

IT IS ORDERED that Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from engaging, participating or assisting in any manner or capacity whatsoever, directly, or in concert with others, individually or through any business entity or other device, in any multi-level marketing program or pyramid scheme in which any Defendant engages, participates or assists, including, but not limited to, the advertising, promotion, offering for sale, or sale of, or the provision of services to or for any such multi-level marketing program or pyramid scheme.

IV. Securities Ban in Maryland and Hawaii

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from promoting, offering or selling securities in the State of Maryland or the State of Hawaii, as defined by those respective States' securities acts, provided, however, that Gould, may offer and sell securities on his own behalf and can participate in a registered public offering of any company with which he is involved directly or indirectly as a minority owner. In order to participate in a registered public offering of any company with which Gould is involved directly or indirectly as a majority owner, this Order shall be fully disclosed in the company's offering materials and such offering otherwise will comply with state and federal securities laws. Gould may petition the State of Maryland or the State of Hawaii to modify or waive this disclosure requirement.

V. Prohibited Representations

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, offering for sale, sale, or distribution of any multi-level marketing program or pyramid scheme, the Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from making or assisting in the making of, expressly or by implication, directly or indirectly, orally or in writing, any false or misleading statement or misrepresentation of material fact, including but not limited to, the following:

A. Any false or misleading representation about the potential earnings or income derived from such activity;

B. Any false or misleading representation about the benefits any person participating in such an activity actually can receive from such activity;

C. Any false or misleading representation about the amount of sales a person actually made or can potentially make through such activity; and

D. Any false or misleading hypothetical earnings claims.

VI. Advertising Prohibition in Nevada

IT IS FURTHER ORDERED that, within the State of Nevada, Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from advertising under the guise of obtaining sales personnel when in fact their purpose is to sell goods or services.

VII. Prohibition Against Providing Means and Instrumentalities

IT IS FURTHER ORDERED that, in connection with the advertising, promoting, offering for sale, sale, or distribution of any multi-level marketing program or pyramid scheme, the Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from providing to others the means and instrumentalities with which to make, expressly or by implication, orally or in writing, any false or misleading representations of material fact.

VIII. Monetary Judgment and Redress

IT IS FURTHER ORDERED that:

A. Except as set forth in Subsection VIII.B below, Defendants and Related Entities shall within one week of the date of the entry of this Order transfer, assign, turn over or otherwise convey or shall cause the transfer, assignment, turn over, or other conveyance of title, ownership and control of all assets as the term assets is defined herein to Robb Evans, the Full Equity Receiver appointed by this Order.

B. Notwithstanding the provisions of Subsection VIII.A above, Gould shall be entitled to retain the following from the assets referred to in Subsection VIII.A above: (1) one home at 6064 NW 31st Way, Boca Raton, Florida, at which Gould's former spouse currently resides; (2) Gould's tenancy-in-common interest in a home at 6122 NW 31st Court, Boca Raton, Florida, at which Gould's former significant other resides; (3) reasonable household furnishings in such homes listed in Subsection VIII.B. (1) & (2) above, no such single furnishing to exceed \$5,000 in value, provided that Gould shall provide a list of such household furnishings to the Receiver within 30 days of this Order; (4) any interest attributable to Gould in the IRC Section 419A(f)(6) Welfare Benefit Trust established by and for the benefit of the employees of BGM; (5) one 1997 yellow Range Rover; (6) debentures of Sandhill Capital; (7) one watch not to exceed approximately \$11,000 in value; (8) Gould's clothing; and (9) personal effects not to exceed \$50,000 in value, provided that Gould shall provide a list of such personal

effects to the Receiver within 30 days of this Order. As used in this Section the term “value” shall mean fair market value.

C. Plaintiffs’ agreement to file a satisfaction of judgment with respect to Gould upon Defendants’ fulfillment of the provisions of this Subsection VIII.C is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial affidavits required by Subsection VIII.E of this Paragraph and related documents that were submitted to Plaintiffs reflecting Defendants’ financial condition. These documents contain material information upon which Plaintiffs relied in negotiating and agreeing to this Order. If, upon motion by any Plaintiff, this Court finds that any Defendant has failed to disclose any material asset in the financial statements and related documents described above, or has made any other material misstatement or omission in the financial statements and related documents described above, the Court shall enter an order requiring transfer of any unreported assets to the Receiver.

D. All distributor agreements are hereby rescinded and declared void *ab initio*.

E. Defendants have agreed to complete a sworn financial affidavit in the form attached hereto as Appendix A listing all assets, as defined herein, of all Defendants or any related entity, and submit a copy to the Court and to Plaintiffs within ten (10) days after the filing of this Order with the Court.

F. Gould shall have thirty (30) days to vacate his residence at 765 Lake Drive, Boca Raton, Florida, and to determine the personal effects he desires to keep pursuant to Subsection VIII.B(9).

IX. Appointment of a Permanent Receiver

IT IS FURTHER ORDERED that Robb Evans is appointed as permanent Receiver, with the full power of an equity receiver, for the Corporate Defendants and Related entities (hereinafter “Receivership Entities”), and of all assets to be transferred, assigned, turned over or otherwise conveyed pursuant to Subsection VIII.A & Section XIII, with directions and authority to accomplish the following:

A. Assume and maintain full control of the Receivership Entities, by among other things, removing Gould and any other officer, employee, independent contractor, or agent of the Corporate Defendants, from control and management of the affairs of the Receivership Entities.

B. Suspend the operation of the Receivership Entities, including terminating all sales and promotional efforts, in order to prepare for the liquidation and dissolution of the Receivership Entities.

C. Collect, marshal, maintain and take custody, control, and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of, the Receivership Entities, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Entities, with full power to:

collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of the Receivership Entities and purchasers of the Corporate Defendants' programs, goods, and services whose interests are now held by or under the direction, possession, custody, or control of the Receivership Entities.

D. Perform all acts necessary to protect, conserve, preserve, and prevent from waste or dissipation the funds, property, premises, accounts, and other assets of the Receivership Entities in order to insure that funds are available to provide restitution to purchasers of the Corporate Defendants' programs, goods or services, including members of the class defined below.

E. Enter into agreements in connection with administration of the Receivership, including, but not limited to: (1) the retention and employment of managers, agents, investigators, attorneys or accountants of the Receiver's choice, including, without limitation, members and employees of the Receiver's firm, to assist, advise, and represent the Receiver; (2) the movement and storage of any equipment, furniture, records, files or other physical property of the Receivership Entities; and (3) the retention of auctioneers or other professionals to assist in the liquidation of the Receivership Entities' assets.

F. Subject to the releases set forth above in Subsections I., G. & H. institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in

state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or increase the value of the Receivership estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, and likewise to defend, compromise, or adjust or otherwise dispose of any and all actions or proceedings instituted against the Receiver or the Receivership Entities that the Receiver deems necessary and advisable to preserve the properties of the Receivership Entities or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order.

G. Liquidate assets of the Receivership Entities and all assets transferred to the Receiver in accordance with the terms of this Order or any prior or subsequent order of this Court; and to transfer Receivership property to storage facilities, cancel leases, and to terminate and enter contracts. Neither Defendants nor the Receiver shall convey any proprietary rights to the names "Equinox" or "Equinox International Corporation."

H. Execute all bills of sale and deeds to personal and real property belonging to or coming into possession of the Receiver or the Receivership Entities.

I. Prepare and submit periodic reports, as necessary, to this Court and to the Plaintiffs, describing the Receiver's efforts to comply with the terms of this Order, and recommendations of any additional action required by this Court to ensure that the funds, property, premises, accounts and other assets of Receivership Entities are preserved in order to provide restitution to purchasers of Corporate Defendants' programs, goods or services including members of the class defined below and any other claimants as may be approved by the Court.

J. To maximize the amount of funds available for consumer redress, formulate (in consultation with the Plaintiffs) a plan for distribution of the assets of the Receivership estate to consumers who sent money to the Corporate Defendants in connection with purchasing the Corporate Defendants' programs, goods, or services, including members of the class (defined below). The final distribution plan shall be approved by the Court. The Plaintiffs shall have the opportunity to object to or comment upon any distribution plan proposed by the Receiver or to the payment of funds to any person or entity pursuant to such plan.

K. The Receiver and those he employs are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the costs of actual out-of-pocket expenses incurred by them, including ordinary and necessary expenses incurred by the Receivership for professional and other services, from the assets now held by or in the possession or control of the Receiver or the Receivership Entities without the need for Court approval and such payments shall have priority over all other distributions from Receivership assets. The Receiver shall report to the Court periodically on these expenses and submit to the Court requests for payment of his own expenses.

L. The Receiver shall maintain with the Clerk of this Court a bond in the sum of \$50,000 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

M. The Receiver shall employ all employees of the Corporate Defendants (other than officers) for at least two weeks from the date that this Order is submitted to the Court.

The Receiver may employ any of the Corporate Defendants' employees (including officers) for a longer period if the Receiver believes that such employment would assist him in the fulfillment of his responsibilities. The Receiver shall pay all employees of the Corporate Defendants (other than officers) for one-third of their unused PTO (paid time off), up to but not to exceed one week of PTO, provided, however, that if the Corporate Defendants are legally obligated to pay employees, including officers, for additional PTO time, the Receiver shall honor this legal obligation. The Receiver shall provide all employees of the Corporate Defendants, including officers, with current health benefits for one month from the date this Order is submitted to this Court, and the Receiver shall honor any legal obligation of Defendants under COBRA. All employees of Defendants (including officers) shall retain the proceeds of their 401K plans, and the Receiver shall take all reasonable steps to provide a mechanism for the employees to roll over such proceeds into another plan without adverse tax consequences. The Receiver shall allow management of the Corporate Defendants a reasonable opportunity to inform the employees of the Corporate Defendants and the independent distributors of Equinox of the provisions of this Order.

N. The Receiver shall maintain a repository of documents (including computer records) in the possession of Equinox and shall provide access to such documents to Gould as Gould reasonably finds necessary to protect his interests in legal proceedings. All documents in the possession of Defendants that are protected by the attorney-client privilege or the work product doctrine shall be separately maintained by the Receiver in files marked "Confidential – Attorney-Client Privilege; Work Product." The Receiver shall not disclose such

documents to third parties and shall not waive the attorney-client privilege or the work product doctrine, except that the Receiver may use such documents relating to assets to determine whether Defendants have hidden assets, and in the event that the Receiver determines that the Defendants have hidden assets, the Receiver may openly use such documents related to any hidden assets.

O. The Receiver assumes all obligations (other than tort liabilities and liabilities related to any and all claims and actions containing allegations substantially similar to those of the Plaintiffs in this action) of Gould relating to any and all assets, Corporate Defendants, and Related Entities that have been transferred to the Receiver, and agrees to indemnify and hold harmless Gould from any claims, legal fees or expenses arising from such obligations. This indemnification is limited to the assets of the Receivership Estate. For the purposes of this Subsection, the term “obligations” includes, but is not limited to, federal, state and local tax obligations that arise by virtue of possession, ownership, use or sale of any asset by the Receiver. The parties expressly agree that the Receiver shall not be personally liable for any claims, legal fees or expenses arising from the aforementioned obligations.

X. Winding Up Receivership Entities

IT IS FURTHER ORDERED that the Receiver shall liquidate all assets of the Receivership Entities, wind up all activities and operations of the Receivership Entities, and prepare to dissolve the Receivership Entities. The Receivership assets and proceeds of liquidation shall be held and maintained pending final approval of this Order and the formulation

and implementation of a plan to resolve all claims that accrued against the Receivership Entities prior to entry of this Order, and to distribute those assets, as provided in Paragraph IX.J. Defendants shall have no right to contest the manner or plan of distribution chosen by the Plaintiffs, or the Receiver, or approved by the Court.

XI. Termination of Receivership

IT IS FURTHER ORDERED that, after a final distribution plan is approved and implemented, the Receiver shall file his final report. The Receiver's final report and request for fees and expenses shall be served upon the parties through counsel. Plaintiffs may object to the Receiver's request for fees and expenses within 15 days of receipt, but Defendants shall have no right to object to the Receiver's request for fees and expenses. Upon entry of the Court's Order for Final Payment, the Receivership shall terminate.

XII. Cooperation with Receiver

IT IS FURTHER ORDERED that Gould shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the Receivership against third parties; (B) assisting the Receiver in defending any and all actions or claims brought against the Receivership by third parties; and (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Order.

XIII. Turnover to Receiver

IT IS FURTHER ORDERED that, except as provided for in section VIII above, within thirty days upon them, Gould and any other person or entity served with a copy of this Order, if they have

not done so already, deliver to the Receiver: (A) possession and custody of all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the Receivership Entities; (B) all stock, ownership, legal, beneficial, or other interests that they hold in the Receivership Entities; (C) possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers of the Receivership Entities; (D) possession and custody of all funds and other assets belonging to members of the public now held by the Receivership Entities; (E) all keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects of the Receivership Entities; (F) all monies in any financial institutions deposited to the credit of the Receivership Entities, wherever situated; and (G) information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Entities. The turn over requirements set forth in this section do not delay the obligation of the Defendants or the Related Entities to comply with the turn over obligations in Subsection VIII.A.

XIV. Lifting of Asset Freeze

IT IS FURTHER ORDERED that the freeze against the assets of the Defendants pursuant to the Preliminary Injunction entered by this Court on September 14, 1999, shall be lifted to the extent necessary for the transfer of assets to the Receiver required by Subsection VIII.A. & Section XIII of this Order and upon compliance with those requirements, shall be lifted permanently.

XV. Transfer of Customer Lists

IT IS FURTHER ORDERED that the Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who has paid any money to any Defendant at any time prior to entry of this Order, in connection with the Corporate Defendants' programs, goods or services; *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by law or regulation, including the limited disclosures required by the Franchise Rule, or court order.

XVI. Acknowledgement of Receipt of Order

IT IS FURTHER ORDERED that within five (5) business days of receipt of the Order as entered by the Court, Gould shall submit to the Plaintiffs a truthful sworn statement, in the form shown on Appendix B, that shall acknowledge the receipt of the Order.

XVII. Compliance Reporting by Defendants

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years after the date of entry of this Order, Gould shall notify the Government Plaintiffs in writing of the following:

1. Any changes in his residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

2. Any changes in his employment status (including self-employment), within ten (10) days of such change. Such notice shall include the name and address of each business that Gould is affiliated with or employed by, a statement of the nature of the business, and a statement of Gould's duties and responsibilities in connection with the business or employment;

B. Upon written request by a representative of any Government Plaintiff, Defendants shall produce documents on thirty (30) days' written notice with respect to any conduct that is subject to this Order;

C. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC with reference to *Equinox et al.*, District Court of Nevada, CV-S-99-0969-JBR-RLH, X990077 and mail them to:

Associate Director
Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

The FTC shall make such written notifications available to any State Plaintiff upon request;

D. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" includes any individual or entity for whom Gould performs services as an employee, consultant, or independent contractor; and

E. For purposes of the compliance reporting required by this Section, the Government Plaintiffs are authorized to communicate directly with Gould. For the purposes of this Order, Plaintiffs shall mail all notices to Gould at his home address.

XVIII. Indemnification of Claims

The Receivership estate agrees to indemnify and hold harmless Gould from any and all claims and actions containing allegations substantially similar to those of the Plaintiffs, including but not limited to the Nowakowski and Trek cases, that have been or hereinafter are brought against Gould arising out of his official duties with any of the Corporate Defendants. This indemnity provision covers legal fees, liabilities, expenses and any settlement amounts. The dollar amount of this indemnity shall in no event exceed \$300,000 regardless of the number of the covered claims and actions. This indemnity shall remain in place and funds shall be reserved for three years, or for the duration of the Receivership, whichever is longer. Nothing in this Section requires the Receiver to assert defenses on Gould's behalf that are inconsistent with Plaintiffs' claims in this action; provided however, that the Receiver shall be required to reimburse Gould for legal fees and expenses incurred asserting such defenses up to the limit of this indemnity.

XIX. Authority to Monitor Compliance

IT IS FURTHER ORDERED that the Plaintiffs are authorized to monitor Defendants' compliance with this Order by all lawful means, in the case of the Commission, including but not limited to the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendants have violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable

rule or regulation promulgated and enforced by the Commission, including the Franchise Rule, 16 C.F.R. § 436.

XX. Costs and Fees

IT IS FURTHER ORDERED that the Receiver shall pay plaintiff states and Intervenor for their reasonable costs and fees upon application to and approval by the Court. Intervenor's application shall be governed by the common fund doctrine. See Hanlon v. Chrysler Corp., 150 F.3d at 1029; Torrise v. Tucson Elec. Power Co., 8 F.3d 1370, 1376-77 (9th Cir. 1993).

XXI. Retention of Jurisdiction

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

XXII. Final Judgment and Order

The parties hereby consent to entry of the foregoing Order which, upon final approval, shall constitute a final judgment and order in this matter.

AMENDMENT OF CLASS DEFINITION AND APPROVAL OF MANDATORY SETTLEMENT CLASS

Pursuant to Fed. R. Civ. P. 23(c)(1), the Court hereby amends the definition of the class and certifies the following class:

All persons and entities (excluding Equinox International Corporation, Bill Gould, BG Management, Inc., Advanced Marketing Seminars, Inc., and any trusts or other entities that they control) who have ever been or are now Equinox International Corporation independent distributors (including but not limited to in the United States, Mexico, or Taiwan but excluding distributors who received a total of \$150,000 or more in bonuses and rebates).

For the reasons set forth in the Court's Order of February 11, 2000, the Court finds that this class meets the requirements of Fed. R. Civ. P. 23(a).

Furthermore, based on the extensive record in this case, the Court finds that the class meets the requirements of Fed. R. Civ. P. 23(b)(1). In particular, the prosecution of equitable claims by individual members of the class, including claims for the rescission of their distributorship agreements, would create a risk of "inconsistent or varying adjudications . . . which would establish incompatible standards of conduct" for Defendants. Fed. R. Civ. P. 23(b)(1)(A). Moreover, the limited funds available for distribution to members of the class, the role of the Receiver and creation of the Receivership Estate, and the winding up of the Corporate Defendants contemplated by this Order "would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests." *Id.* 23(b)(1)(B); see Ortiz v. Fibreboard Corp., 119 S. Ct. 2295 (1999) (discussing criteria for mandatory settlement class in "limited fund" cases).

**SCHEDULING OF FAIRNESS HEARING
ON THE PROPOSED ENTRY OF FINAL JUDGEMENT**

The Court hereby sets a fairness hearing on the terms of this settlement and the final judgment for May ____, 2000. Any objections to the terms of this Stipulated Final Judgment and Class Action Settlement must be submitted to the Court in writing by May ____, 2000. Pursuant to Fed. R. Civ. P. 23(d), the Court hereby directs class counsel to distribute notice of the fairness hearing and the proposed entry of final judgment, in a form agreed upon by all parties, advising all members of the class of the terms of the proposed settlement and Intervenors' application for an award of attorney's fees and reimbursement of expenses, their

rights to present written objections to the proposed settlement and Intervenor's application, and the fairness hearing. This notice shall be distributed by first-class mail to the last-known addresses of all members of the class and by publication notice in one weekday edition of USA Today. Funds necessary for the printing, publication, and dissemination of the notice shall be provided by the Receiver.

In the event that this settlement is not finally approved by the Court, any assets transferred pursuant to this Order shall be returned forthwith, subject to the provisions of the Preliminary Injunction.

SO ORDERED.

Signed this _____ day of April 2000.

Johnnie B. Rawlinson
United States District Judge

STIPULATED AND AGREED:

Bill Gould

EQUINOX INTERNATIONAL CORPORATION

By: Bill Gould, CEO

ADVANCED MARKETING SEMINARS, INC.

By:

BG MANAGEMENT, INC.

By:

FOR THE DEFENDANTS

By: Daniel F. Katz, Esq.
Philip A. Sechler, Esq.
Robert A. Cary, Esq.
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Counsel for Defendants

FEDERAL TRADE COMMISSION
DEBRA A. VALENTINE
General Counsel

JENNIFER M. GRANHOLM
Attorney General of Michigan

By: David C. Fix
Frank M. Gorman
Gary L. Ivens
Lawrence Hodapp
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W., Room 238
Washington, D.C. 20580

By: Katharyn Barron
Assistant Attorney General
P.O. Box 30213
G. Mennen Williams Blds.
525 W. Ottawa Street, Suite 60
Lansing, MI 48913

J. JOSEPH CURRAN, JR.
Attorney General of Maryland
MELANIE SENTER LUBIN
Maryland Securities Commissioner

MICHAEL F. EASLEY
Attorney General of North Carolina

By: Dale E. Cantone
Assistant Attorney General
200 Saint Paul Place
Baltimore, MD 21202-2020

By: Kristine Lanning
Assistant Attorney General
114 West Edenton Street
P.O. Box 629
Raleigh, NC 27602

BENJAMIN CAYETANO, Governor
State of Hawaii
RYAN S. USHIJIMA
Commissioner of Securities

FRANKIE SUE DEL PAPA
Attorney General of Nevada

By: Dean A. Soma, Attorney
Securities Enforcement Unit
250 South King Street, Suite 400
Honolulu, HI 96813

By: Tracey Brierly
Deputy Attorney General
555 E. Washington, Ave., #3900
Las Vegas, Nevada 98101

MARK L. EARLEY
Attorney General of Virginia

PAUL G. SUMMERS
Attorney General and Reporter of Tennessee

By: Gregory C. Fleming
Assistant Attorney General
900 E. Main Street
Richmond, VA 23219

By: Jennifer L. Rawls
Assistant Attorney General
425 5th Avenue, 2nd Floor
Nashville, TN 37243

D. MICHAEL FISHER
Attorney General of Pennsylvania

By: J.P. McGowan
Senior Deputy Attorney General
Bureau of Consumer Protection
214 Samter Building
101 Penn Avenue
Scranton, PA 18503

INTERVENORS

By: Barry C. Barnett
Susman Godfrey, L.L.P.
901 Main Street, Suite 4100
Dallas, TX 75202
Counsel for Intervenors

RECEIVER

Robb Evans

RECEIVED
APR 20 2 22 PM '00

LETTER AGREEMENT

Re: *FTC, et al. v. Equinox International Corporation, et al.*,
CV-S-99-0969-JBR-RLH

This Agreement sets forth the understanding between the Plaintiffs and the Intervenor, on the one hand, and Defendant Bill Gould on the other hand, with respect to the agreed upon return of capital to Gould pursuant to the terms set forth in the Order Preliminarily Approving Stipulated Final Judgment and Class Action Settlement and Setting Fairness Hearing in the above-referenced matter. Government plaintiffs have authorized David C. Fix to sign this letter on their behalf.

It is agreed that in addition to the two Florida homes, reasonable household furnishings in such homes (no single furnishing to exceed \$5,000 in value), one 1997 Range Rover, debentures in Sand Hill Capital, one wristwatch not to exceed approximately \$11,000 in value, and Gould's clothing and other personal effects not to exceed \$50,000 in value, Gould will receive one hundred percent of any interest attributable to Bill Gould in the IRC § 419A(f)(6) Welfare Benefit Trust established by and for the benefit of the employees of BG Management, Inc. (hereafter "§ 419 Trust") up to a limit of \$8,000,000 cash net of all costs, expenses, taxes, and fees of every type and nature whatsoever. It is understood by the parties to this agreement that immediately after the Receiver takes ownership and control of BG Management, Inc. the § 419 Trust will be reduced to cash, and that Gould is entitled to receive when that event occurs a total of \$8,000,000 cash net of all costs, expenses, taxes and fees of every type and nature whatsoever that are incurred as a result of reducing the § 419 Trust to cash. The Receiver and Gould agree that the Receiver shall take all reasonable steps necessary to insure that the § 419 Trust yields the maximum amount of cash. In the event that the § 419 Trust yields less than \$8,000,000 cash to Gould net of all costs, expenses, taxes, and fees of every type and nature whatsoever, the parties agree that the Receiver shall return additional capital to Gould, as soon as practicable, so that Gould receives \$8,000,000 cash net of all costs, expenses, taxes and fees of every type and nature whatsoever. If reducing the § 419 Trust to cash yields more than \$8,000,000 cash to Gould net of all costs, expenses, taxes and fees of every type and nature whatsoever, the Receivership estate will receive any such amount in excess of \$8,000,000.

At Gould's request, the Receiver shall advance to Gould against the proceeds from the § 419 Trust \$200,000 within seventy-two (72) hours of Gould's compliance with Subsection VIII A of the Order Preliminarily Approving Stipulated Final Judgment and Class Action Settlement and Setting Fairness Hearing, and an additional \$200,000 per month until Gould receives the proceeds from the cashing out of the § 419 Trust. The amount of any advances shall be deducted from the \$8,000,000 payment net of all costs, expenses, taxes, and fees of every type and nature whatsoever that Gould is to receive as set forth above.

Johnnie B. Rawlinson -4/20/00

Johnnie B. Rawlinson
United States District Judge

FEDERAL TRADE COMMISSION
DEBRA A. VALENTINE
General Counsel

David C. Fix

By: David C. Fix, Esq.
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., N.W., Room 238
Washington, D.C. 20580

INTERVENORS

Barry C. Barnett

By: Barry C. Barnett, Esq.
Susman Godfrey, L.L.P.
901 Main Street, Suite 4100
Dallas, TX 75202

RECEIVER

DEFENDANT
BILL GOULDD

Kenton Johnson, Deputy to the Receiver
for Robb Evans

Robert M. Cary
By: Robert Cary, Esq.
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005