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

**Motion for Order Authorizing Distribution to Approved Claimants;
Declaration of Kenton Johnson in Support Thereof**

Filed September 17, 2007

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9 Attorneys for Receiver
10 **ROBB EVANS**

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

13
14 FEDERAL TRADE COMMISSION,
15 Plaintiff,
16 v.
17 EQUINOX INTERNATIONAL
CORP., et al.,
18 Defendants.

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

**MOTION FOR ORDER
AUTHORIZING DISTRIBUTION
TO APPROVED CLAIMANTS;
DECLARATION OF KENTON
JOHNSON IN SUPPORT THEREOF**

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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
28

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 Authorizing Distribution to Approved Claimants, seeking to distribute
4 approximately \$16,580,000 to approved claimants.

5 **I. STATEMENT OF FACTS**

6 Plaintiff Federal Trade Commission ("FTC") and the states of Hawaii,
7 Maryland, Nevada, North Carolina, Pennsylvania and South Carolina commenced
8 this action on August 3, 1999. On September 14, 1999, the Court entered an order
9 partially granting the FTC's Motion for Preliminary Injunction. On November 19,
10 1999, the FTC filed an Amended Complaint together with the States of Hawaii,
11 Maryland, Michigan, Nevada, North Carolina, Pennsylvania, Tennessee and
12 Virginia, seeking a permanent injunction against Equinox International Corporation
13 ("Equinox"), Advanced Marketing Seminars, Inc. ("AMS"), and BG Management,
14 Inc. ("BGM") (collectively, "Defendants") and monetary redress for injuries
15 suffered by current and former distributors of Equinox.

16 Previously, in January 1997, five individuals filed a lawsuit seeking damages
17 and equitable relief for all distributors who had joined Equinox prior to January 7,
18 1997. The lawsuit was certified as a class action in October 1997, and the
19 certification was upheld on appeal. In November 1999, the Court granted the class
20 representatives permission to intervene in the instant action. In March 2000, notice
21 of the class action was mailed to persons who became Equinox distributors before
22 January 7, 1997. On April 20, 2000, the Court entered the Permanent Receivership
23 Order, which approved a mandatory settlement of certain claims by current and
24 former independent distributors of Equinox against Defendants. The Permanent
25 Receivership Order amended the class definition to include all distributors of
26 Equinox other than certain insiders and distributors who received \$150,000 or more
27 in bonuses or rebates from Equinox. The primary beneficiaries of the settlement
28 are the people and companies that are or were Equinox independent distributors.

1 The Permanent Receivership Order also appointed Robb Evans as Permanent
2 Receiver to collect, marshal, maintain and take custody, control and possession of
3 all of the assets of Equinox, AMS, BGM, and their subsidiaries and affiliates, as
4 well as "Related Entities" as defined in that Order, and all assets of Bill Gould, d,
5 except those expressly enumerated therein, to perform all acts necessary to
6 conserve the assets, and to liquidate the assets into cash in order to maximize the
7 amount of funds available for consumer redress. The Court directed the Receiver,
8 in connection with Plaintiffs and class counsel to prepare, obtain Court approval of,
9 and implement and plan for distributing the settlement fund to potential claimants
10 who timely submit claims that qualify for payment.

11 Over the next several years, the Receiver, in conjunction with Plaintiffs and
12 class counsel, obtained various Court orders implementing a claims allowance
13 process with respect to both class members and non-distributor claimants. This
14 process included the following orders:

15 1. The July 6, 2000 Stipulation and Order Approving Form and Content
16 of Notice of Class Settlement, Final Approval Hearing, Distribution Process,
17 Summary Notice of Mandatory Class Settlement, and Proof of Claim form ("Class
18 Claim Order"). Under the Class Claim Order, a form of proof of claim form was
19 approved to be disseminated to the mandatory class members. Pursuant to the
20 Class Claim Order, the Receiver mailed 481,657 claim packages to potential
21 claimants on July 14, 2000.

22 2. The October 1, 2003 Court Order Granting the Receiver's Motion for
23 Order Establishing Claims Bar Dates, Claims Objection Procedures and Approving
24 Receiver's Prior Claims Determinations ("October 1, 2003 Order"). The October 1,
25 2003 Order approved the Receiver's request to establish detailed distributor claim
26 objection procedures. The October 1, 2003 Order directed the Receiver to submit
27 an order with regard to the approval of the Receiver's prior claims determinations
28

1 made pursuant to the Class Claim Order and establishment of claims bar dates and
2 claims objection procedures.

3 3. The December 11, 2003 Order: (1) Approving the Receiver's Prior
4 Claims Determinations Made to Date Pursuant to the Class Claim Order; (2)
5 Establishing Claims Bar Dates as to Members of the Mandatory Settlement Class
6 Not Heretofore Established by the Class Claim Order, as Well as Establishing a
7 Claims Bar Date for Other Creditors of the Receivership Estate; and (3)
8 Establishing Claims Objection Procedures as to Members of the Mandatory
9 Settlement Class Not Heretofore Established by the Class Claim Order, as Well as
10 Claims Objection Procedures as to Other Creditors of the Receivership Estate
11 ("December 11, 2003 Order"). In accordance with the October 1, 2003 Order and
12 December 11, 2003 Order, the Receiver mailed letters to 4,838 claimants describing
13 how their claims were revised, which ultimately led to the resolution of all
14 distributor claims except for eight claims. Pursuant to the December 11, 2003
15 Order, the Receiver served a Notice of Claims Bar Date to 107 persons or entities
16 comprising all known actual or potential pre-receivership non-distributor claims.
17 This led to the processing of 13 non-distributor claims, of which three were
18 objected to.

19 4. The July 10, 2006 Order Approving Receiver's Determinations on
20 Unresolved Claims and Approving Plan of Distribution Providing for Equal
21 Treatment Between Classes of Distributor and Non-Distributor Claimants ("July
22 10, 2006 Order"). The July 10, 2006 Order approved the Receiver's
23 recommendations with respect to the disputed distributor claims and with respect to
24 the disputed non-distributor claims. The July 10, 2006 Order further provided for
25 equal treatment between classes of distributor claimants and non-distributor
26 claimants and the approval and authorization that all distributions be subsequently
27 made on a pro rata basis, based on a combined pool of allowed distributor claimants
28 and non-distributor claimants, when assets become available for distribution, after

1 resolution and payment of the Internal Revenue Service (“IRS”) claims and the fee
2 request of class counsel.

3 Subsequently, as more particularly set forth in the Receiver’s Report of
4 Receiver’s Activities September 1, 2005 Through December 31, 2006, the IRS
5 claims for unpaid taxes totaling more than \$12 million was ultimately successfully
6 resolved and approved by this Court on December 22, 2006. At that time, the Court
7 approved the settlement which provided that the receivership estate pay \$1 million
8 to the IRS in full settlement of its claims. The \$1 million payment was delivered in
9 January 2007. At about the same time, the FTC, the Receiver and class counsel
10 successfully resolved the fee request of class counsel which was approved by Court
11 order on December 27, 2006. That settlement provided for the receivership estate
12 to pay \$2.2 million in full settlement of the amounts claimed by class counsel,
13 which payment was made immediately thereafter.

14 As a result of the foregoing activities and orders, the Receiver is now in a
15 position to seek Court authorization for distribution to approved claimants.

16 **II. THE RECEIVER PROPOSES A DISTRIBUTION OF**
17 **APPROXIMATELY \$16,580,000**

18 As a result of the foregoing activities and orders, there are now
19 approximately 64,000 approved claims totaling approximately \$330 million.
20 Throughout the initial period of 2007, the Receiver completed and filed all required
21 corporate, federal and local tax returns and filed an estimated tax payment with the
22 United States Treasury in the amount of \$250,000 which the Receiver has been
23 advised will adequately cover any and all future IRS adjustments. A spreadsheet
24 showing all returns filed by the Receiver to date is attached hereto as Exhibit 1.

25 The Receiver is in a position to distribute approximately \$16,580,000 to
26 allowed claimants at this time. This figure is believed to be a conservative
27 estimate, however there are several unknown factors, particularly as they relate to
28 the expenses to complete the distribution. A primary unknown factor is the expense

1 the estate will incur in processing returned mail. As part of the distribution, the
 2 Receiver's distribution agent, Garden City Group, Inc., will have to mail postcard
 3 announcements to all approved claimants. The expense of processing returned mail
 4 (those claimants whose addresses are no longer valid) will not be known until the
 5 extent of undeliverable mail is ascertained and efforts to obtain corrected addresses
 6 are completed. Additionally, depending upon expense factors and the extent of
 7 undeliverable mail, the Receiver may propose a redistribution of non-deposited or
 8 outstanding checks, as well as funds not distributed because of unknown current
 9 addresses for claimants. Subject to these variables, the Receiver estimates that
 10 approximately \$16,580,000 can be distributed at this time, calculated as follows:¹

11	Cash on Hand	\$17,200,593.35
12	Estimated Expenses of Garden City	
13	Group, Inc. ²	\$ 300,000.00
14	Estimated Receivership Expenses	
15	Through Close of Case:	
16	Receiver Fees (Including Staff)	\$ 70,000.00
17	Legal Fees	\$ 60,000.00
18	Records Destruction	\$ 40,000.00
19	Remaining Tax Preparation and	
20	Possible Audit Expenses	\$ 125,000.00
21	Miscellaneous Administrative	
22	Expenses	\$ <u>25,000.00</u>
23		\$ 320,000.00
24	Estimated Balance Available for	
25	Distribution	\$16,580,593.35

26 Therefore, pursuant to this distribution, allowed claimants will receive a pro
 27 rata distribution of approximately 5% on their claims.

28 ¹ These expense figures are estimates.

² This includes unpaid fees and expenses of \$105,010.35 already incurred.

1 **III. CONCLUSION**

2 The Receiver respectfully requests that the Court grant this Motion
3 authorizing the Receiver to make a distribution to approve distributor and non-
4 distributor claimants in the approximate amount of \$16,580,000.

5

6 Dated: September 17, 2007

MCKENNA LONG & ALDRIDGE LLP
GARY OWEN CARIS
LESLEY ANNE HAWES

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By: /s/ Gary Owen Caris
Gary Owen Caris

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Attorneys for Receiver
ROBB EVANS

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3 \$150,000 or more in bonuses or rebates from Equinox. The primary beneficiaries
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6 Evans as Permanent Receiver to collect, marshal, maintain and take custody,
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12 the Receiver, in connection with Plaintiffs and class counsel to prepare, obtain
13 Court approval of, and implement and plan for distributing the settlement fund to
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15 4. Over the next several years, the Receiver, in conjunction with
16 Plaintiffs and class counsel, obtained Court orders implementing a claims
17 allowance process with respect to both class members and non-distributor
18 claimants. This process included the following orders:

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20 Content of Notice of Class Settlement, Final Approval Hearing, Distribution
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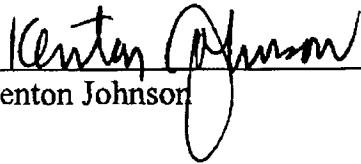
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Estimated Expenses of Garden City Group, Inc. (Including unpaid fees and expenses of Garden City Group of \$105,010.35)	\$ 300,000.00
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Receiver Fees (Including Staff)	\$ 70,000.00
Legal Fees	\$ 60,000.00
Records Destruction	\$ 40,000.00
Remaining Tax Preparation and Possible Audit Expenses	\$ 125,000.00
Miscellaneous Administrative Expenses	\$ <u>25,000.00</u>
	\$ 320,000.00
Balance Available for Distribution	\$16,580,593.35

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 17, 2007 at Sun Valley, California.


Kenton Johnson

SERVICE LIST

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Richmond, VA 23219

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Department of Justice
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Washington, D.C. 20001

EXHIBIT 1

NOTE> The dates reflected represent either the actual date of filing (if readily known) or the date signed by the taxpayer for which the actual filing date would have occurred shortly thereafter.
 NOTE> Those returns filed in 2005 were filed directly with the Las Vegas IRS office.
 NOTE> ~~~~ indicates entity is liquidated; no further filing required
 NOTE> Both Advanced Marketing Seminars and BG Management were liquidated effective 01-31-2007 and final short year 2007 returns have been filed
 NOTE> Equinox International Corporation was liquidated effective 01-31-2007 and its final year tax return has been filed.

Entity	EIN	Year End	Tax Year 2008		Tax Year 2007		Tax Year 2006		Tax Year 2005		Tax Year 2004		Tax Year 2003		Tax Year 2002		Tax Year 2001		Tax Year 2000 - pre receivership		Tax Year 1999		
			Tax		Tax		Tax		Tax		Tax		Tax		Tax		Tax		Tax		Tax		Tax
Robb Evans, Receiver of Equinox International Corporation	88-6084249	31-Dec			6/7/2007		9/15/2006	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	n/a	n/a	n/a
Equinox International Corporation	88-0278323	28-Feb			6/7/2007		9/15/2006	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	n/a	n/a	11/14/2000
Equinox Travel, Inc.	88-0332025	28-Feb			6/7/2007		9/15/2006	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	n/a	n/a	11/14/2000
Equinox de Mexico	N/A	28-Feb			6/7/2007		9/15/2006	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	n/a	n/a	11/14/2000
Equinox Asia - Pacific, Ltd.	N/A	28-Feb			6/7/2007		9/15/2006	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	10/17/2005	n/a	n/a	11/14/2000
Advanced Marketing Seminars, Inc.	88-0319738	31-Dec			6/7/2007		9/15/2006	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	n/a	n/a	9/14/2000
Seminarios de Mexico Avanzad	N/A	31-Dec			6/7/2007		9/15/2006	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	n/a	n/a	9/14/2000
44 city and state tax returns	N/A	31-Dec																			n/a	n/a	9/14/2000
International Purity Corporation	75-2256766	31-Dec																			n/a	n/a	9/14/2000
BG Management Services, Inc. (converted from S to C)	88-0308216	31-Dec			6/7/2007		9/15/2006	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	3/15/2005	9/14/2001	9/14/2001	3/15/2000
J.L.S Services, Inc. (converted from S to C)	88-0353428	31-Dec																			1/15/2002	1/15/2002	10/13/2000
Estate Development Corporation	65-0734231	31-Dec																			3/15/2005	3/15/2005	10/13/2000
EQ Futures FLP	88-0309296	31-Dec																			10/15/2001	10/15/2001	3/15/2000
EQ Futures LLC	88-0309313	31-Dec																			10/15/2001	10/15/2001	3/15/2000
Pure Water FLP	88-0309301	31-Dec																			10/15/2001	10/15/2001	9/14/2000
Pure Water LLC	88-0309305	31-Dec																			10/15/2001	10/15/2001	9/14/2000
AMSCO Holdings FLP	88-0309291	31-Dec																			10/15/2001	10/15/2001	3/15/2000
AMSCO Holdings LLC	88-0309316	31-Dec																			10/15/2001	10/15/2001	3/15/2000
Eagle Aircraft Services FLP	88-0309293	31-Dec																			10/15/2001	10/15/2001	3/15/2000
EQ Holdings LLC	88-0309314	31-Dec																			10/15/2001	10/15/2001	3/15/2000
Rocky Mountain Holdings FLP	88-0309290	31-Dec																			11/14/2001	11/14/2001	9/14/2000
Rocky Mountain Holdings LLC	88-0309307	31-Dec																			11/14/2001	11/14/2001	9/14/2000
Royal Palms Holdings LP	65-0578756	31-Dec																			11/14/2001	11/14/2001	10/13/2000
Royal Holdings LLC	76-0469094	31-Dec																			11/15/2002	11/15/2002	disregarded entity

