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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JEFF POKORNY and LARRY BLENN, on  
behalf of themselves and those similarly situated,

Plaintiffs,

vs.

QUIXTAR INC., JAMES RON PURYEAR JR.,  
GEORGIA LEE PURYEAR, and WORLD  
WIDE GROUP, L.L.C., BRITT WORLDWIDE,  
L.L.C., AMERICAN MULTIMEDIA INC.,  
BRITT MANAGEMENT, INC., BILL BRITT  
and PEGGY BRITT,

Defendants.

) Case No. C-07-201 SC

) **NOTICE OF MOTION BY BRITT**  
) **DEFENDANTS TO DISMISS AND COMPEL**  
) **COMPLIANCE WITH DISPUTE**  
) **RESOLUTION AGREEMENT, AND**  
) **JOINDER IN DEFENDANT QUIXTAR**  
) **INC.'S MOTION RE SAME;**  
) **MEMORANDUM IN SUPPORT**

) Date: April 27, 2007

) Time: 10:00 a.m.

) Courtroom: 1, 17<sup>th</sup> Floor

) Judge: Hon. Samuel Conti

) Complaint Filed: January 10, 2007

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on April 27, 2007, at 10:00 a.m., before the Honorable Samuel Conti, Courtroom 1, 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Defendants Britt Worldwide, L.L.C., American Multimedia Inc., Britt Management, Inc., Bill Britt and Peggy Britt (collectively, the “Britt Defendants”), by and through their attorneys of record, pursuant to 9 U.S.C. § 3, will and hereby move the Court for an Order:

Dismissing the claims of Plaintiffs Jeff Pokorny and Larry Blenn (“Plaintiffs”) and compelling Plaintiffs to comply with their dispute resolution obligations, on the grounds that the Britt Defendants are third party beneficiaries of the relevant contracts containing the dispute resolution requirements, and/or that the Plaintiffs are equitably estopped from denying their dispute resolution obligations because their claims against signatory and non-signatory defendants are indistinguishable and inherently inseparable.

In the alternative, in the event that the Court orders the other named defendants in this litigation to alternative dispute resolution, but not the Britt Defendants, then the Britt Defendants will and hereby move the Court for an Order staying the litigation as to the Britt Defendants, on the ground that failure to stay the litigation would amount to prejudice to all of the defendants.

The Britt Defendants further provide notice that they hereby join in the Motion to Dismiss Or Stay Litigation And Compel Compliance With Dispute Resolution Agreement, filed concurrently herewith by Defendant Quixtar Inc., based on the reasons stated in that Motion as well as the reasons stated in the Britt Defendants’ Motion.

The Britt Defendants’ Motion is based on this Notice and the following Memorandum, the accompanying Declaration of Bill Britt, the Declaration of Gary VanderVen and Memorandum in support filed concurrently with Defendant Quixtar Inc.’s Motion to Dismiss and Compel Compliance With Dispute Resolution Agreement, the Declaration of Richard A. Davis filed in support of Defendant Puryears and World Wide Group, LLC’s Memorandum in Support of Joinder in Quixtar Inc.’s and Britt’s Motion to Dismiss Or Stay Litigation And Compel Compliance With Dispute

Resolution Agreement, and any other matter of which the Court may take judicial notice, or which may be presented to the Court at or before the time of the hearing.

## MEMORANDUM

### **I. INTRODUCTION**

Plaintiffs are two Quixtar distributors who, presumably, did not achieve success in their Quixtar business operations and are now looking to recoup their alleged losses from three groups of defendants: (1) Quixtar; (2) the “Puryear Defendants” (Ron and Georgia Lee Puryear and World Wide Group LLC); and (3) the “Britt Defendants” (Bill Britt, Peggy Britt, Britt Worldwide, L.L.C., American Multimedia Inc., and Britt Management, Inc.). Plaintiffs allege that the Britt Defendants — together with the other named defendants — participated in a purported RICO enterprise formed to attract new recruits through a series of misrepresentations and omissions regarding the Quixtar business model, the potential success that Plaintiffs could achieve by becoming Quixtar distributors, and the necessity of “tools and functions” to assist Plaintiffs in achieving their success. In other words, Plaintiffs contend that the actions of each defendant are inherently intertwined with the actions of the other defendants, as part of their collective efforts to further the RICO enterprise.

As explained in Quixtar’s Motion to Dismiss Or Stay Litigation And Compel Compliance With Dispute Resolution Agreement (“Quixtar’s Motion to Dismiss”), Plaintiffs have an enforceable ADR/arbitration agreement with Quixtar by virtue of the fact that they signed and renewed the Quixtar Registration Agreement. Under that agreement, Plaintiffs are required to adhere to and complete the Quixtar dispute resolution process. That is, Plaintiffs must first attempt to resolve their claims through conciliation; and, if those efforts are unsuccessful, Plaintiffs must then submit their claims to binding arbitration through JAMS.<sup>1</sup> There is no doubt that the broad Quixtar ADR/arbitration agreement encompasses the various claims in Plaintiffs’ Complaint, since that agreement covers “any claim or

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<sup>1</sup> As noted in the Notice of Motion, the Britt Defendants join Quixtar’s Motion to Dismiss. Because the Britt Defendants’ arguments in this Motion complement and, in part, build on Quixtar’s Motion to Dismiss, it may be helpful for the Court to first review Quixtar’s Motion to Dismiss.

1 dispute arising out of or relating to [Plaintiffs'] distributorship, the [Quixtar] Independent Business  
 2 Ownership Plan or [Quixtar's] IBO Rules of Conduct."

3 Plaintiffs also have dispute resolution obligations stemming from their execution of two other  
 4 key contracts: (1) the Business Support Materials Arbitration Agreement ("BSMAA"), which also  
 5 expressly mandates non-binding conciliation and then binding arbitration; and (2) the Dreambuilders  
 6 membership agreement which, at the very least, requires binding arbitration. Both of these contracts  
 7 are particularly applicable to Plaintiffs' business support materials claims.

8 The Britt Defendants are entitled to compel Plaintiffs to adhere to their dispute resolution  
 9 agreements. Because Bill and Peggy Britt are also Quixtar distributors and have signed the Quixtar  
 10 Registration Agreement, they are direct and intended third party beneficiaries of that agreement's non-  
 11 binding conciliation and binding arbitration provisions. Indeed, the Registration Agreement requires  
 12 that any suit between or among distributors be resolved under the agreed ADR processes. Likewise,  
 13 since Plaintiffs' business support materials claims allege that Britt Worldwide, L.L.C., American  
 14 Multimedia Inc. and Britt Management, Inc., in part, helped produce and distribute these support  
 15 materials, the three Britt-related entities are third party beneficiaries of Plaintiffs' agreement to  
 16 conciliate and arbitrate these claims under the Quixtar Registration Agreement. Plaintiffs' BSMAA  
 17 and Dreambuilders agreements also confer third party beneficiary status on the Britt Defendants since  
 18 the alleged business support materials claims are subject to the ADR provisions of these contracts.

19 Finally, given the interrelated nature of Plaintiffs' allegations — *i.e.*, that each of the  
 20 defendants purportedly participated with the other defendants in alleged wrongdoing as part of a  
 21 collective enterprise — Plaintiffs are equitably estopped from denying their obligations to conciliate  
 22 and arbitrate their claims against the Britt Defendants. The law is clear that, when a signatory to an  
 23 arbitration provision alleges intertwined and interdependent misconduct by both signatory and non-  
 24 signatory defendants, all defendants are entitled to compel arbitration.

25 In sum, the Britt Defendants are entitled to enforce the ADR provisions of the contracts signed  
 26 by Plaintiffs. Accordingly, the Britt Defendants respectfully request that their Motion to compel  
 27  
 28

1 conciliation and arbitration of Plaintiffs' claims be granted along with those concurrently submitted by  
2 the other named defendants.

## 3 **II. FACTUAL BACKGROUND<sup>2</sup>**

### 4 **A. The Britt Defendants**

5 Bill and Peggy Britt became Amway distributors in 1970 and then became Quixtar distributors  
6 in 1999, when Amway's owner launched Quixtar as an e-commerce sister company to Amway.  
7 (Declaration of Bill Britt ("Britt Decl."), ¶ 2.) Bill and Peggy Britt are alleged to be "upline" sponsors  
8 to Ron and Georgia Lee Puryear. (Complaint, ¶¶ 12-13.) That is, the Brittts are more senior in the line  
9 of sponsorship in which the Puryears participate. (*Id.*)

10 Bill and Peggy Britt are also members in Britt Worldwide, L.L.C., and own American  
11 Multimedia Inc. and Britt Management, Inc. (*Id.*) Plaintiffs have characterized these three entities as  
12 "tools and functions" businesses that sell literature and audio materials, convene motivational meetings  
13 and events, and provide support to other Quixtar distributors in their efforts to achieve business  
14 success. (*Id.* ¶¶ 9-11.) Plaintiffs have alleged that Britt Worldwide, L.L.C., in particular, is upline in  
15 the line of sponsorship to all of "the Puryear Defendants" — *i.e.*, Ron and Georgia Lee Puryear and  
16 World Wide Group LLC. (*Id.* ¶ 9.)

### 17 **B. The Relevant Contracts**

#### 18 **1. Quixtar Registration Agreements**

19 To become a Quixtar distributor and to maintain a distributorship, one must execute and renew  
20 the Registration Agreement with Quixtar. (*Id.* ¶ 18.) Under that Registration Agreement, all Quixtar  
21 distributors agree to:

22 give notice in writing of any claim or dispute arising out of or relating to  
23 my Independent Business, the Independent Business Ownership Plan, or  
24 the IBO Rules of Conduct, to the other party or parties involved in the  
25 dispute, specifying the basis for my claim and the amount claimed or  
relief sought. I will then try in good faith to resolve the dispute using the  
Dispute Resolution Procedures contained in the IBO Rules of Conduct,  
including the conciliation process.

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26  
27 <sup>2</sup> To the extent that they cite the allegations of the Complaint, the Britt Defendants do so without in any way conceding the  
accuracy of Plaintiffs' allegations or waiving their right to challenge those allegations in the future.

If the claim or dispute is not resolved to my satisfaction within 90 days, or after the conciliation process is complete, whichever is later, I agree to submit any remaining claim or dispute arising out of or relating to my Independent Business, the Independent Business Ownership Plan, or the IBO Rules of Conduct (including any claim against another IBO, or any such IBO's officers, directors, agents, or employees; or against Quixtar Inc., Quixtar Canada Corporation, and any parent, subsidiary, affiliate, predecessor or successors thereof, or any of their officers, directors, agents, or employees) to binding arbitration in accordance with the Arbitration Rules which are set forth in the IBO Rules of Conduct.

(Ex. 1 to the Complaint.<sup>3</sup>) Quixtar provides a detailed explanation of this dispute resolution process (hereinafter, referred to as "the Quixtar ADR Agreement") in Section II.C of its Motion to Dismiss.

Bill and Peggy Britt have executed and renewed the Quixtar Registration Agreement between 1999 and the present. (Britt Decl., ¶ 3.) Both Plaintiffs have done the same: Plaintiff Jeff Pokorny has signed the Amway/Quixtar Registration Agreement and renewed it between 1997 and 2006 (Exs. 6-9 to VanderVen Decl.), and Plaintiff Larry Blenn and his wife have done so in 2005 and 2006. (Exs. 12, 14 and 15 to VanderVen Decl.) Thus, both Plaintiffs and Bill and Peggy Britt are bound to the Quixtar ADR Agreement.

## **2. Agreements related to disputes regarding business support materials**

Quixtar distributors have the option of purchasing merchandising aids and support materials to help them build successful businesses of their own. (Ex. 9 to the Complaint, ¶ 7 at D-31 ("SM [support materials] are entirely optional . . ."); *see also id.* at C-4 ("While you are not required to purchase any BSMs [business support materials], you may decide that they can play a useful role in building a profitable business.")). While Plaintiffs call these materials "tools and functions," they are known in Quixtar vernacular as "business support materials," or "BSM." (*See generally id.* at C-4 and D-31.) Business support materials are produced and distributed independently by Quixtar distributors who decide to offer them. (*Id.*) Plaintiffs have implicated Britt Worldwide, L.L.C., American Multimedia Inc. and Britt Management, Inc. in their claims regarding business support materials.

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<sup>3</sup> The multi-tiered dispute resolution process, including binding arbitration, has been a part of the Quixtar Registration Agreement since 1998. (*See* Declaration of Gary D. VanderVen, ¶¶ 5-6 ("VanderVen Decl.")).



1 If distributors choose to purchase business support materials (and they are not required to do  
 2 so), they sign the Business Support Materials Arbitration Agreement, or BSMAA. (*Id.* at C-4.) The  
 3 BSMAA contains conciliation and arbitration requirements similar to those found in the Quixtar ADR  
 4 Agreement. Particularly, the BSMAA expressly applies to

5 any claim or dispute arising out of or relating to Business Support  
 6 Materials (including any claim a party to this Agreement may make  
 7 against any publisher, author, speaker, distributor, manufacturer, seller,  
 8 reseller, or marketer of Business Support Materials) . . . .

9 (Ex. 11 to VanderVen Decl.) Plaintiff Jeff Pokorny signed the BSMAA (Ex. 10 to VanderVen Decl.),  
 10 and Plaintiffs Larry Blenn agreed to the terms of the BSMAA when he joined the Quixtar  
 11 distributorship formed by his wife, who had signed the BSMAA one year earlier. (Ex. 13 to  
 12 VanderVen Decl.)

13 For World Wide Dreambuilders members who purchase Dreambuilders business support  
 14 materials in particular, there are additional terms and conditions regarding dispute resolution. (*See*  
 15 Exs. 1-2, ¶ 13, to Declaration of Richard A. Davis (“Davis Decl.”).) A distributor who becomes a  
 16 “Premier Member” of World Wide Dreambuilders has the opportunity to purchase Dreambuilders  
 17 business support materials, upon execution of the BSMAA. (*Id.* ¶ 2.2.) As noted above, the BSMAA  
 18 contains certain conciliation and arbitration requirements. In addition, however, the Dreambuilders  
 19 membership agreement contains its own dispute resolution clause requiring binding arbitration of “any  
 20 and all differences or disputes related to or arising out of [the Dreambuilders membership agreement]  
 21 or the services or the goods.” (*Id.* ¶ 13.) Both Plaintiffs accepted the terms of the Dreambuilders  
 22 membership agreement in 2004 and 2005. (*See* Davis Decl., ¶¶ 13-14.)

### 23 **C. The Claims Against The Britt Defendants**

24 Plaintiffs’ claims in general are two-fold: (1) a challenge against the Quixtar multi-level  
 25 marketing business model; and (2) a challenge against businesses engaged in selling “tools and  
 26 functions.”

27 Plaintiffs allege that all of the defendants comprise “the Quixtar/Kingpin Enterprise,” a  
 28 purported “association in fact of entities and individuals” in existence since at least January 2003, and

1 purportedly engaged in racketeering activities prohibited under the Racketeer Influenced and Corrupt  
 2 Organizations Act (“RICO”). (Complaint, ¶¶ 85-86.) According to Plaintiffs, this so-called enterprise  
 3 has had the common purpose of distributing both products and “tools and functions” materials in order  
 4 to: (a) earn money through fraudulent means; (b) entice individuals to purchase products from Quixtar  
 5 and “tools and functions” materials from Kingpins by giving such individuals the false impression that  
 6 they would be able to recruit others to purchase Quixtar products; and (c) reap large profits for  
 7 themselves based on false representations. (*Id.* ¶¶ 88-89.) The Complaint identifies various alleged  
 8 racketeering acts — *i.e.*, the use of United States mail and wire communications for the purpose of  
 9 defrauding distributors like Plaintiffs — in which all of the defendants, including the Britt Defendants,  
 10 supposedly participated. (*Id.* ¶¶ 99-104.) The alleged racketeering activities form the basis for three  
 11 RICO claims against all of the defendants, including the Britt Defendants, and for two California state  
 12 law claims for unfair business practices and false advertising. (*Id.* ¶¶ 84-131 (Second - Sixth Claims  
 13 for Relief).)

14 Plaintiffs’ allegations against the Britt Defendants are indistinguishable and indistinct from the  
 15 claims against the other named defendants. The Complaint charges the alleged wrongdoers in general  
 16 terms, either referring to defendants as generic “defendants” (*see generally* Complaint), or identifying  
 17 them as a collective group with phrases such as “Quixtar, the Kingpin Companies, and the individual  
 18 defendants” (*see, e.g., id.* ¶ 33), or “the Quixtar/Kingpin Enterprise” (*see, e.g., id.*, ¶¶ 84-133 (Second -  
 19 Sixth Claims for Relief)). Similarly, Plaintiffs couch their allegations regarding defendants’ purported  
 20 misconduct in joint terms. For example, Plaintiffs claim: “[t]he defendant companies and individuals  
 21 recruit people to become Quixtar distributors, entice them to purchase Quixtar products and related  
 22 ‘tools and functions’ through material false statements and omissions, and then distribute the proceeds  
 23 of product sales to new recruits based almost exclusively on participants’ recruitment of new victims,  
 24 rather than on the sale of products to retail users of Quixtar’s products.” (*Id.* ¶ 33.)

25 Indeed, after the Complaint’s initial identification of each of the defendants, none of the  
 26 allegations separates out the claims against Britt Defendants. Even the few allegations in which  
 27 Plaintiffs have called the Britt Defendants out by name merely identify the Britt Defendants as having  
 28

acted together with the other named defendants. For example, Paragraph 101 of the Complaint alleges: “On or about November 18, 2003, the defendants Ron Puryear, Georgia Lee Puryear, World Wide Group, Britt Worldwide, American Multimedia, Britt Management, Bill Britt and Peggy Britt distributed information by interstate wire transmissions over the world wide web promoting their ‘Dream Night 2004’ convention for January 14, 2004 in San Jose, California.”

In sum, instead of distinguishing among the various defendants and/or making any distinct claims against the Britt Defendants, Plaintiffs intertwine the purported misconduct of all defendants.

### III. ARGUMENT

#### A. Plaintiffs Should Be Compelled to Conciliate And Arbitrate Their Claims Because They Contracted To Do So.<sup>4</sup>

The Britt Defendants submit that the Plaintiffs should be compelled to resolve their claims as they consented through the Quixtar ADR Agreement. Under Section 3 of the Federal Arbitration Act, when asked to compel arbitration, the Court must review and decide two matters: (1) whether the parties agreed to arbitrate their disputes and, if they have so agreed; (2) whether the claims fall within their arbitration agreement. *See Rep. of Nicaragua v. Standard Fruit Co.*, 937 F.2d 469, 478 (9<sup>th</sup> Cir. 1991). If the Court finds that the matters are arbitrable, the motion to compel arbitration must be granted. *See* 9 U.S.C. § 3 (“the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement. . . .”); *see also Standard Fruit*, 937 F.2d at 475; *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (holding that the Federal Arbitration Act “leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement

<sup>4</sup> As argued in Sections III.A and III.B of Quixtar’s Motion to Dismiss, the conciliation and arbitration agreements signed by Plaintiffs are fully enforceable. In the interests of time and space, the Britt Defendants join in Quixtar’s arguments and focus here on the reasons that they have standing to compel Plaintiffs’ conciliation and arbitration obligations.

has been signed”) (emphasis in original). The merits of the claims and defenses are left to the arbitrator. *See Standard Fruit*, 937 F.2d at 478.

**1. The Britt Defendants are third party beneficiaries of Plaintiffs’ various arbitration agreements.**

The Britt Defendants can, as third party beneficiaries, enforce Plaintiffs’ obligations to conciliate and/or arbitrate their claims. *See, e.g., Vestax Secs. Corp. v. McWood*, 116 F. Supp. 2d 865, 868 n.4 (E.D. Mich. 2000) (holding that non-signatory third party beneficiaries had a right to compel arbitration); *see also In Re Prudential Insurance Company of America Sales Practice Litigation*, 133 F.R.D. 225, 230 (3d Cir. 1998) (same). A non-signatory is a third party beneficiary if the promisor “has undertaken to give or do or refrain from doing something directly to or for said person.”<sup>5</sup> *See Mich. Comp. Laws § 600.1405(1)*. As explained below, all of the Britt Defendants fall within this definition.

**a. Plaintiffs committed to conciliate and/or arbitrate all of their claims against Bill and Peggy Britt.**

Plaintiffs committed to resolve all of their claims against Bill and Peggy Britt through the private dispute resolution processes set forth in the Quixtar IBO Rules of Conduct, and not through court litigation. In executing the Quixtar ADR Agreement, Plaintiffs consented to conciliate and/or arbitrate “any claim or dispute arising out of or relating to my Independent Business, the Independent Business Ownership Plan, or the IBO Rules of Conduct . . . including any claim against another IBO . . .” (emphasis added). *See Morrison v. Amway Corp.*, 49 F. Supp.2d 529, 535 (S.D. Tex. 1998) (holding that a similar clause in the Amway arbitration agreement, upon which the Quixtar ADR

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<sup>5</sup> Under the Federal Arbitration Act, it is appropriate to look to state law to decide the question of who is bound by an arbitration agreement. *See, e.g., Flink v. Carlson*, 856 F.2d 44 (8<sup>th</sup> Cir. 1988). Here, both the Quixtar Registration Agreement containing the Quixtar ADR Agreement, and the BSMAA, are governed by Michigan state law. (Ex. 1 to the Complaint (referring to the Arbitration Rules in the IBO Rules of Conduct) and Ex. 9 to the Complaint (Rule 11.5.21, citing Michigan law as the applicable law); *see also* Ex. 11 to VanderVen Decl. (“BSMAA”); *Stewart & Assoc. Int’l v. Alticor, Inc.*, No. 05-3440-CV-RED (W.D. Mo. Nov. 20, 2006) (*See* Ex. A to Appendix of Authorities Regarding the Quixtar ADR Agreement, filed concurrently by Quixtar.)

1 Agreement is modeled, was broad enough to require arbitration of claims by Amway distributors  
2 against both Amway and other distributors).

3 This express language leaves no doubt that claims between and among Quixtar distributors are  
4 governed by the Quixtar ADR Agreement. There is similarly no doubt that both Plaintiffs, and Bill  
5 and Peggy Britt, are distributors to whom the ADR Agreement applies since they all signed and  
6 annually renewed their Quixtar Registration Agreements.

7 In addition, the Quixtar ADR Agreement clearly covers all of Plaintiffs' claims against Mr. and  
8 Mrs. Britt. Plaintiffs assert, in part, that statements made to them about both the Quixtar business and  
9 the need for tools and functions were false. (Complaint, ¶¶ 40, 41, 46, and 99.) Plaintiffs also contend  
10 that the Quixtar IBO model is an illegal pyramid scheme. (*Id.* ¶¶ 52 and 123.) These claims  
11 necessarily arise out of and relate to their distributorships, the Quixtar Independent Business  
12 Ownership Plan, and/or the Quixtar IBO Rules of Conduct.

13 Under these facts, there can be no doubt that Bill and Peggy are intended third party  
14 beneficiaries of Plaintiffs' Quixtar ADR Agreement. Thus, even though Mr. and Mrs. Britt did not  
15 sign an agreement directly with Plaintiffs, they are entitled to have Plaintiffs' claims — distributor  
16 against distributor — resolved through the dispute resolution process to which Plaintiffs subscribed.  
17 *See, e.g., In Re Prudential Ins. Co.*, 133 F.R.D. at 230 (holding that Prudential, a non-signatory, could  
18 compel arbitration as a third party beneficiary, based on plaintiffs' agreement to arbitrate their disputes  
19 against "any other person" with respect to claims covered by the NASD Code, and further based on  
20 fact that NASD Code required arbitration of claims between member firms, like Prudential, and  
21 "associated persons," like plaintiffs).

22 **b. Because all of the Britt Defendants are third party beneficiaries of**  
23 **the various contracts that Plaintiffs signed, Plaintiffs must conciliate**  
24 **and/or arbitrate their business support materials claims against the**  
25 **Britt Defendants.**

26 Plaintiffs expressly committed to conciliate and/or arbitrate their business support materials  
27 claims when they signed three types of contracts: the Quixtar ADR Agreement, the BSMAA and the  
28 Dreambuilders membership agreement. Plaintiffs' Complaint alleges that a RICO enterprise, which

1 allegedly includes the Britt Defendants, misrepresented the need for business support materials to  
2 achieve success. These claims fall squarely within the ambit of the three aforementioned agreements:

- 3 • The Quixtar ADR Agreement applies broadly to “any claim or dispute arising out of or  
4 relating to . . . the IBO Rules of Conduct.” (Ex. 9 to the Complaint.) The IBO Rules of  
5 Conduct set forth various requirements and disclosures regarding the purchase and sale  
6 of business support materials. (*See id.*, ¶ 7, at D-31 to D-33.) Therefore, when  
7 Plaintiffs executed the Quixtar ADR Agreement, they agreed that they would conciliate  
8 and arbitrate their business support materials claims.
- 9 • The BSMAA expressly covers “any claim or dispute arising out of or relating to  
10 Business Support Materials” and requires submission of such claims to conciliation and  
11 arbitration under the IBO Rules of Conduct. (Ex. 11 to VanderVen Decl.) Thus, when  
12 Plaintiff Jeff Pokorny and Plaintiff’s Larry Blenn’s wife (who Mr. Blenn later joined in  
13 her Quixtar IBO) signed the BSMAA, they consented to conciliate and arbitrate their  
14 business support materials claims. (*See* Exs. 10 and 13 to VanderVen Decl.)
- 15 • The Dreambuilders membership agreement contains terms and conditions regarding,  
16 *inter alia*, the purchase and sale of business support materials. (Exs. 1-2 to Davis Decl.)  
17 Paragraph 13 of that agreement broadly provides for binding arbitration of “any and all  
18 disputes related to or arising out of this Agreement or the services or the goods.”  
19 Hence, when Plaintiffs acknowledged the Dreambuilders membership agreement, they  
20 subscribed to binding arbitration of their business support materials claims.

21 Through these agreements, there can be no doubt that Plaintiffs intended to submit their claims to  
22 conciliation and arbitration.

23 Even though Britt Worldwide, L.L.C., American Multimedia Inc. and Britt Management, Inc.  
24 did not sign these three agreements, they are still entitled to enforce Plaintiffs’ dispute resolution  
25 obligations as intended third party beneficiaries. *See, e.g., Vestax Secs. Corp.*, 116 F. Supp. 2d at 868  
26 n.4 (holding that third party beneficiaries had a right to compel arbitration). Plaintiffs have alleged that  
27 Britt Worldwide, L.L.C., American Multimedia Inc., and Britt Management, Inc. are engaged in the  
28

1 production and sale of business support materials, and that Plaintiffs were defrauded as to the necessity  
 2 of purchasing these support materials to achieve success as IBOs. (Complaint, ¶¶ 9-11; *id.* at ¶¶ 84-  
 3 133 (Second - Sixth Claims for Relief).)

4 As noted above, the Quixtar ADR Agreement applies broadly to claims arising out of or  
 5 relating to business support materials. Therefore, the ADR Agreement controls any of these business  
 6 materials claims brought against providers of these materials. In other words, the Britt-related entities  
 7 — as alleged providers of business support materials — are direct third party beneficiaries of the  
 8 Quixtar ADR Agreement.

9 Likewise, the BSMAA membership agreement covers all of the Britt Defendants as third party  
 10 beneficiaries. The BSMAA covers disputes against “any publisher, author, speaker, distributor,  
 11 manufacturer, seller, reseller, or marketer of Business Support Materials.” (Exs. 10, 11 and 13 to  
 12 VanderVen Decl.) According to Plaintiffs’ descriptions in the Complaint, all of the Britt Defendants  
 13 fall within this definition (Complaint, ¶¶ 9-13), and thus all are third party beneficiaries of the  
 14 BSMAA.<sup>6</sup>

15 Because the Britt Defendants are third party beneficiaries of the various contracts signed by  
 16 Plaintiffs, the Britt Defendants have standing to compel Plaintiffs to adhere to their conciliation and  
 17 arbitration obligations.

18 **2. At the very least, Plaintiffs are estopped from denying their dispute**  
 19 **resolution obligations in this case.**

20 It is well established that a signatory to an arbitration agreement can be compelled to arbitrate  
 21 its claims against a non-signatory where the signatory claims “substantially interdependent and  
 22 concerted misconduct” by both non-signatory and signatory defendants. *See Amisil Holdings, Ltd. v.*  
 23 *Clarium Cap. Mgmt LLC*, 2006 WL 3949332, at \*13 (N.D. Cal. Dec. 21, 2006) (Hon. Eugene M.

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24  
 25 <sup>6</sup> For the same reason, the Britt Defendants also should be found to be third party beneficiaries of the Dreambuilders  
 26 agreement. Like the Quixtar ADR Agreement, the Dreambuilders membership agreement applies broadly to various types  
 27 of disputes, including claims regarding business support materials. (Exs. 1-2 to Davis Decl.) Thus, to the extent that  
 28 Plaintiffs claim that the Britt Defendants are producers and distributors of relevant business support materials (Complaint,  
 ¶¶ 9-13), the Britt Defendants are also third party beneficiaries of the ADR provisions of the Dreambuilders agreement.



Chen); *see also Boston Telecomm. Group, Inc. v. Deloitte Touche Tohmatsu*, 278 F. Supp. 2d 1041, 1048 (N.D. Cal. 2003) (JSW) (noting the same ground for estopping a signatory from denying its arbitration obligation). This principle applies with equal force to both the arbitration and conciliation requirements contained in the Quixtar ADR Agreement and the BSMAA, and the arbitration obligation found in the Dreambuilders membership agreement. *Accord generally Fisher v. GE Med. Sys.*, 276 F. Supp. 2d 891 (M.D. Tenn. 2003) (holding that mediation is a form of dispute resolution that should be treated similarly to arbitration under the Federal Arbitration Act, and compelling a non-signatory to a contract to mediation prior to court litigation).

As discussed above, Plaintiffs' claims against the Britt Defendants are virtually identical and indistinguishable from the claims they have asserted against Quixtar and the Puryear Defendants. Specifically, Plaintiffs allege that all of the defendants collectively formed a RICO enterprise and committed supposed acts of mail and wire fraud to profit, at Plaintiffs' expense, from the sales of Quixtar products and the tools and functions offered by World Wide Group. Even in the instances when the Complaint specifically mentions the Britt Defendants, it does so merely to tie them to the alleged misconduct of the other defendants.

In this circumstance, it would be inefficient (and likely impossible) to require the Britt Defendants to defend Plaintiffs' claims in court, while compelling Plaintiffs to resolve their disputes against Quixtar and the Puryear Defendants in conciliation and/or arbitration. As this Court noted recently in *Amisil Holdings Ltd. v. Clarium Cap. Mgmt LLC*:

[W]here the conduct of a nonsignatory is substantially interdependent with the conduct of a signatory, unless the non-signatory is compelled to arbitrate, arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted. In other words, where a lawsuit against non-signatories is inherently bound up with the claims against a signatory, the court should compel arbitration in order to avoid denying the signatory [defendant] the benefit of the arbitration clause, and in order to avoid duplicative litigation which undermines the efficiency of arbitration.

2006 WL 3949332, at \*13. Thus, assuming that this Court compels Plaintiffs to submit to the conciliation and/or arbitration procedures to which they agreed, the Britt Defendants request that they be included in that Order as well.



**B. If This Court Compels Quixtar And The Puryear Defendants, But Not The Britt Defendants, to Conciliation And Arbitration, The Britt Defendants Request A Stay of Plaintiffs' Litigation Against The Britt Defendants.**

This Court has the authority and discretion, under the Federal Arbitration Act, to stay the litigation against the Britt Defendants until the claims asserted by Plaintiffs against the other named defendants have been resolved in conciliation and arbitration. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 n.23 (1983) (“it may be advisable to stay litigation among the non-arbitrating parties pending the outcome of the arbitration”). Particularly, “if a suit against a nonsignatory is based upon the same operative facts and is inherently inseparable from the claims against a signatory, the trial court has discretion to grant a stay if the suit would undermine the arbitration proceedings and thwart the federal policy in favor of arbitration.” *See Hill v. G.E. Power System, Inc.*, 282 F.3d 343, 347 (5th Cir. 2002).

This Court has found this policy persuasive. For example, in *Amisil Holdings Ltd. v. Clarium Cap. Mgmt LLC*, this Court was presented with a case involving an investor’s claims: (1) against a hedge fund, with whom the investor had a contract; and (2) against three individual officers of the hedge fund who did not sign the contract. The defendants jointly moved to compel arbitration pursuant to a clause in the relevant contract providing for non-binding mediation and, if unsuccessful, binding arbitration. Analyzing the law and the close relationship between the defendants and the claims asserted against them, the Honorable Eugene M. Chen recommended that the District Judge compel the plaintiff to arbitrate its claims against all of the defendants. As an alternative, however, Magistrate Judge Chen recommended staying the claims against the individual, non-signatory defendants, since the claims against the individual defendants were based on the same facts and identical to the claims against the hedge fund. As to this latter recommendation, Magistrate Judge Chen observed that a stay of litigation would be fair because:

[n]ot only would a failure to stay prejudice Clarium’s [the signatory defendant’s] right to arbitration but also “considerations of economy and efficiency” counsel in favor of a stay.

2006 WL 3949332, at \*14; *see also Fujian Pac. Elec. Co. Ltd. v. Bechtel Power Corp.*, 2004 WL 2645974, at \*7-\*8 (N.D. Cal. Nov. 19, 2004) (Hon. Marilyn H. Patel) (also staying litigation against a nonsignatory defendant for the same reasons).

The outcome in the current litigation should be the same. As noted in Section II.C above, the claims against the Britt Defendants are wrapped up and intertwined with the claims against the other named defendants. Plaintiffs have failed to distinguish among the defendants and their alleged wrongdoings. Allowing Plaintiffs to proceed with their claims against the Britt Defendants alone in this Court, while requiring resolution of identical claims against the other named defendants in a separate forum, would amount to unfair prejudice against the Britt Defendants, as well as potentially against Quixtar and the Puryear Defendants. Thus, if the claims against the Britt Defendants must remain under this Court's jurisdiction, a stay of the litigation would not only be appropriate, but consistent with the interests of fairness.

#### IV. CONCLUSION

For the foregoing reasons, the Britt Defendants respectfully request that Plaintiffs be compelled to conciliate and arbitrate their claims against the Britt Defendants, along with Plaintiffs' claims against the other named defendants. In the alternative, the Britt Defendants respectfully request that this Court stay the litigation against the Britt Defendants, until such time as Plaintiffs' claims against the other named defendants have been resolved through the Quixtar dispute resolution procedures.

Dated: March 5, 2007

Respectfully submitted,

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