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Federal Trade Commission v. Equinox International Corp., et al.
CASE No. CV-S-99-0969 KJD (Pal)

Motion for Order Modifying Distribution Procedures;
Declaration of Kenton Johnson in Support Thereof

Filed January 3, 2008

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10 **ROBB EVANS**

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

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14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 EQUINOX INTERNATIONAL
CORP., et al.,

18 Defendants.
19

CASE NO. CV-S-99-0969-KJD (PAL)

**MOTION FOR ORDER
MODIFYING DISTRIBUTION
PROCEDURES; DECLARATION
OF KENTON JOHNSON IN
SUPPORT THEREOF**

20 TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD,
21 PLAINTIFF, FEDERAL TRADE COMMISSION, AND ALL OTHER PARTIES-
22 IN-INTEREST:

23 PLEASE TAKE NOTICE that Robb Evans, Receiver of Defendants Equinox
24 International Corporation, Advanced Marketing Seminars, Inc. and BG
25 Management, Inc., and Related Entities as defined in the Order Preliminarily
26 Approving Stipulated Final Judgment and Class Action Settlement and Setting
27 Fairness Hearing entered April 20, 2000 ("Permanent Receivership Order") and
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1 over various assets as set forth in the Permanent Receivership Order (hereinafter
2 Robb Evans is referred to as the "Receiver"), hereby submits his Motion for Order
3 Modifying Distribution Procedures ("Motion") as more particularly set forth herein.

4 By this Motion, the Receiver requests the Court modify distribution
5 procedures as follows:

6 1. Allow the Receiver to remove 13,193 distributor claimants with
7 invalid addresses from the initial distribution;

8 2. Allow the Receiver to proceed to distribute approximately
9 \$16,580,000 in the initial distribution to the remaining claimants with valid mailing
10 addresses whose claims aggregate approximately \$276,800,000, so that the initial
11 distribution is approximately 5.99% to these claimants;

12 3. Allow the Receiver to distribute the lesser of 5.99% on allowed claims
13 to any of the 13,193 distributor claimants with invalid addresses who come forward
14 later and advise the Receiver of a valid address for mailing, to be paid from a pool
15 of funds unclaimed from the initial distribution, to the extent available, or if such
16 amount is not available, a lesser pro rata sum among such claimants, determined at
17 the time that the initial distribution checks become stale dated, to be fixed at three
18 months after distribution; and

19 4. Fix the minimum distribution at \$5 so that those allowed claimants
20 with projected distributions below that figure receive a flat \$5 distribution.

21 **I. STATEMENT OF FACTS**

22 On September 17, 2007, the Receiver filed his Motion for Order Authorizing
23 Distribution to Approved Claimants ("Distribution Motion"). On October 17,
24 2007, the Court issued its Order Granting Motion for Order Authorizing
25 Distribution to Approved Claimants ("Distribution Order"). The Distribution Order
26 approved the Distribution Motion in its entirety and authorized the Receiver to
27 make a distribution to approved distributor and non-distributor claimants in the
28 approximate amount of \$16,580,000. As set forth in the Distribution Motion, the

1 Receiver's distribution agent, Garden City Group, Inc., mailed postcard
2 announcements on November 2, 2007 to 64,041 approved distributor claimants.
3 The mailing produced 5,760 changes of address. However, 13,193 distributors had
4 invalid addresses for which no changes of address were obtained. Therefore, as to
5 these 13,193 approved distributor claimants, the Receiver is unable to make a
6 distribution. The aggregate dollar amount of allowed claims for the 13,193
7 distributors with invalid mailing addresses is \$53,799,440.75.

8 In his original Distribution Motion, the Receiver indicated that he might
9 propose a subsequent redistribution of funds not paid out in the original distribution
10 because of unknown current addresses for claimants, however he did not expressly
11 obtain Court authorization to do this. Because of the number and dollar amount of
12 claimants with invalid mailing addresses, the Receiver now seeks authorization to
13 redistribute these funds as part of the original distribution.

14 As set forth in the Distribution Motion, allowed claimants were estimated to
15 receive a pro rata distribution of approximately 5% on their claims, based upon an
16 allowed investor pool of approximately \$330,600,000 and \$16,580,000 available
17 for distribution. However, if the Receiver were to distribute only 5% at this time to
18 the remaining 50,858 claimants with valid mailing addresses, comprising aggregate
19 claims of approximately \$276,800,000, the Receiver would only distribute
20 approximately \$13,840,000 at this time. Therefore, the Receiver would have
21 remaining on hand approximately \$2,740,000 which would automatically
22 necessitate a mass second distribution.

23 Because a mass distribution to the remaining 50,858 claimants with valid
24 addresses may cost as much as \$200,000, the Receiver is attempting to avoid this
25 additional distribution expense if possible.

26 Therefore, the Receiver requests that the Court authorize a modified
27 distribution procedure such that the Receiver is allowed to distribute the
28 approximately \$16,580,000 available for distribution to the 50,858 allowed

1 distributor and non-distributor claimants with valid mailing addresses, whose
2 claims aggregate approximately \$276,800,000. This will result in a distribution to
3 allowed claimants with valid addresses of approximately 5.99%. The 13,193
4 distributor claimants with invalid addresses would not receive an initial
5 distribution.

6 It is possible that some of the 13,193 distributor claimants with invalid
7 addresses will come forward subsequently and advise the Receiver of a valid
8 address to which distribution checks can be mailed. However, based upon his
9 experience, the Receiver believes that it is also highly likely that there will be a
10 sizeable pool of unclaimed funds from the initial distribution simply because some
11 claimants will not timely negotiate the distribution checks. Even conservatively
12 estimating that 3% of all distribution checks will be uncashed, those uncashed
13 checks would result in a pool of approximately \$500,000 which could thereafter be
14 made available to claimants who subsequently come forward and provide the
15 Receiver with valid mailing addresses. The Receiver believes that only a very
16 small percentage of claimants that are being dropped from the initial distribution
17 will come forward later and furnish valid addresses. However, assuming that 3% of
18 the \$16,580,000 in distributions remain uncashed, or about \$500,000, this pool of
19 uncashed funds would enable the Receiver to distribute 5.99% to approximately
20 15.5% of the 13,193 claimants for which the Receiver does not presently have valid
21 addresses.¹ In the unlikely event that uncashed funds are insufficient to serve as a
22 pool to fund claimants who later come forward with valid addresses, it is requested
23 that claimants who come forward after the initial distribution receive a pro rata
24 distribution not exceeding 5.99% based upon remaining available funds as
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27 ¹ This is calculated by taking the pool of claimants with invalid addresses, totaling
28 \$53,799,440.75, multiplied by the revised distribution percentage of 5.99%, for a
total of \$3,222,586.46, and dividing \$500,000 by that sum.

1 determined once the initial distribution checks become stale dated, to be fixed at
2 three months after distribution.

3 Finally, the Receiver has determined that 1,859 claimants are projected to
4 receive distributions of less than \$5, based on a 5.99% payout. The Receiver has
5 calculated that it would cost the receivership estate only \$3,555.94 in order that
6 each claimant in this category receive a fixed \$5 distribution. It is requested that
7 the Receiver be permitted to distribute a fixed \$5 amount to those claimants who
8 otherwise would receive less than \$5. This will have no material impact on the
9 estate or the distributions to other claimants.

10 The Receiver requests the entry of an order granting this Motion and
11 modifying distribution procedures as soon as possible given the long period of time
12 that claimants have waited for the estate to distribute payments.

13 **II. CONCLUSION**

14 The Receiver respectfully requests that the Court grant this Motion
15 modifying distribution procedures as follows:

16 1. Allow the Receiver to remove 13,193 distributor claimants with
17 invalid addresses from the initial distribution;

18 2. Allow the Receiver to proceed to distribute approximately
19 \$16,580,000 in the initial distribution to the remaining claimants with valid mailing
20 addresses whose claims aggregate approximately \$276,800,000, so that the initial
21 distribution is approximately 5.99% to these claimants;

22 3. Allow the Receiver to distribute the lesser of 5.99% on allowed claims
23 to any of the 13,193 distributor claimants with invalid addresses who come forward
24 later and advise the Receiver of a valid address for mailing, to be paid from a pool
25 of funds unclaimed from the initial distribution, to the extent available, or if such
26 amount is not available, a lesser pro rata sum among such claimants, determined at
27 the time that the initial distribution checks become stale dated, to be fixed at three
28 months after distribution; and

1 4. Fix the minimum distribution at \$5 so that those allowed claimants
2 with projected distributions below that figure receive a flat \$5 distribution.

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4 Dated: January 3, 2008

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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7 By: /s/ Gary Owen Caris
8 Gary Owen Caris

9 Attorneys for Receiver
10 ROBB EVANS
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1 dollar amount of claimants with invalid mailing addresses, the Receiver now seeks
2 authorization to redistribute these funds as part of the original distribution.

3 4. As set forth in the Distribution Motion, allowed claimants were
4 estimated to receive a pro rata distribution of approximately 5% on their claims,
5 based upon an allowed investor pool of approximately \$330,600,000 and
6 \$16,580,000 available for distribution. However, if the Receiver were to distribute
7 only 5% at this time to the remaining 50,858 claimants with valid mailing
8 addresses, comprising aggregate claims of approximately \$276,800,000, the
9 Receiver would only distribute approximately \$13,840,000 at this time. Therefore,
10 the Receiver would have remaining on hand approximately \$2,740,000 which
11 would automatically necessitate a mass second distribution. Because a mass
12 distribution to the remaining 50,858 claimants with valid addresses may cost as
13 much as \$200,000, the Receiver is attempting to avoid this additional distribution
14 expense if possible.

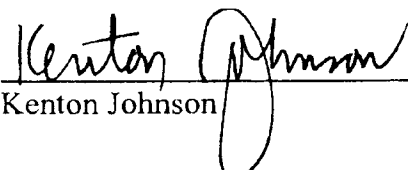
15 5. The Receiver requests that the Court authorize a modified distribution
16 procedure such that the Receiver is allowed to distribute the approximately
17 \$16,580,000 available for distribution to the 50,858 allowed distributor and non-
18 distributor claimants with valid mailing addresses, whose claims aggregate
19 approximately \$276,800,000. This will result in a distribution to allowed claimants
20 with valid addresses of approximately 5.99%. The 13,193 distributor claimants
21 with invalid addresses would not receive an initial distribution.

22 6. It is possible that some of the 13,193 distributor claimants with invalid
23 addresses will come forward subsequently and advise the Receiver of a valid
24 address to which distribution checks can be mailed. However, based upon my
25 experience, I believe that it is also highly likely that there will be a sizeable pool of
26 unclaimed funds from the initial distribution simply because some claimants will
27 not timely negotiate the distribution checks. Even conservatively estimating that
28 3% of all distribution checks will be uncashed, those uncashed checks would result

1 in a pool of approximately \$500,000 which could thereafter be made available to
2 claimants who subsequently come forward and provide the Receiver with valid
3 mailing addresses. I believe that only a very small percentage of claimants that are
4 being dropped from the initial distribution will come forward later and furnish valid
5 addresses. However, assuming that 3% of the \$16,580,000 in distributions remain
6 uncashed, or about \$500,000, this pool of uncashed funds would enable the
7 Receiver to distribute 5.99% to approximately 15.5% of the 13,193 claimants for
8 which the Receiver does not presently have valid addresses. In the unlikely event
9 that uncashed funds are insufficient to serve as a pool to fund claimants who later
10 come forward with valid addresses, it is requested that claimants who come forward
11 after the initial distribution receive a pro rata distribution not exceeding 5.99%
12 based upon remaining available funds as determined once the initial distribution
13 checks become stale dated, to be fixed at three months after distribution.

14 7. Finally, we have determined that 1,859 claimants are projected to
15 receive distributions of less than \$5, based on a 5.99% payout. We have calculated
16 that it would cost the receivership estate only \$3,555.94 in order that each claimant
17 in this category receive a fixed \$5 distribution. It is requested that the Receiver be
18 permitted to distribute a fixed \$5 amount to those claimants who otherwise would
19 receive less than \$5. This will have no material impact on the estate or the
20 distributions to other claimants.

21 I declare under penalty of perjury that the foregoing is true and correct and
22 that this declaration was executed on January 3, 2008 at Sun Valley, California.

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24 _____
25 Kenton Johnson
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