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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION, STATE OF HAWAII, MARYLAND SECURITIES COMMISSIONER, STATE OF NEVADA, STATE OF NORTH CAROLINA, COMMONWEALTH OF PENNSYLVANIA, and STATE OF SOUTH CAROLINA,

Plaintiffs.

v.

EQUINOX INTERNATIONAL CORP., ADVANCED MARKETING SEMINARS, INC., BG MANAGEMENT, INC., and WILLIAM GOULDD

Defendants.

CV-S-99 0969-JBR (RI.H)

ORDER

U.S. 70

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U.S. DISTRICT COURT
DISTRICT OF NEVADA

On August 3, 1999, the Federal Trade Commission ("FTC") filed a complaint against Defendants Equinox International, Advanced Marketing Seminars, BG Management (jointly referred to hereinafter as "Equinox") and William Gould (founder and owner of Equinox). The complaint alleges that Equinox is a "multi level marketing" company operating as a pyramid scheme which makes false and misleading statements that constitute deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act (the "FTC Act," 15 U.S.C. § 45(a)). The FTC also filed an application for an ex-parte temporary restraining order (#6) preventing Defendants from further deceptive practices, freezing assets, preventing the destruction of records, allowing the FTC to review records, and appointing a temporary receiver.

1 On August 5, 1999, this Court entered the Temporary Restraining Order (#17) and
2 scheduled a hearing for a preliminary injunction. At the hearing, the parties stipulated to extending
3 the Temporary Restraining Order with modifications until September 1, 1999 when an evidentiary
4 hearing on a preliminary injunction could be held. Equinox filed an opposition (#38) to the FTC's
5 motion for a preliminary injunction, to which the FTC replied (#43).

6 At the evidentiary hearing, all parties were represented by counsel. After
7 considering all the pleadings and material on file with the Court, the evidence presented at the
8 hearing and the arguments of counsel, the Court makes its preliminary findings of fact and
9 conclusions of law.

10 PRELIMINARY FINDINGS OF FACT

11 Equinox is a "multi level marketing" company that sells water filters, air filters,
12 nutritional supplements, and other assorted health care products. Gould is the founder and owner
13 of Equinox. Equinox distributes products by recruiting distributors, who in turn sponsor other
14 distributors. Recruited distributors are referred to as the "downline" while sponsoring distributors
15 are referred to as the "upline." Distributors achieve different levels in Equinox when they, with
16 their downline, purchase a certain volume of product from Equinox for a one month period. The
17 following (from lowest to highest) are the six levels achievable: Representative, Manager,
18 Supervisor, Director, Executive Director ("ED") and International Marketing Director ("IMD").

19 Becoming a Representative requires very little investment. A distributor becomes
20 a Manager when he and certain portions of his downline purchase ("Group Purchase") \$5000 of
21 Equinox product in a one month period. He becomes a Supervisor with Group Purchase of \$10,000
22 in a two-month period. Director status is achieved with a Group Purchase of \$20,000 in a one
23 month period. A distributor becomes an ED with a Group Purchase of \$100,000 in a one month
24 period. To become an IMD, a distributor must make a Group Purchase of \$500,000.

25 Distributors are also entitled to bonuses and rebates depending on the amount of
26 product they purchase from Equinox ("Personal Purchases") from Equinox and the purchases of a

1 certain portion of their downline. Equinox refers to Personal Purchases as Personal Sales Volume
2 and purchases by certain portions of the downline as Group Sales Volume. The percentage paid in
3 rebates and bonuses, however, does not depend on actual sales by distributors and their downline
4 but only on the amount purchased from Equinox. To receive rebates, distributors must personally
5 purchase \$100 in product from Equinox per month. To receive a bonus, the distributor must be
6 "qualified," i.e. meet a certain minimum purchase quota during the month. Depending on the
7 amount purchased, Representatives receive 0% - 15% rebate on Personal Purchases and the
8 products other Representatives they sponsor purchase from Equinox ("Group Purchases").

9 Managers that purchase \$100 in product from Equinox receive 20% rebate on their
10 Personal Purchases and a rebate calculated as the difference between 20% of the Group Purchases
11 and the rebate percentage that those representatives making up the Group Purchases received.
12 Qualified Managers, Managers with \$100 in Personal Purchases and \$1000 in Group Purchases per
13 month, also receive 3% bonus on their Personal Purchases, Group Purchases, and three downline
14 generations of the Group and Personal Purchases of the managers sponsored under them

15 Supervisors, Directors, EDs, and IMDs also receive the same rebates as managers.
16 When distributors meet the minimum personal and group purchase quota for each of these levels,
17 qualified distributors are entitled to a bonus for that level which is defined as a certain percentage
18 (3 - 10%) of their Personal Purchases and the purchases of a portion of their downline. Also at each
19 level, the distributor is entitled to the bonuses of the lower levels, provided he meets the minimum
20 purchase requirements to be qualified for that level.

21 If a distributor does not meet his Personal and Group purchase quotas, he does not
22 receive the bonus. The bonus is paid to the first qualifying distributor above him in the organization.
23 As the quotas are difficult to meet, only a small percentage of Equinox distributors obtain bonuses.

24 Equinox encourages its distributors to recruit other distributors by placing classified
25 advertisements in the help wanted section of the newspaper. The advertisements imply that either
26 a salaried or a commissioned position is being offered. Most advertisements do not indicate that

1 such positions may require a cash investment. Recruits that respond to the advertisements are
2 scheduled for a job interview. Instead of being interviewed, recruits are subject to a sales
3 presentation presenting the "Equinox Opportunity." Recruits that seem receptive are pressured to
4 quickly purchase \$5,000 worth of product so they can enter as Managers, even if the recruit has to
5 borrow the money. Recruits are told that Equinox will provide evidence that the recruit has been
6 given a job with a monthly salary of \$3,000 - \$ 4,000 / month to facilitate the loan process

7 To become a distributor, recruits are required to sign a Representative Application
8 and Agreement. New distributors are usually given little chance to review the agreement because
9 the sponsor explains which spaces are to be filled in before distributors have an opportunity to read
10 the agreement. In the representative agreement, a new distributor certifies that he is bound to the
11 attached terms, conditions, policies and procedures. Many times, however, the terms, conditions,
12 policies and procedures have been removed from the representative agreement before new
13 distributors sign the representative agreement. Often, new distributors are unaware of the policies
14 and procedures to which they are supposedly agreeing. Equinox has no method of verifying that
15 the policies and procedures were included with the representative agreement signed by new
16 distributors.

17 New distributors are then pressured to lease desk space from Equinox for \$300 -
18 \$500 per month, to subscribe to a phone line, and pay for advertisements so the new distributor can
19 sponsor others. All recruiting is tightly scripted by Equinox and Gould due to the extensive
20 seminars promoted by Equinox and conducted by Gould or by another person approved by Gould.

21 Distributors are encouraged to attend seminars conducted by Gould or other upper
22 management at a cost to distributors of \$300 to \$2,500 per seminar. They are told that through
23 Equinox, they can achieve fabulous wealth like Gould, the founder of Equinox, if they continue
24 to attend seminars. At these seminars and during recruitment, the Equinox compensation package
25 is described using hypothetical geometric examples which unrealistically describe the probable
26

1 amount of compensation to be expected and the number of persons that can be reasonably be
2 recruited.

3 Equinox stresses that money is made by recruiting and not by retail sales.
4 Distributors are told that such wealth can only be achieved if they choose to purchase large amounts
5 of product each month so that they can move up the various levels as quickly as possible. As a
6 result, distributors frequently purchase a large inventory of Equinox products that they are unable
7 to sell.

8 Distributors during seminars are told that the average "qualified" manager makes
9 \$600/month, average "qualified" supervisor \$1600/month, average "qualified" director
10 \$3,800/month, the average "qualified" ED makes \$9,700/month and the average "qualified" IMD
11 makes \$25,000/month. Distributors, however, are not informed in these seminars that "qualified"
12 means those distributors that meet their monthly quotas. Distributors are also not informed that
13 only a small percentage of distributors are "qualified." Equinox does not inform distributors that
14 many Equinox distributors lose thousands of dollars each month as a result of unsold product that
15 has been purchased, desk leases, phone costs, and other expenses that Equinox encourages
16 distributors to incur.

17 The Equinox Manual, which is sold to each new distributor, does indicate that to be
18 qualified the distributor must meet monthly quotas. New distributors, however, are not encouraged
19 to read the Equinox Manual but to use it only as a reference if the need arises.

20 Equinox has three policies which were ostensibly implemented to encourage retail
21 sales and prevent distributors from buying product just to meet sales quotas (referred to as
22 "loading"). First, Equinox's policies limit the amount of product that a distributor may purchase.
23 Equinox's policies provide that distributors must certify that they have sold 70% of the previously
24 ordered product before purchasing additional product (the "70% Rule"). New distributors also are
25 limited to purchasing no more than \$5000 worth of product per month. Second, to obtain bonuses,
26 distributors are required to certify that they have made sales to six retail customers in the past month

1 (the "Receipt Rule"). Equinox conducts random verification checks of the receipts submitted.
2 Third, Equinox has a refund policy for distributors that resign. Equinox refunds 90% for products
3 that are unopened and have not been certified as sold under the 70% Rule, less bonuses and rebates
4 paid to the distributor on the product returned.

5 The policies ostensibly adopted by Equinox to encourage retail sales are not effective.
6 Distributors may circumvent the \$5000 limitation by purchasing product on behalf of their
7 downline, who are often family members. Equinox, in fact, encourages such purchases so
8 distributors can achieve the Supervisor level or higher in a one month period. The 70% Rule is at
9 best loosely enforced. Orders are placed by phone without requiring an express certification that
10 70% of the previously purchased product had been sold. Equinox relies on the implication that if
11 a distributor places a new order for product, the distributor is tacitly certifying that 70% of the
12 previous product has been sold. There was evidence that in some instances, the 70% certifications
13 were even forged or falsified.

14 Distributors can satisfy the Receipt Rule by purchasing very inexpensive products
15 which can be bought for less than \$10.00, even though the distributor's inventory maybe principally
16 composed of expensive products which can be priced at more than \$1000.00. Distributors are told
17 that the bonuses and rebates they receive are worth purchasing six inexpensive products. While
18 Equinox randomly reviews certain retail receipts supplied by distributors, Equinox's reviews
19 provide little assurance that retail sales are being made and do not verify that the retail sales are
20 typical of the inventory purchased by that distributor.

21 Distributors can only request refunds by making a toll telephone call. Often,
22 distributors are placed on hold for long periods and are required to make several phone calls before
23 Equinox will allow the distributor to return product. Last year Equinox provided over \$7.5 million
24 in refunds. Equinox, however, does not keep records on the number or amount of refunds that were
25 denied.

26

1 **ANALYSIS**

2 The FTC seeks a preliminary injunction preventing Defendants from further
3 deceptive practices in violation of the FTC Act, 15 U.S.C. § 45(a). The FTC also seeks to freeze
4 the assets of Equinox and Gould, prevent the destruction of records, permit the FTC to review
5 records, and appoint a temporary receiver over Equinox. In *FTC v. Affordable Media*, 179 F.3d
6 1128, 1233 (9th Cir. 1999), the Ninth Circuit held that "Section 13(b) of the [FTC] Act allows a
7 district court to grant the [FTC] a preliminary injunction upon a proper showing that, weighing the
8 equities and considering the [FTC's] likelihood of ultimate success, such action would be in the
9 public interest." Citing 15 U.S.C. § 53(h). "Section 13(b), therefore, places a lighter burden on
10 the [FTC] than that imposed on private litigants by the traditional equity standard; the [FTC] need
11 not show irreparable harm to obtain a preliminary injunction." *Id.* "Under this more lenient
12 standard, a court must 1) determine the likelihood that the [FTC] will ultimately succeed on the
13 merits and 2) balance the equities." *Id.* The FTC, however, may only seek a preliminary
14 injunction when it believes a person "is violating, or is about to violate" any law enforced by the
15 FTC. *FTC v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985). The FTC cannot base its
16 request for injunction relief on evidence of past violations without a showing that those violations
17 are likely to recur. *Id.*

18 The preliminary injunction analysis is also proper to determining whether a receiver
19 should be appointed or assets should be frozen in FTC cases alleging deceptive practices. *See FTC*
20 *v. American Nat. Cellular*, 810 F.2d 1511, 1512-1514 (1987). A district court's power to supervise
21 an equity receivership and to determine the appropriate action to be taken in the administration of
22 the receivership is extremely broad. *Securities Exch. Comm'n v. Hardy*, 803 F.2d 1034, 1037 (9th

23
24
25 ¹ Equinox argues that irreparable harm must be shown before a preliminary injunction may
26 issue. Even if that were the case, this Court would find that continued deceptive practices by
Defendants would constitute irreparable harm.

1 Cir.1986). The primary purpose of equity receiverships is to promote orderly and efficient
2 administration of the receivership by the district court for the benefit of creditors. *Id.* at 1038.

3 **Likelihood of Success on the Merits**

4 Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or
5 affecting commerce." 15 U.S.C. § 45(a). Deception is found "if there is a representation, omission
6 or practice that is likely to mislead the consumer acting reasonably in the circumstances."
7 *Southwest Sunstree, Inc. v. FTC*, 785 F.2d 1431, 1435 (9th Cir. 1986) cert. denied, 479 U.S. 828
8 (1986). In *Webster v. Omnitrition International*, 79 F.3d 776, 781 (9th Cir. 1996), the Ninth
9 Circuit found that pyramid schemes are "inherently fraudulent because they must eventually collapse
10 after making money for those at the top of the pyramid, but disappointing those at the bottom who
11 can find no recruits."

12 The test for determining what constitutes a pyramid scheme is "the payment by
13 participants of money to the company in return for which they receive (1) the right to sell a product
14 and (2) the right to receive in return for recruiting other participants into the program rewards
15 which are unrelated to sale of the product to ultimate users." *Id.* Equinox likely satisfies both
16 elements of this test.

17 "The 'payment of money' element of a pyramid scheme can be met where the
18 participant is required to purchase 'non-returnable' inventory in order to receive the full benefits
19 of the program."² *Id.* at 782. In order to participate in rebates, which rewards distributors not only
20 based on their purchases but also on purchases of those they sponsor, Representatives must purchase
21 \$100 of product a month. Managers require a significantly greater investment to receive rebates
22 and bonus on their personal purchases and on the purchases of those they recruit. Managers must
23 also personally purchase \$100 of product per month to receive their rebates and bonuses. To
24 become a Manager, however, distributors and the Representatives they sponsor must purchase

25 _____
26 ²Equinox argues that its refund policy makes the product purchased "returnable." This
argument will be addressed below in the Court's discussion of Equinox's Amway defenses.

1 \$5,000 of product in a one month period. To continue to receive bonuses, Managers with the
2 Representatives they sponsor must purchase \$1000 of product a month. Because Equinox pressures
3 new distributors to enter at least the Manager level and new distributors have no downline,
4 distributors who enter as Managers personally purchase the initial \$5000 in product and the monthly
5 quota in order to receive the rebates and bonuses.

6 Equinox, in its recruitment and training seminars, emphasizes the promise of
7 lucrative rewards for recruiting others. Distributors are given unrealistic hypothetical examples that
8 their profits will increase geometrically if distributors focus on recruitment rather than retail sales.
9 Equinox's video presentations and certain materials provided by Equinox contain disclaimers as to
10 the amount of profits obtainable. These disclaimers, however, are difficult to read, do not
11 accurately indicate the actual amount of earnings that can be expected and do not immunize
12 Equinox's exaggerated claims of income. *Removatron International Corp. v. FTC*, 884 F.2d 1489,
13 1497 (1st Cir. 1989) (disclaimers or qualifications in any particular advertisement are not adequate
14 to avoid liability for deceptive advertising unless they are sufficiently prominent and unambiguous
15 to change apparent meaning of claims and to leave accurate impression). Additionally, Managers
16 are encouraged to sell the product they purchase to new recruits rather than to end users. Rebates
17 and bonuses, the primary compensation emphasized by Equinox, are facially unrelated to sales to
18 the ultimate user but are based on purchases made from Equinox by the distributor and his
19 downline. In short, distributors rewards are received by purchasing product and recruiting others
20 to do the same.

21 Equinox relies on *In re Amway Corp.*, 93 F.T.C. 618 (1979) to rebut any finding that
22 it is a pyramid scheme. In *Amway*, the FTC found that Amway was not a pyramid scheme because
23 it instituted the following policies: (1) participants must sell at wholesale or retail 70% of the
24 products bought in a given month in order to receive bonuses for that month; (2) participants must
25 submit proof of retail sales made to ten different customers; and (3) participants must buy back from
26 any person they recruit any salable, unsold inventory upon the recruit leaving Amway. *Id.* at 716.

1 Equinox argues that its formal adoption of policies similar to Amway's was sufficient to prevent a
2 finding that it was a pyramid scheme as a matter of law.

3 In *Omnivision*, however, the Ninth Circuit held that the implementation of policies
4 that would prevent a program from being a pyramid scheme do not insulate the program unless the
5 policies are enforced and actually serve to deter inventory loading (making purchase quotas solely
6 to receive the bonuses and rebates without reselling the product to an end user) and encourage retail
7 sales. 79 F.3d at 783. The policies adopted by Equinox are not adequately enforced and do not
8 have the required effect. Often, distributors are not even aware of Equinox's policies. Policies that
9 are attached to representative agreements that distributors are required to sign are removed before
10 the distributor signs the agreement. Distributors are also discouraged from reading the Equinox
11 Manual which contain Equinox's policies and only use the manual as a reference guide.

12 Equinox requires distributors to certify that 70% of the previously purchased product
13 has been sold or consumed before allowing distributors to purchase more product. Equinox,
14 however, does not enforce this rule. Evidence presented at the hearing indicated that distributors
15 are allowed to make orders by phone directly from Equinox without any mention of certification.
16 When a distributor orders additional product, Equinox merely infers that the distributor is certifying
17 that 70% previous product purchased had been sold. Evidence also indicated that Equinox, despite
18 its written policies to the contrary, allowed and/or encouraged distributors to falsify or forge at least
19 some of the written certifications that were made. Because Equinox's 70 % Rule is not effectively
20 enforced, it does not actually serve to prevent inventory loading.

21 Additionally, distributors can satisfy the 70% Rule by consuming the product
22 themselves or by selling the product to their own downline.³ Equinox does not require certification
23 in order to receive rebates and bonuses. Amway's 70% Rule provides that bonuses may be withheld
24

25 ³Equinox, in its policies, acknowledges that such sales do not constitute retail sales because
26 products opened by the distributor are not entitled to any refund, whereas retail customers are
entitled to 30 day money back guaranty if not satisfied.

1 for product not certified as sold. Rebates and bonuses paid by Equinox are therefore less likely to
2 be tied to sales to the retail customers.

3 Equinox's policies do require that distributors make retail sales to six customers per
4 month and send copies of the retail receipts to Equinox in order to obtain bonuses. Equinox also
5 produced evidence that it randomly checks to verify that the receipts are genuine. In *Omnitrition*,
6 however, the Ninth Circuit found that requiring evidence of sale to ten retail customers did not
7 clearly serve to tie the amount of bonuses to retail sales. 79 F.3d at 783. Here, Equinox only
8 requires retail sales to six customers instead of ten. Additionally, distributors can satisfy the
9 Receipt Rule by purchasing very inexpensive products, even though the distributor's inventory may
10 be principally composed of expensive products. Equinox Receipt Rule is therefore less likely than
11 the rule in *Omnitrition* to tie the amount of bonuses to retail sales. Further, this Court is not
12 convinced that Equinox's audit procedures effectively deter forged or falsified receipts.

13 Equinox does have a refund policy. Equinox, however, only refunds 90% of the
14 price of the product which is less than Amway refunded in the case considered by the Ninth Circuit.
15 See *Omnitrition*, 79 F.3d at 783. Distributors that enter as Managers and purchase \$5000 in
16 product are effectively paying \$500 for the right to participate in the Equinox opportunity.

17 Equinox's refund policy also does not effectively prevent the evil of inventory
18 loading. In *Omnitrition*, the Ninth Circuit found that a refund policy "is only effective if it can
19 reduce or eliminate the possibility of inventory loading by insuring that program participants do not
20 find themselves saddled with thousands of dollars worth of unsaleable product." 79 F.3d 784
21 Distributors that want to resign are saddled with the majority of their inventory because Equinox
22 refuses to allow the return of product that was certified as sold under the 70% Rule. Equinox infers
23 that distributors certify that 70% of previous product purchased had been sold when distributors
24 order additional product. Consequently, when a distributor orders any additional product, 70% of
25 his previous order becomes automatically unreturnable. As written and applied, the 70% Rule
26 becomes a sword for Equinox to deny refunds, instead of a shield to protect distributors from

1 inventory loading. If a distributor entered as a Manager, placed a \$100 order the next month to
2 remain active but decided to resign in the third month, the resigning Manager would be saddled with
3 \$3,500 worth of unrefundable product. While Equinox issued \$7.5 million in refunds last year,
4 Equinox does not keep records on refunds denied due to the 70% Rule or for other reasons.
5 Equinox therefore cannot show the actual extent to which it repurchased product from disappointed
6 distributors. The facts before the Court, therefore, provide an inference that a majority of product
7 sold to Equinox distributors is unrefundable.

8 Equinox argues that its refund policy is superior to the Amway policy discussed in
9 *Omnirrition* because Equinox provides the refunds directly whereas Amway requires the departing
10 distributor to seek a refund from his upline before Amway will issue a refund. Under Amway's
11 refund policy, the downline of the departing distributor is given to the upline distributor, who
12 provides a refund. Additionally, if Amway issues a refund, Amway charges the account of the first
13 Direct Distributor (one of the levels in Amway). By requiring the upline to provide the refund,
14 sponsoring distributors are deterred from pushing unrealistically large amounts of inventory onto
15 the sponsored distributor in order to increase bonuses. Equinox, however, has no effective check
16 to prevent sponsors from pushing huge inventories on their downline so as to increase their rebates
17 and bonuses.

18 Because Equinox satisfies the test of a pyramid scheme and its policies do not
19 effectively promote retail sales while preventing inventory loading, the Equinox program will likely
20 be found an unfair or deceptive practice in violation of the FTC Act, 15 U.S.C. § 45(a), using the
21 *Omnirrition* analysis.

22 Equinox misrepresented distributorships as salaried or commissioned positions
23 without disclosing that the "positions" require a financial investment. Equinox also misrepresented
24 the amount of potential earning an Equinox distributor can expect and failed to disclose that the vast
25 majority of Equinox distributors do not qualify for rebates and bonuses. Such misrepresentations
26 will also likely constitute an unfair or deceptive practice in violation of the FTC Act, 15 U.S.C. §

1 45(a). *Southwest Sunsites*, 785 F.2d at 1435 (deception is found if there is a representation,
2 omission or practice that is likely to mislead the consumer acting reasonably in the circumstances).
3 *Affordable Media*, 179 F.3d at 1234-36 (misrepresenting the amount an investment is likely to
4 return is a deceptive practice)

5 Equinox asserts that it can no longer be subject to a preliminary injunction based on
6 the aforementioned misrepresentations because Equinox no longer makes such misrepresentations.
7 Equinox argues the evidence provided by the FTC was over two years old and that any
8 misrepresentations in recruiting or in amounts earned were made by independent distributors,
9 contrary to Equinox's current policies. Even if that were true, Equinox previously taught its
10 distributors to use such misrepresentation, now profits from the use of those misrepresentations,
11 knows that its distributors continue to make such misrepresentations, and has done little to prevent
12 distributors from currently making the misrepresentations. Equinox cannot therefore shield itself
13 from liability merely by arguing that current misrepresentations are made by independent
14 contractors. See *Affordable Media*, 179 F.3d at 1235-36 (reckless indifference to deceptive
15 practices by independent sales office supported granting a preliminary injunction for a violation of
16 Section 5(a) of the FTC Act); *Consumer Sales Corp. v. FTC*, 198 F.2d 404, 406-07 (2nd Cir. 1952)
17 (by furnishing independent salesmen with deceptive information, defendants actively encouraged
18 and participated in a deceptive practice in violation of Section 5(a) of the FTC Act regardless of the
19 salesmen's status as independent contractors).

20 Mr. Goulded will also likely be found subject to liability for the aforementioned
21 deceptive practices. In *Affordable Media*, the Ninth Circuit held that "[i]ndividuals are personally
22 liable for restitution for corporate misconduct if they had knowledge that the corporation or one of
23 its agents engaged in dishonest or fraudulent conduct, that the misrepresentations were the type upon
24 which a reasonable and prudent person would rely, and that consumer injury resulted." 179 F.3d
25 at 1234 (citation and quotation omitted). "The knowledge requirement can be satisfied by showing
26 that the individuals had actual knowledge of material misrepresentations, were recklessly indifferent

1 to the truth or falsity of a misrepresentation, or had an awareness of a high probability of fraud
2 along with an intentional avoidance of the truth." *Id.* The FTC, however, "is not required to show
3 that a defendant intended to defraud consumers in order to hold that individual personally liable."
4 *Id.* Mr. Gould, as the founder of Equinox, was intimately connected with the creation of
5 Equinox's compensation plan and was aware that the program encouraged inventory loading at the
6 expense of retail sales. Mr. Gould was also well aware that the return policy was designed to
7 burden unwary distributors with unreturnable product. Mr. Gould, who scripted most of the
8 Equinox training and was a model for other Equinox distributors, encouraged distributors to
9 overstate the average earnings of Equinox distributors and had approved use of recruitment
10 advertisements designed to mislead potential recruits. The FTC will therefore likely succeed in
11 holding Mr. Gould liable for Equinox's deceptive practices.

12 **Balance of the Equities**

13 In *Affordable Media*, the Ninth Circuit held that "when a district court balances the
14 hardships of the public interest against a private interest, the public interest should receive greater
15 weight." 179 F.3d at 1236. The public interest is in preserving the illicit proceeds obtained by
16 deceptive practices in order to provide restitution to the victims. As the Court has found that
17 Equinox and Gould have likely engaged in deceptive practices, asset preservation is a prime
18 concern. The public also has an interest in preventing further deceptive practices by Equinox and
19 Gould. Because this Court will tailor the injunction to address the harms Equinox may have
20 caused and will allow the release of money to pay expenses that are actual, ordinary and necessary,
21 the public interest outweighs any private interest of Equinox. Accordingly,

22 **IT IS ORDERED** that the FTC's motion for a Preliminary Injunction is
23 **PARTIALLY GRANTED.**

24 **IT IS FURTHER ORDERED** that Defendants Equinox International, Advanced
25 Marketing Seminars, BG Management and William Gould, each of them and their successors,
26 assigns, officers, agents, servants, and employees and those persons in active concert or

1 participation with them whether acting directly or through any corporation, subsidiary, division or
 2 other device, are preliminarily enjoined from operating a pyramid scheme or in any other way
 3 violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Specifically, that Defendants shall cease
 4 and desist from:

5 A. any and all representations as to income levels of Equinox distributors,
 6 except as provided for in this order, including but not limited to any hypothetical
 7 income levels from the purchase of product and services by a distributor's downline
 8 or recruits, the income levels that distributors, potential distributors, or any person
 9 may achieve as an Equinox distributor, or the income level of current or past
 10 Equinox distributors.

11 B. any and all representations that distributors or potential distributors of
 12 Equinox may or will receive compensation related to recruitment.

13 C. any and all representations of a high likelihood of success in selling
 14 Equinox's products.

15 D. failing to disclose, in a clear and conspicuous manner, before accepting
 16 a representative application or fulfilling an initial order the monetary commitment
 17 required to run an Equinox distributorship and other typical expenses made by
 18 Equinox distributors including but not limited to monthly desk rental, monthly
 19 telephone costs, monthly advertising costs, and training seminar costs.

20 E. failing to disclose, in a clear and conspicuous manner, before accepting
 21 a representative application or fulfilling an initial order the number of Active
 22 Equinox Distributors (those that have made purchases in the last twelve months) in
 23 the distributor's geographic area and the percentage of Active Equinox Distributors
 24 that are presently qualified to receive rebates and bonuses from Equinox.

1 F failing to require Equinox distributors to refrain from representations
2 found in the above paragraphs A - C and to provide the disclosures found in the
3 above paragraphs D - E.

4 G failing to provide to a distributor terminating his Equinox distributorship
5 a 100% refund, less rebates and bonuses paid to the distributor based on the product
6 being returned, for all undamaged products with the tamper proof seals intact
7 purchased from Equinox and received by the distributor within the proceeding
8 twelve month period without regard to any previous representations, express or
9 implied, that the product had been previously sold by the distributor

10 H. failing to provide a toll-free telephone number for the purpose of
11 arranging and processing distributor refunds

12 IT IS FURTHER ORDERED Defendants shall develop recruitment advertisements
13 that are not deceptive or misleading, approved by the Temporary Receiver hereinafter appointed,
14 which Defendants shall require as the only advertisements that Equinox distributors may use

15 IT IS FURTHER ORDERED Defendants shall amend the Terms and Conditions and
16 Supplemental Terms and Conditions attached to Equinox's current Representative Application and
17 Agreement to reflect the changes to Equinox's policies ordered by the Court in a form approved
18 by the Temporary Receiver hereinafter appointed. Each term and condition shall be initialed by
19 all new distributors before Equinox will process any orders from that distributor.

20 IT IS FURTHER ORDERED Defendants shall use its best efforts to notify Equinox
21 distributors about the changes to Equinox's policies ordered by this Court including posting such
22 information on Equinox's world wide web page, and informing distributors through Equinox's
23 meetings, conference calls, seminars and newsletters.

24 IT IS FURTHER ORDERED, to insure that funds are available to provide restitution
25 to the victims of any deceptive practices that may have resulted from Defendants acts or practices,
26 the Court appoints Roh Evans as temporary receiver (the "Temporary Receiver") for Defendants

1 and of all the funds, properties, premises, accounts and other assets directly or indirectly owned,
2 beneficially or otherwise by Defendants, with direction and authority to prevent the dissipation of
3 assets. The Temporary Receiver is to specifically,

4 A. Collect, marshal, take custody, control and possession of all funds
5 property, premises, accounts and other assets, owned beneficially or otherwise, in
6 possession or under the control of Defendants wherever situated that are not, in the
7 judgment of the Temporary Receiver or as directed by this Court, actual, ordinary,
8 and necessary business or living expenses that Defendants will reasonably incur.

9 B. Perform all acts necessary to protect, conserve, preserve and prevent from
10 waste or dissipation the funds, property, premises, accounts and other assets of
11 Defendants in order to insure that funds are available to provide restitution to the
12 victims of any deceptive practices that may have resulted from Defendants acts or
13 practices.

14 C. Approve all contracts, obligations and expenditures that are not actual,
15 ordinary and necessary business or living expenses or are valued over \$50,000.00
16 (other than those expenses to purchase inventory at a cost per unit no greater than
17 that before the court entered this order and in a quantity no greater than necessary
18 to fulfill orders from distributors) prior to entering those contracts or incurring those
19 expenditures or obligations.

20 D. Perform all act necessary to ensure that Defendants are in compliance
21 with the provisions of this Order including approving advertisements that Equinox
22 and its distributors will be permitted to use, requiring Defendants to generate
23 reports, documents and other records, and ensuring that Defendants cease any and
24 all representations as to income levels of Equinox distributors, any and all
25 representations that distributors or potential distributors of Equinox may or will
26 receive compensation related to recruitment, any and all representations of a high

1 likelihood of success in selling Equinox's products, failing to disclose all material
2 information required by this Order, and failing to provide the refund policy provided
3 for in this Order.

4 E. Perform all acts necessary to determine the extent, nature and amount of
5 all funds, property, premises, accounts and other assets, beneficially or otherwise,
6 of or in possession or under the control of Defendants, wherever situated, including
7 without limitation to inspect and inventory all property and assets of Defendants, and
8 to audit, review, inspect and copy all books and records of accounts, all financial
9 and accounting records, balance sheets, income statements, bank records (including
10 monthly statements, canceled checks, records of wire transfers, and check registers),
11 client lists, title documents, leases, computer maintained information, contracts,
12 receipts, refund records, membership records and other papers and documents of
13 Defendants

14 F. Prepare and submit periodic reports, as necessary, to this Court and the
15 parties describing Defendants business activities, income, expenditures, transactions
16 and any deceptive practices by Defendants. Reports should include
17 recommendations of any additional action required by this Court to ensure that the
18 funds, property, premises, accounts and other assets of Defendants are preserved in
19 order to provide restitution to the victims of any deceptive practices that may have
20 resulted from Defendants' acts or practices.

21 G. To employ such managers, agents, employees, servants, accountants,
22 attorneys and other professionals as may be advisable or necessary for the
23 Temporary Receiver to perform his duties and otherwise to assist generally in the
24 receivership. The Temporary Receiver and those he employs are entitled to
25 reasonable compensation for the performance of duties pursuant to this Order and
26

1 for the costs of actual out-of-pocket expenses incurred by them, from the assets now
2 held by or in the possession or control, or which may be received by Defendants.

3 H. The bond in the amount of \$50,000.00 filed with the Clerk of the Court
4 by the Temporary Receiver shall continue to insure that the Temporary Receiver will
5 well and truly perform the duties of the office and abide by and perform all acts the
6 Court directs.

7 IT IS FURTHER ORDERED Defendants shall cooperate with and assist the
8 Temporary Receiver, and shall take no action, directly or indirectly, to hinder, obstruct, or
9 otherwise interfere with the Temporary Receiver in the conduct of his duties as set forth in this
10 order.

11 IT IS FURTHER ORDERED, that Defendants are preliminarily enjoined from
12 destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any
13 manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements,
14 computer tapes, discs, or other computerized records, books, written or printed records,
15 handwritten notes, telephone logs, telephone scripts, receipt books, written or printed records,
16 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
17 canceled checks and check registers, bank statements, appointment books and other documents or
18 records of any kind which relate to their business practices or business or personal finances.

19 IT IS FURTHER ORDERED that Defendants are preliminarily enjoined from
20 directly or indirectly selling, transferring, alienating, liquidating, encumbering, pledging, loaning,
21 assigning, concealing, dissipating, converting, withdrawing, or making any other disposition of any
22 funds, credit instruments, real or personal property, or other assets, or any interest therein,
23 wherever located, owned or controlled by, or held for the benefit of, in whole or in part, or in the
24 possession of Defendants, other than those approved by the Temporary Receiver or those that are
25 actual, ordinary, and necessary business or living expenses that Defendants will reasonably incur.

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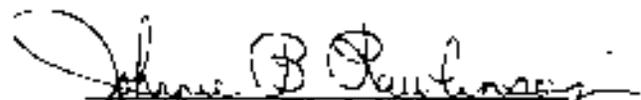
1 IT IS FURTHER ORDERED Defendants shall provide the Temporary Receiver with
2 books, records, and accounts which are created and maintained in reasonable detail and accurately,
3 fairly, and completely reflect the amount of refunds granted and denied, incomes, disbursements,
4 transactions, use, and location of monies and assets by Defendants.

5 IT IS FURTHER ORDERED that the Court reserves the right to make and enter
6 such further orders or decrees, upon application of the Temporary Receiver or otherwise, that may
7 be necessary for the guidance of the Temporary Receiver in his administration of the receivership
8 herein established.

9 IT IS FURTHER ORDERED that the Court retains jurisdiction of this matter for
10 purposes of construction, modification and enforcement of this Order.

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DATED this 14th day of September 1999


Johnnie B. Rawlinson
United States District Judge