

ROBB EVANS
Receiver of
Equinox International Corp., et al.
11450 Sheldon Street
Sun Valley, California 91352-1121
Telephone No.: (818) 768-8100
Facsimile No.: (818) 768-8802

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

Motion for Order:

- (1) For Dissolution of Equinox World Hope Foundation;**
 - (2) Authorizing Receiver to Distribute Assets of Equinox World Hope Foundation to 501(C)(3) Charities; and**
 - (3) Authorizing Receiver to Take Steps Necessary or Convenient to Implement Dissolution and Distribution of Assets;**
- Memorandum of Points and Authorities and Declaration of M. Val Miller in Support Thereof**

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1 GARY OWEN CARIS (SBN 088918)
gcaris@mckennalong.com
2 LESLEY ANNE HAWES (SBN 117101)
lhawes@mckennalong.com
3 MCKENNA LONG & ALDRIDGE LLP
444 South Flower Street, 8th Floor
4 Los Angeles, CA 90071-2901
Telephone: (213) 688-1000
5 Facsimile: (213) 243-6330

6 THOMAS F. KUMMER
KUMMER KAEMPFER BONNER & RENSHAW
7 3800 Howard Hughes Parkway, 7th Floor
Las Vegas, Nevada 89109-0907
8 Telephone: (702) 792-7000
Facsimile: (702) 796-7181

9 Attorneys for Receiver
10 **ROBB EVANS**

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

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 EQUINOX INTERNATIONAL
CORP., et al.,

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

**MOTION FOR ORDER (1) FOR
DISSOLUTION OF EQUINOX
WORLD HOPE FOUNDATION; (2)
AUTHORIZING RECEIVER TO
DISTRIBUTE ASSETS OF
EQUINOX WORLD HOPE
FOUNDATION TO 501(C)(3)
CHARITIES; AND (3)
AUTHORIZING RECEIVER TO
TAKE STEPS NECESSARY OR
CONVENIENT TO IMPLEMENT
DISSOLUTION AND
DISTRIBUTION OF ASSETS;
MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATION OF M. VAL
MILLER IN SUPPORT THEREOF**

25
26 TO: ALL DEFENDANTS AND THEIR ATTORNEYS OF RECORD,
27 PLAINTIFF, FEDERAL TRADE COMMISSION, AND ALL OTHER PARTIES-
28 IN-INTEREST:

1 PLEASE TAKE NOTICE that Robb Evans, Receiver of Defendants Equinox
2 International Corporation, Advanced Marketing Seminars, Inc. and BG
3 Management, Inc., and Related Entities as defined in the Order Preliminarily
4 Approving Stipulated Final Judgment and Class Action Settlement and Setting
5 Fairness Hearing entered April 20, 2000 (“Permanent Receivership Order”) and
6 over various assets as set forth in the Permanent Receivership Order (hereinafter
7 Robb Evans is referred to as the “Receiver”), hereby submits his Motion for Order
8 (1) for Dissolution of Equinox World Hope Foundation; (2) Authorizing Receiver
9 to Distribute Assets of Equinox World Hope Foundation to 501(c)(3) Charities; and
10 (3) Authorizing Receiver to Take Steps Necessary or Convenient to Implement
11 Dissolution and Distribution of Assets (“Motion”) as more particularly set forth
12 herein.

13 By this Motion, the Receiver requests the Court issue an order:

14 1. Directing that Receivership Entity Equinox World Hope Foundation
15 (“World Hope”), a Nevada non-profit corporation qualified for tax exempt status
16 under section 501(c)(3) of the Internal Revenue Code be dissolved and its affairs
17 wound up;

18 2. Authorizing the Receiver to distribute the assets of World Hope to two
19 charitable organizations, United Way and Opportunity Village (the “Charities”),
20 both of which are also qualified for tax exempt status under section 501(c)(3) of the
21 Internal Revenue Code. The Receiver proposes to distribute World Hope’s stock in
22 Oracle Corporation to United Way and World Hope’s cash assets to Opportunity
23 Village and requests authorization to execute all documents and instruments
24 necessary or convenient to effectuate the distribution, donation and transfer of
25 World Hope’s assets as requested herein;

26 3. Authorizing the Receiver to take all steps necessary or convenient to
27 effectuate and implement the dissolution of World Hope, the wind up of its affairs,
28 and the distribution of its assets to the Charities, including without limitation

1 executing all documents and instruments on behalf of World Hope in connection
2 therewith.

3 **I. STATEMENT OF FACTS**

4 The Receiver was initially appointed upon application of the Federal Trade
5 Commission (“FTC”) by this Court pursuant to a Temporary Restraining Order
6 Freezing Assets, Appointing a Temporary Receiver and Providing Additional
7 Equitable Relief (“Temporary Receivership Order”) dated August 4, 1999. The
8 Temporary Receivership Order, at section V, provides that the temporary receiver
9 was appointed as temporary receiver with the full powers of an equity receiver for
10 Equinox International Corporation and for all of the funds, properties, premises,
11 accounts and other assets directly or indirectly owned by it. The temporary
12 receiver’s role was thereafter further clarified and limited by subsequent orders of
13 the Court.

14 Subsequently, the Court entered the Order Preliminarily Approving
15 Stipulated Final Judgment and Class Action Settlement and Setting Fairness
16 Hearing (“Permanent Receivership Order”) on April 20, 2000. Pursuant to the
17 Permanent Receivership Order, the Receiver became permanent receiver over
18 Equinox International Corporation, Advanced Marketing Seminars, Inc. and BG
19 Management, Inc., their subsidiaries and affiliates (the “Corporate Defendants”
20 under Definitions paragraph A) as well as Related Entities as defined in the
21 Permanent Receivership Order, and over various assets of Bill Gould and others as
22 set forth in the Permanent Receivership Order, with the full powers of an equity
23 receiver. Pursuant to the final Judgment and Order Granting Final Approval of
24 Class Settlement entered February 13, 2001, the Court gave final approval to the
25 Permanent Receivership Order, and retained jurisdiction for purposes of, among
26 other things, supervising the receivership.

27 World Hope is a non-profit corporation formed under the laws of the State of
28 Nevada in 1996 prior to the receivership. World Hope is a charitable organization

1 qualified under section 501(c)(3) for tax exempt status. World Hope was organized
2 by Bill Gould to provide a captive charitable organization to which he and other
3 Receivership Entities could make donations and obtain tax deductions while being
4 able to control and direct the charitable purposes for which the donated funds and
5 assets were invested and used. By the terms of World Hope's Articles of
6 Incorporation, as amended, World Hope has no members and no capital stock,
7 consistent with its non-profit structure and purpose. World Hope is governed by a
8 Board of Trustees, which originally consisted of Bill Gould's brother, Steve
9 Gould, Diane von Son and Gary Henk. M. Val Miller is the secretary of the entity
10 under the latest available annual statement of officers filed with the Nevada
11 Secretary of State's office. World Hope is one of the Receivership Entities under
12 the Permanent Receivership Order that was under the common control of the
13 owners and officers of the named Receivership Defendants. The term
14 "Receivership Entities" under Section IX of the Permanent Receivership Order
15 includes the "Corporate Defendants," which in turn includes subsidiaries and
16 affiliates of the named corporate defendants, which includes World Hope.

17 The Permanent Receivership Order appoints the Receiver as a permanent
18 receiver "with full power of an equity receiver" and authorizes the Receiver to
19 "suspend the operation of any of the Receivership Entities . . . in order to prepare
20 for the liquidation and dissolution of the Receivership Entities." Permanent
21 Receivership Order, Section IX.B. The Permanent Receivership Order also
22 provides that "the Receiver shall liquidate all assets of the Receivership Entities,
23 wind up all activities and operations of the Receivership Entities, and prepare to
24 dissolve the Receivership Entities. Permanent Receivership Order, Section X. The
25 Receiver seeks authority to wind up and dissolve World Hope as set forth hereafter.

1 **III. REQUEST FOR ORDER FOR DISSOLUTION OF WORLD HOPE**
2 **AND AUTHORIZATION FOR RECEIVER TO DISBURSE ASSETS OF**
3 **WORLD HOPE AND WIND UP ITS AFFAIRS**

4 World Hope has not operated post-receivership and in connection with the
5 conclusion of the receivership, it is necessary and appropriate that World Hope be
6 dissolved, its affairs wound up and its assets distributed as appropriate. The
7 Receiver requests that the Court order the dissolution of World Hope and authorize
8 the Receiver to execute all documents and instruments necessary or convenient to
9 effectuate the wind up and dissolution of World Hope.

10 With respect to the dissolution of World Hope and disposition of its assets,
11 World Hope has two types of assets. World Hope holds 21,600 shares of stock in
12 Oracle Corporation, a publicly traded company whose shares are traded on the
13 NASDAQ exchange. Based on the published share price for Oracle stock as of the
14 close of trading on February 29, 2008 of \$18.80 per share, the value of World
15 Hope's 21,600 shares is \$406,080. World Hope also holds cash in a non-interest-
16 bearing account at Wells Fargo Bank, Account Number 444-2002118 ("Wells
17 Fargo Account") in the amount of \$260,364.42. World Hope has no known
18 outstanding debts based on the books and records available to the Receiver.

19 The Receiver has investigated alternatives to liquidate the Oracle stock and
20 dispose of the cash assets of World Hope to wind up its affairs. The Receiver has
21 been advised by accounting and legal professionals that because World Hope is a
22 non-profit, charitable organization, the assets of World Hope cannot be liquidated
23 and distributed to the receivership estate or to the for-profit entities subject to the
24 receivership. Instead, the Receiver has been advised that the assets of World Hope
25 must be distributed to another non-profit organization qualified for tax-exempt
26 charitable status under section 501(c)(3) of the Internal Revenue Code pursuant to
27 26 C.F.R. § 501(c)(3)-1(b)(4), consistent with provisions of World Hope's Articles
28 of Incorporation, as amended, which provide that upon dissolution of World Hope,

1 World Hope's "assets shall be distributed to one or more exempt purposes within
2 the meaning of section 501(c)(3) of the Internal Revenue Code." See Declaration
3 of M. Val Miller, Exh. 2 (Certificate of Amendment of Articles of Incorporation,
4 Amended Article VII).

5 The Receiver proposes to distribute the assets of World Hope by distributing
6 the stock in Oracle Corporation to United Way, a large, nationally recognized,
7 public charitable organization that provides broad assistance to communities to
8 meet basic needs of individuals in many areas, including food, shelter and
9 educational assistance. Examples of United Way's assistance included substantial
10 assistance provided by the organization to the victims of Hurricane Katrina,
11 including basic needs for families (food, clothing and shelter), funding after school
12 and child care programs and various educational and literacy programs, among
13 many others. The Receiver proposes to distribute the cash assets of World Hope,
14 consisting of the funds in the Wells Fargo Account, to Opportunity Village, a local
15 non-profit organization in existence for over 50 years in Las Vegas, Nevada
16 providing vocational training, employment and therapeutic day services as well as
17 social opportunities for individuals with severe disabilities and providing related
18 family support services. Both organizations are qualified charities entitled to tax-
19 exempt status under § 501(c)(3) of the Internal Revenue Code and as to which
20 donations made to those organizations are tax deductible. The Receiver requests
21 that he be authorized to execute all documents and instruments necessary or
22 convenient to effectuate the distribution, donation and transfer of World Hope's
23 assets as requested herein.

24 **IV. CONCLUSION**

25 The Receiver respectfully requests that the Court grant this Motion and the
26 following relief:

- 27 1. Order that World Hope be dissolved and its affairs wound up;

1 2. Authorize the Receiver to distribute the assets of World Hope to two
2 charitable organizations, United Way and Opportunity Village (the "Charities"),
3 both of which are also qualified for tax exempt status under section 501(c)(3) of the
4 Internal Revenue Code, with the Oracle stock held by World Hope to be distributed
5 to United Way and all cash assets of World Hope held in the Wells Fargo Account
6 to be distributed to Opportunity Village. The Receiver requests authorization to
7 execute all documents and instruments necessary or convenient to effectuate the
8 distribution, donation and transfer of World Hope's assets as set forth herein; and

9 3. Authorize the Receiver to take all steps necessary or convenient to
10 effectuate and implement the dissolution of World Hope, the wind up of its affairs,
11 and the distribution of its assets to the Charities, including without limitation
12 executing all documents and instruments on behalf of World Hope in connection
13 therewith.

14
15 Dated: March 5, 2008

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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18 By: /s/ Gary Owen Caris
19 Gary Owen Caris

20 Attorneys for Receiver
21 ROBB EVANS
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DECLARATION OF M. VAL MILLER

I, M. Val Miller, declare:

1. I am a Deputy to Robb Evans, the Permanent Receiver in this matter. Since September 2000, I have been employed as the General Counsel of Robb Evans & Associates LLC. I have personal knowledge of the matters set forth in this Declaration or I have gained knowledge of these matters based upon my supervision of other members and staff of Robb Evans & Associates LLC who assist me in the day-to-day management of this receivership estate. Prior to my employment as General Counsel of Robb Evans & Associates LLC, I was employed Equinox International Corp., and I was the Secretary and a member of the Board of Trustees of Equinox World Hope Foundation (“World Hope”). If called upon to testify as to these matters, I could and would competently testify thereto.

2. The Receiver was initially appointed upon application of the Federal Trade Commission (“FTC”) by this Court pursuant to a Temporary Restraining Order Freezing Assets, Appointing a Temporary Receiver and Providing Additional Equitable Relief (“Temporary Receivership Order”) dated August 4, 1999. The Temporary Receivership Order, at section V, provides that the temporary receiver was appointed as temporary receiver with the full powers of an equity receiver for Equinox International Corporation and for all of the funds, properties, premises, accounts and other assets directly or indirectly owned by it. The temporary receiver’s role was thereafter further clarified and limited by subsequent orders of the Court.

3. On April 20, 2000, the Court entered the Order Preliminarily Approving Stipulated Final Judgment and Class Action Settlement and Setting Fairness Hearing (“Permanent Receivership Order”). Pursuant to the Permanent Receivership Order, the Receiver became permanent receiver over Equinox International Corporation, Advanced Marketing Seminars, Inc. and BG

1 Management, Inc., their subsidiaries and affiliates (the “Corporate Defendants”
2 under Definitions paragraph A) as well as Related Entities as defined in the
3 Permanent Receivership Order, and over various assets of Bill Gould and others as
4 set forth in the Permanent Receivership Order, with the full powers of an equity
5 receiver. Pursuant to the final Judgment and Order Granting Final Approval of
6 Class Settlement entered February 13, 2001, the Court gave final approval to the
7 Permanent Receivership Order, and retained jurisdiction for purposes of, among
8 other things, supervising the receivership.

9 4. World Hope is a non-profit corporation formed under the laws of the
10 State of Nevada in 1996 prior to the receivership. True and correct copies of World
11 Hope’s Articles of Incorporation filed May 6, 1996 and the Certificate of
12 Amendment of Articles of Incorporation filed August 20, 1996 are attached hereto
13 as Exhibits 1 and 2, respectively. World Hope is a charitable organization qualified
14 under section 501(c)(3) for tax exempt status. World Hope was organized by Bill
15 Gould to provide a captive charitable organization to which he and other
16 Receivership Entities could make donations and obtain tax deductions while being
17 able to control and direct the charitable purposes for which the donated funds and
18 assets were invested and used.

19 5. By the terms of World Hope’s Articles of Incorporation, as amended,
20 World Hope has no members and no capital stock, consistent with its non-profit
21 structure and purpose. World Hope is governed by a Board of Trustees, which
22 originally consisted of Bill Gould’s brother, Steve Gould, Diane von Son and Gary
23 Henk. I was the Secretary of World Hope according to the latest annual Statement
24 of Officers filed with the Nevada Secretary of State.

25 6. World Hope has not operated post-receivership. According to the
26 books and records available to the Receiver, World Hope has no outstanding debt.

27 7. World Hope has two types of assets. World Hope holds 21,600 shares
28 of stock in Oracle Corporation, a publicly traded company whose shares are traded

1 on the NASDAQ exchange. Based on the published share price for Oracle stock as
2 of the close of trading on February 29, 2008 of \$18.80 per share, the value of World
3 Hope's 21,600 shares is \$406,080. World Hope also holds cash in a non-interest-
4 bearing account at Wells Fargo Bank, Account Number 444-2002118 ("Wells
5 Fargo Account") in the amount of \$260,364.42.

6 7. On behalf of the Receiver, I have investigated alternatives to liquidate
7 the Oracle stock and dispose of the cash assets of World Hope to wind up its affairs.
8 The Receiver has been advised by accounting and legal professionals that because
9 World Hope is a non-profit, charitable organization, the assets of World Hope
10 cannot be liquidated and distributed to the receivership estate or to the for-profit
11 entities subject to the receivership. Instead, the Receiver has been advised that the
12 assets of World Hope must be distributed to another non-profit organization
13 qualified for tax-exempt charitable status under section 501(c)(3) of the Internal
14 Revenue Code pursuant to 26 C.F.R. § 501(c)(3)-1(b)(4) and the provisions of
15 World Hope's Articles of Incorporation, as amended, which provide that upon
16 dissolution of World Hope, World Hope's "assets shall be distributed to one or
17 more exempt purposes within the meaning of section 501(c)(3) of the Internal
18 Revenue Code." See Exhibit 2 (Certificate of Amendment of Articles of
19 Incorporation), amended Article VII).

20 8. The Receiver proposes to distribute the assets of World Hope by
21 distributing the stock in Oracle Corporation to United Way. United Way is a large,
22 nationally recognized, public charitable organization that provides broad assistance
23 to communities to meet basic needs of individuals in many areas, including food,
24 shelter and educational assistance as reflected in its public information and filings
25 available through its website, www.unitedway.org. Examples of United Way's
26 assistance included substantial assistance provided by the organization to the
27 victims of Hurricane Katrina, including basic needs for families (food, clothing and
28 shelter), funding after school and child care programs and various educational and

1 literacy programs, among many others. Copies of the May 2007 letter from United
2 Way's President and Chief Executive Officer which accompanied its Annual
3 Report and a copy of an article from its website entitled "United Way of America
4 2005 Program Accomplishments" are attached hereto collectively as Exhibit 3.

5 9. The Receiver proposes to distribute the cash assets of World Hope,
6 consisting of all funds in the Wells Fargo Account, to Opportunity Village.
7 Opportunity Village is a local non-profit organization in Las Vegas, Nevada that
8 recently celebrated its 50th anniversary. Opportunity Village provides vocational
9 training, employment and therapeutic day services as well as social opportunities
10 for individuals with severe disabilities and providing related family support
11 services. A copy of a letter to me from Opportunity Village explaining its
12 programs and organization together with copies of certain of its published
13 organizational materials regarding Opportunity Village, its work centers and its
14 community job placement program are attached hereto collectively as Exhibit 4.
15 Both United Way and Opportunity Village are qualified charities entitled to tax-
16 exempt status under § 501(c)(3) of the Internal Revenue Code and as to which
17 donations made to those organizations are tax deductible.

18 I declare under penalty of perjury that the foregoing is true and correct and
19 that this declaration was executed on March 5, 2008 at Las Vegas, Nevada.

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21 _____
22 M. Val Miller