

Lawrence B. Steinberg (State Bar No. 101966)
LSteinberg@buchalter.com
 BUCHALTER, A Professional Corporation
 1000 Wilshire Boulevard, Suite 1500
 Los Angeles, CA 90017-2457
 Telephone: (213) 891-0700
 Facsimile: (213) 896-0400

Pressly M. Millen (admitted *pro hac vice*)
pmillen@wcsr.com
 Jonathon D. Townsend (CA State Bar No. 293918)
jtownsend@wcsr.com
 WOMBLE CARLYLE SANDRIDGE & RICE, LLP
 555 Fayetteville Street, Suite 1100
 Raleigh, NC 27601
 Telephone: (919) 755-2100
 Facsimile: (919) 755-2150

Attorneys for defendants MARKET
 AMERICA, INC., MARKET AMERICA
 WORLDWIDE, INC., JAMES HOWARD
 RIDINGER, LOREN RIDINGER and
 MARC ASHLEY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

CHUANJIE YANG, an individual;
 OLLIE LAN aka RUONING LAN,,
 an individual; LIU LIU, an individual,
 and all those similarly situated ,

Plaintiffs,

vs.

MARKET AMERICA, INC., a North
 Carolina Corporation; MARKET
 AMERICA WORLDWIDE, INC., a
 North Carolina Corporation; JAMES
 HOWARD RIDINGER, an
 individual; LOREN RIDINGER, an
 individual; MARC ASHLEY, an
 individual; and DOES 1- 100,

Defendants.

Case No. CV 2:17-04012-GW (JEMx)

NOTICE OF MOTION AND MOTION
 TO COMPEL ARBITRATION OR, IN
 THE ALTERNATIVE, TO STAY
 PROCEEDING OR DISMISS
 COMPLAINT, OR TRANSFER TO
 THE MIDDLE DISTRICT OF NORTH
 CAROLINA; MEMORANDUM OF
 POINTS AND AUTHORITIES

Date: November 16, 2017
 Time: 8:30 a.m.
 Courtroom: 9D

[Filed Concurrently With Request for
 Judicial Notice; Motion Also Based On
 Previously Filed Declarations (Docket
 Nos. 39-1, 39-2, 39-3)]

1 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD HEREIN:

2 PLEASE TAKE NOTICE that on November 16, 2017, or as soon thereafter
3 as the matter may be heard in Courtroom 9D of the United States District Court for
4 the Central District of California, located at 350 West First Street, Los Angeles,
5 California 90012, defendants MARKET AMERICA, INC., MARKET AMERICA
6 WORLDWIDE, INC., JAMES HOWARD RIDINGER, LOREN RIDINGER, and
7 MARC ASHLEY (collectively, "Defendants") will and hereby do move the Court
8 for the following alternative forms of relief:

9 (1) An order compelling individual arbitration of the claims asserted
10 herein by plaintiffs CHUANJIE YAN, OLLIE LAN AKA RUONING LAN, and
11 LIU LIU (collectively, "Plaintiffs") in Greensboro, North Carolina pursuant to the
12 binding and enforceable arbitration agreement entered into by Plaintiffs and
13 Market America, and 9 U.S.C. § 4, or, in the alternative;

14 (2) An order dismissing this action pursuant to Rules 12(b)(1) and (6) of
15 the Federal Rules of Civil Procedure; *see Thinknet Ink Inf. Res. v. Sun*
16 *Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004) , or, in the alternative;

17 (3) An order staying these proceedings pursuant to 9 U.S.C. § 3 until the
18 Middle District of North Carolina can decide Defendants' recently-filed petition to
19 compel arbitration, *Market America, Inc. et al. v. Chuanjie Yang et al.*,
20 Case No. 1:17-cv-897 (M.D. N.C.), and in the event the Middle District of North
21 Carolina grants Defendants' petition, until the arbitration proceedings have been
22 completed, or, in the alternative;

23 (4) An order transferring this action to the Middle District of North
24 Carolina pursuant to 28 U.S.C. § 1404(a) and the Supreme Court's holding in
25 *Atlantic Marine Construction Co. v. United States District Court for the Western*
26 *District of Texas*, 134 S.Ct. 568, 581 (2013).

This motion is made following the conferences of counsel pursuant to Local Rule 7-3 which took place on June 21, 2017 and July 26, 2017.

This motion is based on this Notice of Motion and Motion, Defendants' Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the previously filed Declarations of Eugene Wallace (Dkt. No. 39-1), Clement Erhardt (Dkt. No. 39-2), and Jonathon D. Townsend (Dkt. No. 39-3) and all exhibits attached thereto, all documents in the Court's file, and on such other arguments as may be presented to the Court.

DATED: October 9, 2017

BUCHALTER
A Professional Corporation

By _____ /s/
Lawrence B. Steinberg
Attorneys for defendants
MARKET AMERICA, INC.,
MARKET AMERICA WORLDWIDE, INC.,
JAMES HOWARD RIDINGER,
LOREN RIDINGER and MARC ASHLEY

WOMBLE CARLYLE
SANDRIDGE & RICE, LLP

By /s/
Pressly M. Millen
Attorneys for defendants
**MARKET AMERICA, INC.,
MARKET AMERICA WORLDWIDE, INC.,
JAMES HOWARD RIDINGER,
LOREN RIDINGER and MARC ASHLEY**

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF FACTS	2
ARGUMENT.....	6
I. THE ARBITRATION PROVISION AND FORUM SELECTION CLAUSE IS A VALID AND ENFORCEABLE PROVISION REQUIRING PLAINTIFFS TO ARBITRATE THEIR CLAIMS IN NORTH CAROLINA.....	7
A. North Carolina Law Governs Whether the Parties Entered Into a Valid Agreement to Arbitrate Disputes in North Carolina.	7
B. All Three Plaintiffs Assented to the Agreement Terms and Conditions	9
C. The Career Manual’s Internal Dispute Resolution Procedure is Not Relevant to the FAC.	11
D. Plaintiffs’ Challenges to the Arbitration Provision and Forum Selection Clause Lack Merit.	12
E. The Broad Arbitration Provision Encompasses Plaintiffs’ Claims.	14
II. THIS COURT SHOULD COMPEL ARBITRATION, DISMISS THIS CASE, STAY PROCEEDINGS, OR TRANSFER THIS CASE TO THE MIDDLE DISTRICT OF NORTH CAROLINA.	17
A. This Court May Compel Arbitration in North Carolina.....	17
B. The Court May Stay These Proceedings, or Dismiss This Action, Pending the Completion of Arbitration.	19
C. In the Alternative, this Court Should Transfer Venue to the Middle District of North Carolina.	21
1. The Supreme Court’s Decision in Atlantic Marine Requires Transfer to the Middle District of North Carolina.	21
2. Plaintiffs Cannot Demonstrate that the Forum Selection Clause is Invalid.	23
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<i>Allied Bruce Terminix Cos. v. Dobson</i> , 513 U.S. 265 (1995).....	6
<i>Alvarado v. Pacific Motor Trucking Co.</i> , 2014 WL 3888184 (C.D. Cal. Aug. 7, 2014)	20
<i>Argueta v. Banco Mexicano, S.A.</i> , 87 F.3d 320 (9th Cir. 1996)	23
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011).....	6
<i>Atlantic Marine Construction Co. v. United States District Court</i> , ___ U.S. ___, 134 S.Ct. 568 (2013)	21, 22
<i>Bauhinia Corp. v. China National Machinery & Equip Import & Export Corp.</i> , 819 F.2d 247 (9th Cir. 1987)	18
<i>Bergenstock v. LegalZoom.com, Inc.</i> , 2015 WL 3866703 (N.C. Super. June 23, 2015)	9
<i>Beuperthuy v. 24 Hour Fitness USA, Inc.</i> , 2012 WL 3757486 (N.D. Cal. July 5, 2012)	19
<i>Bowman v. Kona University, Inc.</i> , 2013 WL 3819674 (C.D. Cal. July 23, 2013)	24
<i>Brennan v. Opus Bank</i> , 796 F.3d 1125 (9th Cir. 2015)	7, 15
<i>Brenner v. Little Red Sch. House, Ltd.</i> , 274 S.E.2d 206 (N.C. 1981)	13
<i>Britvan v. Cantor Fitzgerald, L.P.</i> , 2016 WL 3896821 (C.D. Cal. July 18, 2016)	22
<i>Cape Flattery Ltd. v. Titan Maritime, LLC</i> , 647 F.3d 914 (9th Cir. 2011)	16
<i>Cigirex, LLC v. Acosta, Inc.</i> , 2014 WL 12606496 (C.D. Cal. Oct. 6, 2014)	20
<i>Concat LP v. Unilever, PLC</i> , 350 F.Supp.2d 796 (N.D. Cal. 2004).....	2
<i>Continental Airlines, Inc. v. Mundo Travel Corp.</i> , 412 F.Supp.2d 1059 (E.D. Cal. 2006)	8

TABLE OF AUTHORITIES

1		
2		
3	<i>Continental Grain Co. v. Dant & Russell,</i>	
4	118 F.2d 967 (1941)	<i>passim</i>
5	<i>Crown Capital Secs., L.P. v. Liberty Surplus Ins. Corp.,</i>	
6	2015 WL 12748815 (C.D. Cal. Mar. 3, 2015)	22, 23, 24
7	<i>Curtis v. GE Capital Corp.,</i>	
8	2013 WL 4212932 (W.D. N.C. Aug. 15, 2015)	12
9	<i>Dupuy-Busching Gen. Agency v. Ambassador Ins. Co.,</i>	
10	524 F.2d 1275 (5th Cir.1975)	19
11	<i>Ellison v. Alexander,</i>	
12	700 S.E.2d 102 (N.C. Ct. App. 2010).....	16
13	<i>Entravision Comm'ns Corp v. BroadView Software, Inc.,</i>	
14	2009 WL 10675885 (C.D. Cal. Aug. 26, 2009)	20
15	<i>Fadal Machining Ctrs., LLC v. Compumachine, Inc.,</i>	
16	461 Fed.App'x. 630 (9th Cir. 2011)	15
17	<i>Fagerstrom v. Amazon.com, Inc.,</i>	
18	141 F.Supp.3d 1051 (S.D. Cal. 2015)	8
19	<i>Fireman's Fund Ins. Co. v. M.V. DSR Atlantic,</i>	
20	131 F.3d 1336 (9th Cir. 1997)	24
21	<i>Fteja v. Facebook, Inc.</i>	
22	841 F.Supp.2d 829 (S.D.N.Y. 2012)	9
23	<i>Gen. Signal Corp. v. MCI Telecommunications Corp.,</i>	
24	66 F.3d 1500 (9th Cir. 1995)	8
25	<i>Grisby v. DC 4400, LLC,</i>	
26	2016 WL 7115903 (C.D. Cal. Dec. 5, 2016).....	15
27	<i>Han v. Samsung Telecommunications Am., LLC,</i>	
28	2013 WL 7158044 (C.D. Cal. Dec. 16, 2013).....	8
	<i>Hancock v. Am. Tel & Tel. Co., Inc.,</i>	
	701 F.3d 1248 (10th Cir. 2012)	9
	<i>Ideal Company, Inc. v. 1st Merchant Funding, LLC,</i>	
	2016 WL 2932086 (C.D. Cal. May 18, 2016).....	20
	<i>In re Air Crash Over Taiwan on May 25, 2002,</i>	
	331 F.Supp.2d 1176 (C.D. Cal. 2004).....	22

TABLE OF AUTHORITIES

<i>Jurado v. Schutz 655, LLC,</i> 2017 WL 600076 (C.D. Cal. Feb. 13, 2017)	2, 10
<i>Kramer v. Toyota Motor Corp.,</i> 705 F.3d 1122 (9th Cir. 2013)	16
<i>Luna v. Kemira Specialty, Inc.,</i> 575 F.Supp.2d 1166 (C.D. Cal. 2008)	20
<i>MCI Constructors, Inc. v. City of Greensboro,</i> 125 Fed.App'x 471 (4th Cir. 2005)	8, 12
<i>Miller v. Time Warner Cable Inc.,</i> 2016 WL 7471302 (C.D. Cal. Dec. 27, 2016)	15
<i>Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.,</i> 460 U.S. 1 (1983)	6
<i>Nedlloyd Lines B.V. v. Super. Ct,</i> 3 Cal.4th 459 (1992)	7
<i>Nguyen v. Barnes & Nobles, Inc.,</i> 763 F.3d 1171 (9th Cir. 2014)	9
<i>Paracor Fin., Inc. v. General Elec. Capital Corp.,</i> 96 F.3d 1151 (9th Cir. 1996)	7
<i>Pelleport Inv., Inc. v. Budco Quality Theatres, Inc.,</i> 741 F.2d 273 (9th Cir. 1984)	24
<i>Petersen v. Boeing Co.,</i> 715 F.3d 276 (9th Cir. 2013)	23
<i>Prima Paint Corp. v. Flood & Conklin Mfg. Co.,</i> 388 U.S. 395 (1967)	16
<i>Rent-A-Center, West, Inc. v. Jackson,</i> 561 U.S. 63 (2010)	14
<i>Richards v. Lloyds of London,</i> 135 F.3d 1289 (9th Cir. 1998)	24
<i>Scherk v. Alberto-Culver Co.,</i> 417 U.S. 506 (1974)	21

TABLE OF AUTHORITIES

<i>Schlieper v. Johnson</i> , 672 S.E.2d 548 (N.C. Ct. App. 2009).....	9
<i>Seaman v. Private Placement Capital Notes II, LLC</i> , 2017 WL 1166336 (S.D. Cal. March 3, 2017)	19
<i>Simpson v. Inter-Con Sec. Sys., Inc.</i> , 2013 WL 1966145 (W.D. Wash. May 10, 2013)	10
<i>Simula, Inc. v. Autoliv, Inc.</i> , 175 F.3d 716 (9th Cir. 1999)	16
<i>Solum v. CertainTeed Corp.</i> , 147 F.Supp.3d 404 (E.D. N.C. 2015)	9
<i>Sovak v. Chugai Pharmaceutical, Co.</i> , 280 F.3d 1266 (9th Cir. 2002) <i>amended by</i> 289 F.3d 615 (9th Cir. 2002)	18
<i>Textile Unlimited, Inc. v. A..BMH & Co., Inc.</i> , 240 F.3d 781 (9th Cir. 2001)	18
<i>Thinknet Ink Information Resources, Inc. v. Sun Microsystems, Inc.</i> , 368 F.3d 1053 (9th Cir. 2004)	i, 20
<i>Tompkins v. 23andMe, Inc.</i> , 840 F.3d 1016 (9th Cir. 2016)	6, 14
<i>Torrence v. Nationwide Budget Finance</i> , 753 S.E.2d 802 (N.C. Ct. App. 2014).....	13
<i>United States ex rel. Turnkey Construction Services, Inc. v. Alacran Contracting</i> , 2013 WL 6503307 (E.D. Cal. Dec. 11, 2013).....	19
<i>Valley Power Sys., Inc. v. Gen. Elec. Co.</i> , 2012 WL 665977 (C.D. Cal. Feb. 27, 2012)	20
<i>Wilner v. Cedars of Chapel Hill, LLC</i> , 773 S.E.2d 333 (N.C. Ct. App. 2015).....	13
<i>Zaklit v. Global Linguist Solutions, LLC</i> , 2014 WL 12521725 (C.D. Cal. Mar. 24, 2014)	24
<i>Zeif v. Cintas Corporation No. 2</i> , 2013 WL 12147757 (C.D. Cal. April 15, 2013).....	8
<i>Zhu v. Deng</i> , 794 S.E.2d 808 (N.C. Ct. App. 2016).....	13

TABLE OF AUTHORITIES

Statutes

9 U.S.C. § 2.....	6
9 U.S.C. § 3.....	20
9 U.S.C. § 4.....	17, 19
28 U.S.C. § 1391(a)	18
28 U.S.C. § 1404(a)	21

Other Authorities

Restatement Second of Conflict of Laws, Section 187	7
---	---

Rules

Federal Rules of Civil Procedure, Rule 12(b)(1).....	20
Federal Rules of Civil Procedure, Rule 12(b)(3).....	20
Federal Rules of Civil Procedure, Rule 12(b)(6).....	20
Federal Rules of Civil Procedure, Rule 56.....	2

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants MARKET AMERICA, INC. (“Market America”), MARKET AMERICA WORLDWIDE, INC., JAMES HOWARD RIDINGER, LOREN RIDINGER, and MARC ASHLEY (collectively, “Defendants”) submit this memorandum of points and authorities in support of their motion.

INTRODUCTION

This case arises out of the contractual relationship between plaintiffs CHUANJIE YANG, OLLIE LAN aka Ruoning Lan, and LIU LIU (collectively, “Plaintiffs”) with Market America. Market America’s records show that, between 2010 and 2015, each of the three Plaintiffs signed up online to be Market America distributors by clicking a box affirming that they assented to the Terms and Conditions of Market America’s distributor agreement. Among other things, Plaintiffs expressly agreed to arbitrate “[a]ny controversy or claim arising out of or relating to [the] Agreement” and an express statement that Plaintiffs agreed to give up “the right to have *any* dispute [they] have regarding [the] Agreement heard by a jury and determined in a court of law.” (Declaration of Eugene Wallace (Dkt. No. 39-1, hereinafter “Wallace Decl.”), ¶ 11 (emphasis added).) Plaintiffs also agreed that North Carolina law would govern any dispute related to the agreement with Market America and that the mandatory arbitration proceedings --- and any emergency or provisional relief preceding the arbitration --- must take place in Greensboro, North Carolina. Despite these clear and express contractual agreements, Plaintiffs filed a multi-count complaint against Defendants in this Court, rather than pursuing arbitration in North Carolina.

In a recent tentative ruling in this lawsuit, (Dkt. No. 54 (the “Tentative Ruling”)), the Court questioned the parties’ premise that Ninth Circuit law bars this Court from compelling arbitration outside of this District, and invited Defendants to reconsider filing a motion to compel arbitration. Taking up the Court on its invitation, Defendants have revisited the authorities cited in the Tentative Ruling

DEFENDANTS’ MOTION TO COMPEL ARBITRATION OR, IN THE ALTERNATIVE,
TO STAY PROCEEDING OR DISMISS COMPLAINT, OR TRANSFER VENUE

1 and now present the Court with the following four alternative options, all of which
 2 have precedent in this Circuit: (1) interpret *Continental Grain* narrowly and compel
 3 arbitration in North Carolina; (2) stay proceedings in this case pending the outcome
 4 of a new Petition to Compel Arbitration¹ which Defendants have recently filed in
 5 the United States District Court for the Middle District of North Carolina
 6 (a possible procedure noted by this Court in Footnote 5 of the Tentative Ruling);
 7 (3) dismiss the First Amended Complaint (Dkt. No. 33 (the “FAC”)); or (4) transfer
 8 this case to the Middle District of North Carolina.

9 **STATEMENT OF FACTS**

10 Market America is a 25-year-old product brokerage and Internet one-to-one
 11 marketing company; the company is ranked as the 66th largest Internet retailer in
 12 America.² It sells products through a network of independent distributors, known
 13 within Market America as Independent UnFranchise Owners (“Distributors”). Both
 14 Market America and its co-defendant and parent company Market America
 15 Worldwide, Inc. are North Carolina corporations headquartered in Greensboro,
 16 North Carolina, where nearly 600 Market America employees work. Defendant
 17 James Howard Ridinger founded Market America in North Carolina in 1992 and he
 18 serves as Market America’s Chief Executive Officer. Defendant Loren Ridinger is
 19 the Senior Executive Vice President and defendant Marc Ashley is the President
 20 and Chief Operating Officer. Marc Ashley resides in North Carolina and James
 21 Howard Ridinger and Loren Ridinger reside in Florida. (Wallace Decl. ¶ 2;
 22 Declaration of Clement Erhardt (Dkt. No. 39-2, hereinafter “Erhardt Decl.”) ¶ 2;
 23 FAC ¶¶ 11, 12.)

24
 25 ¹ See Request for Judicial Notice, filed concurrently with this Motion.

26 ²“When considering a motion to compel arbitration, a court applies a standard similar to the summary
 27 judgment standard of Fed.R.Civ.P. 56.” *Jurado v. Schutz 655, LLC*, Case No. 2:16-cv-05996, 2017 WL 600076, *5
 28 (C.D. Cal. Feb. 13, 2017) (quoting *Concat LP v. Unilever, PLC*, 350 F.Supp.2d 796, 804 (N.D. Cal. 2004).)
 Defendants have therefore submitted evidence in support of this motion for the predominant purpose of establishing
 that Plaintiffs agreed to arbitrate the claims at issue in this lawsuit.

1 Notwithstanding the claims advanced by the three former Distributors in this
 2 case (one of which was in the business only three months), Market America has
 3 never been accused by *any* Federal, State, or international regulator of being
 4 anything other than a legitimate direct-selling business marketing safe and effective
 5 products. (Erhardt Decl. ¶ 2.) The company maintains an A+ Better Business
 6 Bureau rating. (*Id.*)

7 Since 1992, Market America has required all Distributors to sign an
 8 agreement with Market America, (now known as the “Independent UnFranchise
 9 Application and Agreement,” and referred to herein as the “Agreement”). (*Id.* ¶ 4.)
 10 The Agreement serves as the key from which Market America enters a Distributor’s
 11 personal information into its system. (*Id.* ¶ 7.) Without an Agreement and the
 12 requisite personal information that accompanies the Agreement, Market America
 13 would have no record of a Distributor’s activities nor would the Distributor’s
 14 information be in Market America’s system. (*Id.*)

15 The Agreement sets out the general, high-level terms between Market
 16 America and its Distributors. (*Id.* ¶ 6.) Some of the terms, for example, directly
 17 relate to Federal regulatory requirements, such as the company’s mandate that
 18 Distributor compensation be based on retail sales. (*Id.*) Other provisions designate
 19 Distributors as independent contractors and explain the tax consequences of that
 20 status. (*Id.*) The Agreement has a one-year term and must be renewed each year.
 21 (*Id.* ¶ 5.) Both parties have the right to terminate the Agreement with 30 days’
 22 notice, (Wallace Decl. ¶ 10), and Market America may only modify the
 23 Agreement’s terms if it notifies the Distributors, (*id.* ¶ 11).

24 The Agreement includes a choice of law provision designating North
 25 Carolina law, (*id.* ¶ 10), and, most importantly for this motion, contains the
 26 following forum selection and arbitration clause:
 27
 28

1 Arbitration. Any controversy or claim arising out of or relating to this
 2 Agreement, or the breach thereof, shall ultimately be settled by
 3 arbitration administered by the American Arbitration Association in
 4 accordance with its Commercial Arbitration Rules and judgment on
 5 the award rendered by the arbitrators may be entered in a court of
 6 competent jurisdiction. You understand that this arbitration provision
 7 means you are giving up the right to have any dispute you have
 8 regarding this Agreement heard by a jury and determined in a court of
 9 law. The arbitration shall be heard by one arbitrator, and it shall take
 10 place in Greensboro, North Carolina. Either party may seek
 11 emergency or provisional relief in the General Court of Justice,
 12 Guilford County, North Carolina, prior to invoking the arbitration
 13 remedy.

14 (Wallace Decl. ¶ 13; FAC ¶ 76 (the “Arbitration Provision”).)

15 Distributors can sign up with Market America online or in paper form.
 16 (Erhardt Decl. ¶ 5.) To sign up online, a Distributor must provide their personal
 17 information before being presented with a copy of the Agreement. (Wallace Decl.
 18 ¶ 8.) Before the Distributor can submit the Agreement, he or she must click a box
 19 indicating agreement to the Terms and Conditions. (*Id.*) The Terms and
 20 Conditions are not in a hyperlink; rather, they are presented on the same page as the
 21 checkbox and include the Arbitration Provision. (*Id.*) Similarly, if a Distributor
 22 signs up using a paper form, the Distributor must sign the form acknowledging that
 23 he or she agrees to the terms on the back of the form. (Erhardt Decl. ¶ 5.)

24 Market America’s records indicate that Plaintiff Yang signed up as a
 25 Distributor online in May 2010 and remained a Distributor until August 2015.
 26 (Wallace Decl. ¶¶ 4, 19.) Market America received Annual Renewal Forms from
 27 Plaintiff Yang in 2010 and 2011. (*Id.*, ¶ 16, Exh. G.) Beginning in 2012,
 28 Market America’s records indicate that Yang opted in to Auto Renew online by
 clicking “I agree” to the following terms:

1 “Acceptance of Amendments to IDA&A. By agreeing to these terms
 2 and conditions for Auto Renewal, you agree to the incorporation by
 3 reference of all amendments and/or revisions of the IDA&A as you
 4 agreed to it originally, as provided during the previous year in official
 5 Market America literature. Renewal of the IDA&A and Forms
 6 925/1001. You renew your IDA&A with Market America. You
 7 agree to be bound by the Terms and Conditions of that Agreement . . .
 8 as amended from time to time.” (*Id.* ¶ 17.)

9 Plaintiff Lan signed up online in November 2015, but did not renew the
 10 Agreement in November 2016 and is currently listed as inactive in Market
 11 America’s system. (*Id.* ¶¶ 5, 20, Exh. B.) Plaintiff Liu signed up online on March
 12 1, 2016, but did not renew the Agreement in March 2017 and is currently listed as
 13 inactive. (*Id.* ¶ 7, Exh. D.) Market America’s records indicate that all three
 14 plaintiffs signed up online by clicking “I agree” next to the Terms and Conditions,
 15 which stated that any dispute related to the Agreement must be arbitrated in
 16 Greensboro, North Carolina. (*Id.* ¶ 15.)

17 Despite this clear agreement to arbitrate all claims related to the Agreement,
 18 Plaintiffs filed this putative class action on May 30, 2017, alleging causes of action
 19 for a declaratory judgment that the arbitration provision is unenforceable,
 20 violations of several California statutes, and RICO violations. Defendants filed a
 21 motion to compel arbitration soon after being served with the complaint, (Dkt.
 22 No. 19), and the parties fully briefed the motion. After the motion was fully
 23 briefed, but before it could be decided, Plaintiffs filed an amended complaint
 24 adding Plaintiff Liu Liu as an additional plaintiff. (Dkt. No. 33.) Thereafter, based
 25 on Plaintiffs’ allegation in paragraph 72 of the FAC and Defendants’ review of
 26 relevant Ninth Circuit case law, namely the Ninth Circuit’s decision in *Continental*
 27 *Grain Co. v. Dant & Russell*, 118 F.2d 967 (1941), Defendants re-styled their
 28 motion as a motion to transfer the action to the Middle District of North Carolina,
 or, in the alternative, stay or dismiss the action. At the hearing on Defendants’
 motion to transfer, the Court issued the Tentative Ruling, which questioned the

1 applicability of *Continental Grain* to the facts of this case and invited Defendants
 2 to move to compel arbitration or to petition the Middle District of North Carolina
 3 to enforce the arbitration agreement. In response, on October 5, 2017, Defendants
 4 filed a petition to enforce arbitration in the United States District Court for the
 5 Middle District of North Carolina, *Market America, Inc. et al. v. Chuanjie Yang et*
 6 *al.*, Case No. 1:17-cv-897 (M.D. N.C.),³ and now file this motion to compel
 7 arbitration, or stay the proceedings pending resolution of the North Carolina action,
 8 or dismiss the case, or transfer the matter to the Middle District of North Carolina.
 9 As noted below, courts in this district have utilized all four approaches when
 10 confronted with a binding and enforceable agreement to arbitrate in a location
 11 outside of the federal district that the plaintiffs chose to file their lawsuit.

12 ARGUMENT

13 The Federal Arbitration Act (“FAA”) governs arbitration provisions in
 14 agreements that affect interstate commerce. *Allied Bruce Terminix Cos. v. Dobson*,
 15 513 U.S. 265, 277 (1995). Written arbitration agreements “shall be valid,
 16 irrevocable, and enforceable, save upon such grounds as exist at law or in equity for
 17 the revocation of any contract.” 9 U.S.C. § 2. “The overarching purpose of the
 18 FAA . . . is to ensure the enforcement of arbitration agreements according to their
 19 terms so as to facilitate streamlined proceedings.” *AT&T Mobility LLC v.*
 20 *Concepcion*, 563 U.S. 333, 344 (2011). This goal reflects a “liberal federal policy
 21 favoring arbitration.” *Moses H. Cone Memorial Hospital v. Mercury Constr.*
 22 *Corp.*, 460 U.S. 1, 24 (1983). “Any doubts about the scope of arbitrable issues,
 23 including applicable contract defenses, are to be resolved in favor of arbitration.”
 24 *Tompkins v. 23andMe, Inc.*, 840 F.3d 1016, 1022 (9th Cir. 2016).

25
 26
 27 ³ Defendants respectfully request that the Court take judicial notice of the filing and contents of the Petition
 28 for Order Compelling Arbitration filed by Defendants on October 5, 2017 in the United States District Court for the
 Middle District of North Carolina. *See*, Request for Judicial Notice, filed concurrently herewith.

I. THE ARBITRATION PROVISION AND FORUM SELECTION CLAUSE IS A VALID AND ENFORCEABLE PROVISION REQUIRING PLAINTIFFS TO ARBITRATE THEIR CLAIMS IN NORTH CAROLINA.

The federal policy favoring enforcement of arbitration provisions limits this Court's inquiry to two "gateway" questions: (1) "whether there is an agreement to arbitrate between the parties," and (2) "whether the agreement covers the dispute." *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015).

A. North Carolina Law Governs Whether the Parties Entered Into a Valid Agreement to Arbitrate Disputes in North Carolina.

The Agreement states that "North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions." (Wallace Decl. ¶ 10.) This Court must look to California choice of law principles to determine whether to honor that provision. *Paracor Fin., Inc. v. General Elec. Capital Corp.*, 96 F.3d 1151, 1164 (9th Cir. 1996) ("In a federal question action where the federal court is exercising supplemental jurisdiction over state claims, the federal court applies the choice-of-law rules of the forum state—in this case, California.") California law, in turn, follows the three-step analysis set forth in Section 187 of the Restatement Second of Conflict of Laws, "which reflects a strong policy favoring enforcement of [choice of law] provisions." *Nedlloyd Lines B.V. v. Super. Ct.*, 3 Cal.4th 459, 465 (1992). First, this Court must determine whether the parties or the transaction have a substantial relationship to North Carolina or "whether there is any other reasonable basis for the parties' choice of law." *Id.* If that prong is satisfied, the Court must enforce the choice of law provision unless the Court finds that "[North Carolina's] law is contrary to a fundamental policy of California." *Id.* If the Court does find that North Carolina law conflicts with a fundamental California policy, the Court may only disregard North Carolina law if it finds that "California has a materially greater interest" than North Carolina in the determination of the issues in this case. *Id.*

1 To start, it is settled law that a party has a substantial relationship to a chosen
 2 state when the party is incorporated, has its principal place of business, or resides in
 3 that state. *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500,
 4 1506 (9th Cir. 1995); *Continental Airlines, Inc. v. Mundo Travel Corp.*,
 5 412 F.Supp.2d 1059, 1064 (E.D. Cal. 2006) (“If one party resides in the chosen
 6 state, that state has a substantial relationship to all of the parties.”). Plaintiffs
 7 concede that Market America and Market America Worldwide, Inc. are
 8 incorporated in North Carolina, (FAC ¶¶ 12, 13; Wallace Decl. ¶ 2), it is undisputed
 9 that all three individual defendants are employees and officers of North Carolina
 10 corporations, (Wallace Decl. ¶ 2), and one of the individual defendants is a North
 11 Carolina resident, (*id.*). Therefore, the “substantial relationship” prong is satisfied.

12 Plaintiffs bear the burden of establishing the “fundamental conflict” and
 13 “materially greater interest” prongs,” which is “a high bar.” *Fagerstrom v.*
 14 *Amazon.com, Inc.*, 141 F.Supp.3d 1051, 1061 (S.D. Cal. 2015). Here, there is no
 15 fundamental California policy at risk if the Court applies North Carolina law
 16 because both states share the federally mandated policy favoring enforcement of
 17 arbitration clauses. Importantly, California federal courts have consistently held
 18 that a fundamental conflict does **not** exist merely because the chosen state’s laws
 19 may render a different outcome than California law, including the determination of
 20 whether an arbitration provision is unconscionable. *See Han v. Samsung*
 21 *Telecommunications Am., LLC*, No. CV 13-3823-GW(AJWx), 2013 WL 7158044,
 22 *5-6 (C.D. Cal. Dec. 16, 2013) (holding that Texas law applied even though
 23 California’s general unconscionability analysis may render a more favorable result
 24 for a California resident); *Zeif v. Cintas Corporation No. 2*, 2013 WL 12147757
 25 (C.D. Cal. April 15, 2013) (applying Ohio law where it “requires both procedural
 26 and substantive unconscionability” just like California).

27 Because Defendants have a substantial relationship to North Carolina and
 28 North Carolina law regarding interpretation and enforcement of arbitration

1 provisions does not conflict with any fundamental policy of California, North
 2 Carolina law governs whether the arbitration provision is valid and enforceable.

3 B. All Three Plaintiffs Assented to the Agreement Terms and Conditions

4 Under North Carolina law, “[a] contract, express or implied, requires assent,
 5 mutuality, and definite terms.” *Schlieper v. Johnson*, 672 S.E.2d 548, 553 (N.C. Ct.
 6 App. 2009). Market America has submitted evidence that all three Plaintiffs
 7 assented to the Terms and Conditions by clicking the box indicating that they agree
 8 to the “Terms and Conditions” which were presented to the Plaintiffs on the same
 9 page as the checkbox. (Wallace Decl. ¶ 15.) Plaintiffs were required to check the
 10 box indicating their assent before they could submit their applications. (*Id.*)
 11 Numerous courts⁴ have enforced similar “clickwrap agreements” and they are
 12 enforceable under North Carolina law. *See Bergenstock v. LegalZoom.com, Inc.*,
 13 No. 13 CVS 15686, 2015 WL 3866703, at *5-6 (N.C. Super. June 23, 2015)
 14 (enforcing arbitration provision in LegalZoom’s clickwrap agreement); *Solum v.*
 15 *CertainTeed Corp.*, 147 F.Supp.3d 404, 413 (E.D. N.C. 2015) (holding plaintiffs’
 16 alleged reliance on defendants’ misrepresentations was unreasonable because
 17 plaintiffs entered into a clickwrap agreement with terms that contradicted the
 18 alleged misrepresentations). Here, Plaintiffs assented to the Terms and Conditions,
 19 including the arbitration provision, by clicking “I agree” on the same page as the
 20 Terms and Conditions. Plaintiffs therefore agreed to the Terms and Conditions and
 21 the Arbitration Provision is valid and enforceable under North Carolina law.

22 Plaintiff Yang challenges Market America’s electronic records and alleges
 23 that he “did not sign the distributorship agreement in the form referred to in Figure
 24 No. 12 and did not enroll with Market America electronically, but instead signed

25 ⁴ *See, e.g., Fteja v. Facebook, Inc.* 841 F.Supp.2d 829, 838 (S.D.N.Y. 2012) (collecting cases enforcing
 26 forum selection clauses in clickwrap agreements); *Hancock v. Am. Tel & Tel. Co., Inc.*, 701 F.3d 1248, 1256 (10th
 27 Cir. 2012) (“Clickwrap agreements are increasingly common and ‘have routinely been upheld.’”); *Nguyen v. Barnes*
 28 *& Nobles, Inc.*, 763 F.3d 1171, 1175-76 (9th Cir. 2014) (noting that the operative question when enforcing a
 clickwrap-like agreement is whether the plaintiff “had actual notice of the Terms of Use or was required to
 affirmatively acknowledge the Terms of Use before completing” the contract).

1 the form presented by his upline.” (FAC ¶ 68.) In a prior declaration, Plaintiff
 2 Yang claimed that he “signed a one page piece of paper” that “to the best of [his]
 3 recollection . . . did not include any ‘terms and conditions.’” (Dkt. No. 42-1, ¶ 3.)

4 This Court addressed a similar argument in *Jurado v. Schutz* 655 LLC, *supra*.
 5 In that case, the defendant submitted a declaration stating that the terms and
 6 conditions were presented to the plaintiff electronically and that “she checked a box
 7 labeled ‘I Accept’ rather than an adjacent box labeled ‘Reject.’” 2017 WL 600076,
 8 at *5. This, the Court found, constituted “undisputed, admissible evidence that [the
 9 plaintiff] accepted the terms of the [agreement] and the arbitration clause therein,”
 10 which “shift[ed] [the burden] to plaintiff to point to evidence creating a material
 11 issue of disputed fact.” *Id.* Ultimately, the Court found that plaintiff’s claim that
 12 “she does not ‘recall reviewing or accepting any type of arbitration agreement with
 13 [defendant]” was “insufficient to create a disputed issue of material fact.” *Id.*; *see*
 14 *also Simpson v. Inter-Con Sec. Sys., Inc.*, No. C12–1955RAJ, 2013 WL 1966145, at
 15 *5 (W.D. Wash. May 10, 2013) (noting that “mere assertion that [a party] does not
 16 remember signing [an arbitration agreement] is insufficient to create a genuine issue
 17 of material fact”).

18 Similarly, Market America’s electronic records show that Plaintiff Yang
 19 clicked “I Agree” when presented with the terms and conditions. (Wallace Decl.
 20 ¶ 4.) Further, any paper form signed by Plaintiff Yang would have included the
 21 terms and conditions on its reverse side. (Erhardt Decl. ¶ 5.) Thus, even if the
 22 Court believed Plaintiff Yang’s allegations that he signed a paper form and does not
 23 remember any terms and conditions, that evidence does not, as the *Jurado* court
 24 found, create a material issue of disputed fact.

1 C. The Career Manual's Internal Dispute Resolution Procedure is Not
 2 Relevant to the FAC.

3 Plaintiffs' allegations regarding the Career Manual are irrelevant because the
 4 internal dispute resolution process does not apply to Plaintiffs' claims and has no
 5 bearing on the enforceability of the Arbitration Provision.

6 The Career Manual lists the rules, regulations, policies, procedures, and
 7 standard of conduct for Market America's Distributors. (Erhardt Decl. ¶ 9.) It
 8 serves as a blueprint for how Distributors are expected to run their business and
 9 includes details and step-by-step procedures for the Distributors to follow. (*Id.*)
 10 For example, the Career Manual includes policies for day-to-day issues like the
 11 generation of commissions, customer orders, and advertising. (*Id.*)

12 Because disputes occasionally arise regarding the proper interpretation of the
 13 Career Manual's rules, Market America has a distributor grievance and complaint
 14 procedure. (*Id.*, ¶ 14.) This procedure requires disputes over interpretations of the
 15 Career Manual and disputes between distributors *inter se* to be submitted to an
 16 Appeals Board and eventually a Dispute Resolution Board within Market America.
 17 (*Id.*, ¶ 14.) Distributors are not required to submit disputes related to the
 18 Agreement to the Dispute Resolution Board and in 25 years the Career Manual's
 19 grievance procedure has *never* been used for any purpose other than interpreting the
 20 Career Manual policies and procedures. (*Id.*, ¶ 16.) Market America has never
 21 required a Distributor to exhaust the remedies in the distributor grievance process
 22 before pursuing arbitration. (*Id.* ¶ 21.)

23 In short, the grievance procedure applies to internal disputes over compliance
 24 with certain Career Manual Rules, not disputes over the validity or legality of the
 25 Agreement or Market America's business model as Plaintiffs have alleged here.
 26 Therefore, Plaintiffs' allegations regarding the purported unconscionability and
 27 unenforceability of those provisions have no bearing on this motion.
 28

1 D. Plaintiffs' Challenges to the Arbitration Provision and Forum
 2 Selection Clause Lack Merit.

3 Plaintiffs advance three general objections to the Arbitration Provision's
 4 enforceability: (1) the written version of the Agreement allegedly only requires a
 5 signatory to agree to the "terms" of the Agreement and not the "conditions," and
 6 Plaintiffs allege that the Arbitration Provision is a condition, (FAC ¶¶ 75-77);
 7 (2) Market America's right to modify the Agreement "render[s] the arbitration
 8 provision illusory, lacking consideration, and therefore unenforceable, (FAC
 9 ¶ 109); and (3) the Arbitration Provision is unconscionable, (FAC ¶ 87). None of
 10 Plaintiffs' defenses have merit.

11 First, even putting aside the fact that all three Plaintiffs electronically agreed
 12 to the Terms and Conditions and accepting Plaintiffs' argument that Distributors
 13 signing up via the paper form only agree to "terms," Plaintiffs' own allegations
 14 undermine their argument that the Arbitration Provision is a condition, rather than
 15 an agreed to "term." Paragraph 109 on page 28 of the FAC alleges that "[t]he
 16 conditions grant MarketAmerica [sic] the power to unilaterally modify the terms of
 17 the Agreement, including the arbitration provision, at any time" And the
 18 Modification provision that Plaintiffs are citing to clearly states that Market
 19 America has the right to modify "the *terms* of this Agreement." (Wallace Decl.
 20 ¶ 11 (emphasis added).) Thus, Plaintiffs' argument that neither they nor other class
 21 members assented to the Arbitration Provision contradicts the FAC.

22 Second, North Carolina courts have held that the right to modify a contract
 23 does not render the contract illusory when the contract requires the modifying party
 24 to notify the other party, and as long as the discretionary power is subject to the
 25 implied duty of good faith and fair dealing. *See Curtis v. GE Capital Corp.*, 2013
 26 WL 4212932, *4 (W.D. N.C. Aug. 15, 2015); *MCI Constructors, Inc. v. City of*
 27 *Greensboro*, 125 Fed.App'x 471, 477 (4th Cir. 2005). The Arbitration Provision
 28 requires Market America to notify Plaintiffs if it modifies any of the terms and

1 conditions, and Plaintiffs then have the unfettered right to terminate the Agreement
 2 if they disapprove of the amendment. (Wallace Decl. ¶¶ 10, 11.) Furthermore,
 3 Market America has not exercised its right to modify the arbitration provision in
 4 Plaintiffs' agreements, (Wallace Decl. ¶ 14), and, even if it did, that right would be
 5 subject to the implied duty of good faith and fair dealing. For both reasons, the
 6 modification provision does not render the Agreement illusory.

7 Third, the Arbitration Provision is not unconscionable. Under North
 8 Carolina law, a contract is not unconscionable unless "the inequality of the bargain
 9 is so manifest as to shock the judgment of a person of common sense, and where
 10 the terms are so oppressive that no reasonable person would make them on the one
 11 hand, and no honest and fair person would accept them on the other." *Brenner v.*
 12 *Little Red Sch. House, Ltd.*, 274 S.E.2d 206, 210 (N.C. 1981). The terms must be
 13 "so one-sided that the contracting party is denied any opportunity for a meaningful
 14 choice[.]" *Id.* "The mere fact that plaintiffs lacked the ability to negotiate contract
 15 terms does not create substantive unconscionability." *Wilner v. Cedars of Chapel*
 16 *Hill, LLC*, 773 S.E.2d 333, 337 (N.C. Ct. App. 2015). Plaintiffs bear the burden of
 17 proving both procedural and substantive unconscionability. *Zhu v. Deng*, 794
 18 S.E.2d 808, 812 (N.C. Ct. App. 2016).

19 Based on recent Supreme Court precedent, North Carolina courts have
 20 determined that "unconscionability attacks that are directed at the arbitration
 21 process itself will no longer be tolerated." *Torrence v. Nationwide Budget Finance*,
 22 753 S.E.2d 802, 811 (N.C. Ct. App. 2014). Specifically, the North Carolina Court
 23 of Appeals held in *Torrence* that the United States Supreme Court's precedent
 24 precludes a finding of unconscionability based on high arbitration costs, or "being
 25 excessively one-sided and lacking mutuality." *Id.* at 811-12.

26 Plaintiffs claim that the Arbitration Provision is unconscionable because "the
 27 rules of Commercial Arbitration for American Arbitration Association do not
 28 provide for prevailing party fees and class members would have to pay the cost and

1 fees of arbitration despite their entitlement to costs of suit and fees should they be
 2 the prevailing party in this action, [and] the pre-litigation requirements of
 3 MarketAmerica [sic] prior to bringing action are unconscionable.” (FAC ¶ 87.) In
 4 North Carolina, Plaintiffs’ attacks on the arbitration process itself cannot support a
 5 claim of unconscionability.

6 Similarly, even if this Court were to ignore the choice of law provision,
 7 application of California law does not change the result. In *Tompkins v. 23andMe*,
 8 the Ninth Circuit applied California law and rejected the plaintiffs’
 9 unconscionability claims concerning an arbitration provision that (1) plaintiffs
 10 agreed to online by clicking a box indicating that the plaintiffs agreed to certain
 11 “Terms of Service,” 840 F.3d at 1020; (2) required arbitration before the AAA, *id.*;
 12 (3) required the losing party to pay the prevailing party’s fees, *id.* at 1024-27;
 13 (4) required arbitration in the defendant’s principal place of business even though it
 14 would be expensive for plaintiffs to arbitrate there, *id.* at 1029; (5) carved out
 15 certain intellectual property claims that plaintiffs claimed the defendant was much
 16 more likely to bring than the plaintiffs, *id.* at 1030-31; and (6) granted the defendant
 17 the unilateral right to modify the entire agreement, including the arbitration
 18 provision, *id.* at 1032-33. Just as in *Tompkins*, Plaintiffs agreed to the Arbitration
 19 Provision online through a similar process, and the Arbitration Provision requires
 20 arbitration proceedings to occur before AAA arbitrators in Market America’s
 21 principal place of business.

22 In short, the Arbitration Provision and the Agreement as a whole are not
 23 unconscionable under North Carolina or California law, and must be enforced.

24 E. The Broad Arbitration Provision Encompasses Plaintiffs’ Claims.

25 Parties may delegate to an arbitrator the question of whether an arbitration
 26 provision covers certain disputes. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S.
 27 63, 79-80 (2010) The Arbitration Provision’s broad language and its incorporation
 28

1 of the AAA Commercial Rules demonstrate Plaintiffs’ and Market America’s
2 mutual intent to delegate the question of arbitrability to an arbitrator.

3 The Arbitration Provision states that “[a]ny controversy or claim arising out
4 of or relating to [the] Agreement” will be submitted to an arbitrator and emphasizes
5 to Plaintiffs that “this arbitration provision means you are giving up the right to
6 have any dispute you have regarding this Agreement heard by a jury and
7 determined in a court of law.” (Wallace Decl. ¶ 13; FAC ¶ 29 (emphasis added).)
8 Because the threshold question of whether the Arbitration Provision covers the
9 disputes at issue is itself a “controversy” related to the Agreement and a “dispute
10 [Plaintiffs] have regarding [the] Agreement,” the parties have clearly and
11 unmistakably agreed to arbitrate arbitrability. *See Fadal Machining Ctrs., LLC v.*
12 *Compumachine, Inc.*, 461 Fed.App’x. 630, 632 (9th Cir. 2011) (parties clearly and
13 unmistakably delegated the question of arbitrability based on exact same language).

14 Furthermore, the Arbitration Provision specifies that arbitration proceedings
15 will be governed by the Commercial Arbitration Rules of the American Arbitration
16 Association (“AAA”). Rule 7(a) of the AAA Rules grants the arbitrator “the power
17 to rule on his or her own jurisdiction, including any objections with respect to the
18 existence, scope, or validity of the arbitration agreement or to the arbitrability of
19 any claim or counterclaim.” (Declaration of Jonathon D. Townsend (Dkt. No. 39-
20 3), Exh. A.) In *Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015), the
21 Ninth Circuit held that “incorporation of the AAA rules constitutes clear and
22 unmistakable evidence that contracting parties agreed to arbitrate arbitrability.”
23 Since *Brennan*, several courts in this District have joined the “vast majority of the
24 circuits” and applied the Brennan rule even when one of the parties is arguably
25 “unsophisticated.” *See Miller v. Time Warner Cable Inc.*, No. 8:16-CV-329
26 (J. Snyder), 2016 WL 7471302, at *5 (C.D. Cal. Dec. 27, 2016) (applying *Brennan*
27 to arbitration agreement between customer and Time Warner Cable); *Grisby v. DC*
28 *4400, LLC*, 2016 WL 7115903, *5 (C.D. Cal. Dec. 5, 2016). Thus, even if the

1 Court considers Plaintiffs to be “unsophisticated,” under the AAA rules it is the
2 arbitrator, and not a court, who determines the scope of the Arbitration Provision.

3 But even if the Court determines the scope of the Arbitration Provision itself,
4 the broad language clearly encompasses the FAC’s claims.⁵ “To require arbitration,
5 [Plaintiffs] factual allegations need only ‘touch matters’ covered by the contract
6 containing the arbitration clause and all doubts are to be resolved in favor of
7 arbitrability.” *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999).

8 The United States Supreme Court previously described an arbitration clause
9 applying to “[a]ny controversy or claim arising out of or relating to this Agreement,
10 or breach thereof” --- language identical to this Arbitration Provision --- as a
11 “broad arbitration clause,” *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*,
12 388 U.S. 395, 398 (1967), and the Ninth Circuit has recognized that “when parties
13 intend to include a broad arbitration provision, they provide for arbitration ‘arising
14 out of or relating to’ the agreement.” *Cape Flattery Ltd. v. Titan Maritime, LLC*,
15 647 F.3d 914, 922 (9th Cir. 2011).

16 Plaintiffs herein allege that Market America’s agreements and business
17 relationships with its distributors, including Plaintiffs, violate California law and
18 RICO. Plaintiffs’ allegations focus on the money paid to Market America under the
19 Agreements, alleged misrepresentations made by Defendants regarding the business
20 opportunities associated with becoming a distributor for Market America, and the
21 alleged unlawful structure of Market America’s business model as an “endless
22 chain” and/or “pyramid scheme.” All of these causes of action “relate to” the
23 Agreement and certainly “touch on” the subject matter of the Agreement.
24 Therefore, they are encompassed by the Arbitration Provision.

25 ⁵ All of the Defendants may enforce the Arbitration Provision against Plaintiffs even though Market
26 America is the only signatory. *See Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128 (9th Cir. 2013) (“[A] litigant
27 who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law
28 allows the litigant to enforce the agreement.”); *Ellison v. Alexander*, 700 S.E.2d 102, 110 (N.C. Ct. App. 2010)
 (“[A]s long as [a nonsignatory’s] alleged liability arises from his actions as an agent of the corporate signatory to the
 arbitration agreement, [the nonsignatory defendant] is entitled to enforce the arbitration clause.”).

1 II. THIS COURT SHOULD COMPEL ARBITRATION, DISMISS THIS
 2 CASE, STAY PROCEEDINGS, OR TRANSFER THIS CASE TO THE
 3 MIDDLE DISTRICT OF NORTH CAROLINA.

4 Districts courts in this Circuit have enforced valid arbitration provisions –
 5 like the arbitration provision at issue here – by using least four different procedural
 6 mechanisms, all of which are available to this Court.

7 A. This Court May Compel Arbitration in North Carolina.

8 A party to an arbitration agreement may petition a federal district court to
 9 compel arbitration and if the Court determines that “the making of the agreement
 10 for arbitration or the failure to comply therewith is not in issue,” the Court must
 11 order arbitration pursuant to the agreement’s terms. 9 U.S.C. § 4 (“Section 4”).
 12 Section 4 also states, however, that “[t]he hearing and proceedings, under such
 13 agreement, shall be within the district in which the petition for an order directing
 14 such arbitration is filed.” 9 U.S.C. § 4.

15 Contrary to the position advanced by Plaintiffs, *Continental Grain Co. v.*
 16 *Dant & Russell*, 118 F.2d 967, 968 (1941), does not prevent this Court from
 17 compelling arbitration which, according to the Arbitration Provision, is to occur in
 18 a different state. In *Continental Grain*, in a situation where the plaintiff filed a
 19 petition in Oregon to compel arbitration in New York, the Ninth Circuit held that
 20 Section 4 limited a federal district court to ordering arbitration within the district in
 21 which it sat. *Id.* at 968. Notably, the Ninth Circuit stated that “the appellant had
 22 invoked the jurisdiction of a court other than that having jurisdiction in New York
 23 to enforce the agreement” and “having invoked the jurisdiction of the United States
 24 District Court for Oregon [the appellant] is hardly in a position to complain that it
 25 has exercised that jurisdiction in accordance with the statute giving it jurisdiction.”
 26 *Id.* Here, of course, it is not the moving party that has invoked the jurisdiction of
 27 this California district court, but it is the party opposing arbitration which filed in
 28 this District.

1 None of the Ninth Circuit decisions since 1941 explicitly prohibit a district
 2 court from compelling arbitration in a different district when, as here, the plaintiff
 3 chose the venue and is the party seeking to avoid arbitration in the contractually-
 4 designated forum. In *Bauhinia Corp. v. China National Machinery & Equipment*
 5 *Import & Export Corporation*, the Ninth Circuit upheld the Eastern District of
 6 California’s order compelling arbitration in its district where the arbitration
 7 provision was ambiguous about the selected forum. 819 F.2d 247, 249-50
 8 (9th Cir. 1987). However, the Ninth Circuit limited its holding to circumstances
 9 where the contract did not designate a forum. *Id.* at 250 (“In the absence of a term
 10 specifying location, a district court can only order arbitration within its district.”).

11 The Ninth Circuit returned to the issue in 2001 and held that a suit to enjoin
 12 arbitration does not have to have to be filed in the “contractually-designated
 13 arbitration locale.” *Textile Unlimited, Inc. v. A.BMH & Co., Inc.*, 240 F.3d 781,
 14 783 (9th Cir. 2001). The court noted that “the venue provisions of the FAA do not
 15 supplant the general venue provisions of 28 U.S.C. § 1391(a); rather they are
 16 permissive and supplement those sections.” *Id.* With this background in mind, the
 17 Ninth Circuit held that a petition to compel arbitration may be filed in a district
 18 other than the one specified in the underlying arbitration provision. *Id.* at 785.

19 Finally, in *Sovak v. Chugai Pharmaceutical, Co.*, 280 F.3d 1266 (9th Cir.
 20 2002) *amended by* 289 F.3d 615, 619 n.1 (9th Cir. 2002), the Ninth Circuit did not
 21 overturn the Southern District of California’s decision to compel arbitration in
 22 Chicago, but noted that the appellant did not “challenge the district court’s order
 23 compelling arbitration.” “Therefore, [the Ninth Circuit] express[ed] no view as to
 24 whether the district court properly compelled arbitration in Chicago, even though
 25 the federal action was filed in California.” *Id.* In support of this statement, the
 26 Ninth Circuit directed the reader to compare *Continental Grain* with *Dupuy-*
 27 *Busching Gen. Agency v. Ambassador Ins. Co.*, 524 F.2d 1275, 1276-78 (5th
 28

1 Cir.1975) (concluding that § 4 bars ordering arbitration in another judicial district
2 only when the party seeking to compel arbitration filed the federal suit).

3 This Court apparently reads *Continental Grain* as not applying here, noting in
4 the Tentative Ruling that “Section 4’s terms arguably only apply where that
5 particular procedure is initiated by the same party who is seeking to compel
6 arbitration.”

7 At least one California federal district court⁶ has read *Continental Grain* as
8 only applying when it is the plaintiff which is trying to compel arbitration. *See,*
9 *United States ex rel. Turnkey Construction Services, Inc. v. Alacran Contracting,*
10 2013 WL 6503307 (E.D. Cal. Dec. 11, 2013) (California district court granted
11 defendant’s motion to compel arbitration where arbitration clause provided for
12 arbitration to occur in Illinois; in so holding, court interpreted *Continental Grain* as
13 limited to its facts and procedural circumstances; court found reasoning of Fifth
14 Circuit in *Dupuy-Busching Gen. Agency, supra*, to be “persuasive”).

15 This case at hand exemplifies the concerns raised by this Court in its
16 Tentative Ruling and the Eastern District of California in *Alacran Contracting*
17 regarding *Continental Grain* opening the door for plaintiffs to circumvent mutually
18 agreed upon forum selection provisions in arbitration clauses by filing suit in a
19 district outside the designated forum.

20 Accordingly, this Court should interpret *Continental Grain* narrowly --- like
21 the *Alacran* court --- and compel Plaintiffs to arbitrate in North Carolina.

22 B. The Court May Stay These Proceedings, or Dismiss This Action,
23 Pending the Completion of Arbitration.

24 The FAA requires this Court to *stay* proceedings until the parties have
25 conducted arbitration proceedings because Plaintiffs brought suit in this court

26 _____
27 ⁶ Admittedly, and as noted in prior submissions by both parties, other district courts within this Circuit have
28 come out the other way on this issue. *See, e.g., Beuperthuy v. 24 Hour Fitness USA, Inc.*, No. 06-0715-SC, 2012 WL 3757486, at *5 (N.D. Cal. July 5, 2012); *Seaman v. Private Placement Capital Notes II, LLC*, Case No. 16-cv-00578-BAS-DHB, 2017 WL 1166336, at *5-6 (S.D. Cal. March 3, 2017).

1 “upon an[] issue referable to arbitration under an agreement in writing for such
 2 arbitration.” 9 U.S.C. § 3. As suggested in the Tentative Ruling as one possible
 3 course of action, on October 5, 2017, Defendants filed, in the United States District
 4 Court for the Middle District of North Carolina (the “Middle District”) a petition to
 5 compel arbitration. Defendants therefore request a stay of these proceedings until
 6 the Middle District issues a ruling on Defendants’ petition; and, if the Middle
 7 District grants the petition, Defendants request that this action be stayed until such
 8 time as the parties complete their arbitration. *See Entravision Comm’ns Corp v.*
 9 *BroadView Software, Inc.*, Case No. CV 09–4573, 2009 WL 10675885, at *3 (C.D.
 10 Cal. Aug. 26, 2009) (noting *Continental Grain* issue, and staying action “pending
 11 the completion of arbitration”).

12 This Court also has discretion to *dismiss* this action if it finds that the claims
 13 are arbitrable. *Thinknet Ink Information Resources, Inc. v. Sun Microsystems, Inc.*,
 14 368 F.3d 1053, 1060 (9th Cir. 2004). Courts in this district have done so pursuant
 15 to Rule 12(b)(6), *Luna v. Kemira Specialty, Inc.*, 575 F.Supp.2d 1166, 1176 (C.D.
 16 Cal. 2008), and Rule 12(b)(1), *Alvarado v. Pacific Motor Trucking Co.*, EDCV 14–
 17 0504–DOC, 2014 WL 3888184, at *7 (C.D. Cal. Aug. 7, 2014). *See also Ideal*
 18 *Company, Inc. v. 1st Merchant Funding, LLC*, 2016 WL 2932086, at *3 (C.D. Cal.
 19 May 18, 2016) (“Further ‘[s]ubstantial case law establishes that [Rules] 12(b)(1),
 20 (3), and (6) are the correct rules under which to seek dismissal based on an
 21 arbitration provision.”) (quoting *Valley Power Sys., Inc. v. Gen. Elec. Co.*, No. 11-
 22 cv-10726-CAS-JCx, 2012 WL 665977, at *7 (C.D. Cal. Feb. 27, 2012)); *Cigirex,*
 23 *LLC v. Acosta, Inc.*, 2014 WL 12606496, at *3 (C.D. Cal. Oct. 6, 2014) (expressing
 24 concerns on the ramifications of *Continental Grain* and dismissing the claims
 25 subject to arbitration as “the best way to navigate the requirements of the FAA”).
 26 Because the Arbitration Provision applies to all of Plaintiffs’ claims, this Court may
 27 dismiss this action in its entirety.

1 C. In the Alternative, this Court Should Transfer Venue to the Middle
 2 District of North Carolina.

3 The arbitration provision provides for mandatory arbitration in Greensboro,
 4 North Carolina, and also provides that “[e]ither party may seek emergency or
 5 provisional relief in the General Court of Justice, Guilford County, North Carolina,
 6 prior to invoking the arbitration remedy.” (Wallace Decl. ¶ 13.)

7 Because arbitration clauses are “in effect, a specialized kind of forum-
 8 selection clause,”⁷ if this Court is not inclined to compel arbitration or stay or
 9 dismiss the case, this Court should transfer the case to the Middle District of North
 10 Carolina pursuant to *Atlantic Marine Construction Co. v. United States District*
 11 *Court for the Western District of Texas*, ___ U.S. ___, 134 S.Ct. 568, 581 (2013).⁸

12 1. The Supreme Court’s Decision in Atlantic Marine
 13 Requires Transfer to the Middle District of North Carolina.

14 In *Atlantic Marine*, the United States Supreme Court recently explained that
 15 a party may enforce a forum selection clause through a motion to transfer pursuant
 16 to 28 U.S.C. § 1404(a), and the court must give “controlling weight” to forum
 17 selection clauses “in all but the most exceptional cases.” 134 S.Ct. at 581. There,
 18 the Court adopted a modified analysis that applies in the context of a motion to
 19 transfer premised on a forum-selection clause: (1) “plaintiff’s choice of forum
 20 merits no weight” because “when a plaintiff agrees by contract to bring suit only in
 21 a specified forum—presumably in exchange for other binding promises by the
 22 defendant—the plaintiff has effectively exercised its ‘venue privilege’ before a
 23 dispute arises,” *id.* at 581-82; (2) a district may only consider “public-interest

24 _____
 25 ⁷ *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974).

26 ⁸ Defendants respectfully disagree with the Court’s suggestion in the Tentative Ruling that Defendants’
 27 motion to transfer hinges on whether the Court determines that it can compel arbitration outside of this district. As
 28 noted *infra*, the Arbitration Provision is a forum selection clause that requires “controlling weight” under *Atlantic*
Marine, irrespective of the Court’s power to compel arbitration in North Carolina. Indeed, the two Central District
 cases relied on in Section IV.A transferred cases to other districts based on similar Arbitration Provisions without
 ever mentioning *Continental Grain* or the Court’s authority to compel arbitration outside this district.

1 factors” rather than the traditional private-interest factors such as the convenience
 2 of the forum for Plaintiffs or their witnesses, *id.* at 582; and (3) transfer of venue
 3 will not carry with it the original venue’s choice-of-law rules, *id.* at 583.

4 Relevant public-interest factors include administrative difficulties flowing
 5 from court congestion, the interest of the local court in deciding local controversies,
 6 and the interest in trying a diversity case in a court that is at home with the law. *Id.*
 7 at 581 & n.6. “As the party acting in violation of the forum-selection clause,
 8 [Plaintiffs] must bear the burden of showing that public-interest factors
 9 **overwhelmingly** disfavor a transfer.” *Id.* at 583 (emphasis added). Here, Plaintiffs
 10 agreed to arbitrate in North Carolina. (Wallace Decl. ¶ 13.)

11 Since *Atlantic Marine*, this Court has granted motions to transfer to another
 12 federal district court based on nearly identical provisions and under similar
 13 circumstances. *See Crown Capital Secs., L.P. v. Liberty Surplus Ins. Corp.*,
 14 2015 WL 12748815, *2, *10 (C.D. Cal. Mar. 3, 2015) (J. Stanton) (granting motion
 15 to transfer venue to the Southern District of New York based on a forum selection
 16 and arbitration provision stating that “[t]he arbitration or any court proceeding shall
 17 take place in New York, New York and New York law shall apply”); *Britvan v.*
 18 *Cantor Fitzgerald, L.P.*, 2016 WL 3896821, *1 (C.D. Cal. July 18, 2016)
 19 (J. Wright) (granting motion to transfer to New York where contract was governed
 20 by New York law and arbitration provision stated that arbitration was “to be
 21 adjudicated by a panel of arbitrators sitting in New York City”).

22 Furthermore, all of the public interest factors weigh in favor of transferring
 23 this matter to the Middle District of North Carolina. First, the Central District is
 24 one of the busiest districts in the country and transferring the case to the Middle
 25 District of North Carolina will enhance rather than hinder administrative efficiency.
 26 *Crown Capital Secs., L.P.*, 2015 WL 12748815 at * 8 (C.D. Cal. Mar. 3, 2015)
 27 (“[T]he Central District of California . . . is one of the busiest districts in the
 28 country.”) (quoting *In re Air Crash Over Taiwan on May 25, 2002*, 331 F.Supp.2d

1 1176, 1202 (C.D. Cal. 2004)). Second, the Middle District has an interest in this
 2 matter because both corporate defendants are North Carolina corporations and all
 3 three individual defendants work for the North Carolina corporations. Third, the
 4 Agreement is governed by North Carolina law, (Wallace Decl. ¶ 12), which the
 5 Middle District will obviously be more familiar with than this Court.

6 Because the Plaintiffs' private interests, including their convenience and their
 7 choice of forum, bear no weight on this question, and because the public interest
 8 factors all favor transfer to the Middle District, this Court should transfer the matter
 9 to the Middle District.

10 2. Plaintiffs Cannot Demonstrate that the Forum Selection Clause
 11 is Invalid.

12 Plaintiffs may only evade the Agreement's forum selection clause if they can
 13 prove that the forum selection clause is "unreasonable" under the circumstances.
 14 *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir. 1996). This Court
 15 may only find that the forum selection clause is unreasonable if the Plaintiffs satisfy
 16 their heavy burden of showing that "(1) its incorporation into the contract was the
 17 result of fraud, undue influence, or overweening bargaining power; (2) the selected
 18 forum is so 'gravely difficult and inconvenient' that the complaining party will 'for
 19 all practical purposes be deprived of its day in court'; or (3) enforcement of the
 20 clause would contravene a strong public policy of the forum in which the suit is
 21 brought." *Id.* (internal citations and quotations omitted). Although Plaintiffs
 22 regurgitate the three factors in the FAC, (FAC ¶ 90), they provide little explanation
 23 for how they intend to satisfy their heavy burden. Nonetheless, the following
 24 principles militate against a finding that the forum selection clause is unreasonable.

25 **First**, Plaintiffs must prove that Market America's inclusion of the forum
 26 selection clause in the Agreement was the product of fraud, overreaching, or
 27 overweening bargaining power, rather than that the Agreement as a whole was a
 28 product of those factors. *See Petersen v. Boeing Co.*, 715 F.3d 276, 282 (9th Cir.

2013); *Crown Capital Secs.*, 2015 WL 12748815, at *5. Here, Plaintiffs allege only that the Agreement as a whole, not the forum selection clause in particular, is the product of overreaching or coercion. This does not satisfy Plaintiffs high burden. *See Richards v. Lloyds of London*, 135 F.3d 1289, 1297 (9th Cir. 1998).

Second, “[t]o establish unreasonableness of a forum selection clause the party resisting enforcement of the clause has a heavy burden of showing that trial in the chosen forum would be so difficult and inconvenient that the party effectively would be denied a meaningful day in court.” *Pelleport Inv., Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d 273, 281 (9th Cir. 1984). In other words, Plaintiffs must show that transferring this case to Greensboro, North Carolina would make it **impossible** for them to try their case, “not simply a less convenient or effective means of doing so.” *Zaklit v. Global Linquist Solutions, LLC*, 2014 WL 12521725, at *19 (C.D. Cal. Mar. 24, 2014) (quoting *Bowman v. Kona University, Inc.*, 2013 WL 3819674, *2 (C.D. Cal. July 23, 2013) (J. Pregerson).).

In their prior declarations, Plaintiffs testified—with almost identical language—that requiring them to arbitrate their claims in North Carolina would be a hardship because they would have to pay for airfare and food, and disrupt their work schedules. (Dkt. No. 42-1, ¶¶ 13, 27; Dkt. No. 42-2, ¶¶ 7, 8, 22; Dkt. No. 42-3, ¶¶ 7, 8, 22.) But this Court has previously rejected similar “bare assertions of dire financial situations and significant financial hardship.” *Zaklit*, 2014 WL 12521725, at *20. Instead, Plaintiffs must put forth specific evidence of “financial difficulty and/or physical limitation, and explain why the difficulty and/or limitation makes litigating in [Greensboro, North Carolina] so prohibitively expensive as to prevent the party from having the case heard at all.” *Id.*

Finally, the loss of a claim does not necessarily invalidate a forum selection clause on public policy grounds. *See Fireman’s Fund Ins. Co. v. M.V. DSR Atlantic*, 131 F.3d 1336, 1338 (9th Cir. 1997) (upholding forum selection clause even though plaintiff lost right to bring *in rem* proceedings in Korea); *Crown*

1 *Capital Secs.*, 2015 WL 12748815, at *6 (“The fact that the remedies available in
 2 New York for insurance bad faith claims may be less favorable than those available
 3 in California is not a valid basis to deny enforcement of a forum selection clause.”).
 4 Thus, even if Plaintiffs can establish that they will lose the right to bring a claim if
 5 this case is transferred to another federal district court, that fact alone will not
 6 satisfy Plaintiffs’ heavy burden.

7 **CONCLUSION**

8 For the foregoing reasons, Defendants respectfully requests that their Motion
 9 to Compel Arbitration be granted or that the Court stay the case pending resolution
 10 of the North Carolina matter, dismiss the case in its entirety, or transfer the matter
 11 to the Middle District of North Carolina.

12 DATED: October 9, 2017

13 BUCHALTER
 14 A Professional Corporation

15 By _____ /s/
 16 Lawrence B. Steinberg
 17 Attorneys for defendants
 18 MARKET AMERICA, INC.,
 19 MARKET AMERICA WORLDWIDE, INC.,
 20 JAMES HOWARD RIDINGER,
 21 LOREN RIDINGER and MARC ASHLEY

22 WOMBLE CARLYLE
 23 SANDRIDGE & RICE, LLP

24 By _____ /s/
 25 Pressly M. Millen
 26 Attorneys for defendants
 27 MARKET AMERICA, INC.,
 28 MARKET AMERICA WORLDWIDE, INC.,
 JAMES HOWARD RIDINGER,
 LOREN RIDINGER and MARC ASHLEY

1 Lawrence B. Steinberg (State Bar No. 101966)
LSteinberg@buchalter.com

2 BUCHALTER, A Professional Corporation
1000 Wilshire Boulevard, Suite 1500
3 Los Angeles, CA 90017-2457
Telephone: (213) 891-0700
4 Facsimile: (213) 896-0400

5 Pressly M. Millen (admitted *pro hac vice*)
pmillen@wcsr.com

6 Jonathon D. Townsend (CA State Bar No. 293918)
jtownsend@wcsr.com

7 WOMBLE CARLYLE SANDRIDGE & RICE, LLP
555 Fayetteville Street, Suite 1100
8 Raleigh, NC 27601
Telephone: (919) 755-2100
9 Facsimile: (919) 755-2150

10 Attorneys for defendants MARKET
AMERICA, INC., MARKET AMERICA
11 WORLDWIDE, INC., JAMES HOWARD
RIDINGER, LOREN RIDINGER and
12 MARC ASHLEY

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 CHUANJIE YANG, an individual;
OLLIE LAN aka RUONING LAN,,
18 an individual; LIU LIU, an individual,
and all those similarly situated ,

19 Plaintiffs,

20 vs.

21 MARKET AMERICA, INC., a North
Carolina Corporation; MARKET
22 AMERICA WORLDWIDE, INC., a
North Carolina Corporation; JAMES
23 HOWARD RIDINGER, an
individual; LOREN RIDINGER, an
24 individual; MARC ASHLEY, an
individual; and DOES 1- 100,
25

26 Defendants.
27
28

Case No. CV 2:17-04012-GW (JEMx)

DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO COMPEL
ARBITRATION OR, IN THE
ALTERNATIVE, TO STAY, DISMISS
OR TRANSFER VENUE

Date: November 16, 2017
Time: 8:30 a.m.
Courtroom: 9D

1 Defendants MARKET AMERICA, INC., MARKET AMERICA
 2 WORLDWIDE, INC., JAMES HOWARD RIDINGER, LOREN RIDINGER, and
 3 MARC ASHLEY (collectively, “Defendants”) respectfully request that the Court
 4 take judicial notice of the following record of the United States District Court for
 5 the Middle District of North Carolina (“the “North Carolina Arbitration Petition”):

6 “Petition for Order Compelling Arbitration,” Dkt. No. 1,
 7 *Market America, Inc. et al. v. Chuanjie Yang, et al.*, Case
 8 No. 1:17-cv-897 (M.D.N.C. filed October 5, 2017)

9 A true and correct copy of the North Carolina Arbitration Petition is attached hereto
 10 as Exhibit 1.

11 Judicial notice is proper for the foregoing document because it is an official
 12 record of the U.S. District Court for the Middle District of North Carolina. *See*,
 13 *e.g.*, *Trigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011) (Federal courts “may
 14 take notice of proceedings in other courts, both within and without the federal
 15 judicial system, if those proceedings have a direct relation to matters at issue.”)
 16 (quoting *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d
 17 244, 248 (9th Cir. 1992)); *Nat. Res. Def. Council v. Sw. Marine, Inc.*, 39 F. Supp.
 18 2d 1235, 1237 n.1 (S.D. Cal. 1999) (noticing the United States’ amicus curiae brief
 19 in another matter, reasoning that because the brief was not a “‘fact,’ legal or
 20 adjudicative, but only legal argument, Fed.R.Evid. 201 [was] not a bar” to taking
 21 judicial notice).

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

1 Defendants request judicial notice only of the existence of this court record,
2 and not of the truth of its specific contents.

3 DATED: October 9, 2017

4 BUCHALTER
5 A Professional Corporation

6
7 By /s/
8 Lawrence B. Steinberg
9 Attorneys for defendants
10 MARKET AMERICA, INC.,
11 MARKET AMERICA WORLDWIDE, INC.,
12 JAMES HOWARD RIDINGER,
13 LOREN RIDINGER and MARC ASHLEY

14 WOMBLE CARLYLE
15 SANDRIDGE & RICE, LLP

16
17 By /s/
18 Pressly M. Millen
19 Attorneys for defendants
20 MARKET AMERICA, INC.,
21 MARKET AMERICA WORLDWIDE, INC.,
22 JAMES HOWARD RIDINGER,
23 LOREN RIDINGER and MARC ASHLEY
24
25
26
27
28

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:17-cv-897

MARKET AMERICA, INC.; MARKET
AMERICA WORLDWIDE, INC; JAMES
HOWARD RIDINGER; LOREN
RIDINGER; and MARC ASHLEY,

Petitioners,

v.

CHUANJIE YANG; OLLIE LAN; and LIU
LIU,

Respondents.

**PETITION FOR ORDER
COMPELLING ARBITRATION**

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.*, Petitioners Market America, Inc. (“Market America”), Market America Worldwide, Inc., James Howard Ridinger, Loren Ridinger, and Marc Ashley (collectively, “Petitioners”) allege as follows:

PARTIES

1. Petitioner Market America is a 25-year-old product brokerage and Internet one-to-one marketing company. It is a corporation organized and existing under the laws of the State of North Carolina with its headquarters in Greensboro, North Carolina, where nearly 600 Market America employees work.

2. Petitioner Market America Worldwide, Inc. is a corporation organized and existing under the laws of the State of North Carolina with its headquarters in Greensboro, North Carolina. It is the parent company of Market America.

3. Petitioner James Howard Ridinger is a resident of Miami, Florida. Mr. Ridinger founded Market America in 1992 and serves as Market America's Chief Executive Officer.

4. Petitioner Loren Ridinger is a resident of Miami, Florida, and the Senior Executive Vice President of Market America.

5. Petitioner Marc Ashley is a resident of North Carolina and the President and Chief Operating Officer of Market America.

6. Respondents Chuanjie Yang, Liu Liu, and Ollie Lan ("Respondents") are individuals that, upon information and belief, reside in Los Angeles County, California. Respondents are plaintiffs in a putative class action filed against Petitioners in the United States District Court for the Central District of California, which is styled *Chuanjie Yang et al. v. Market America, Inc. et al.*, Case No. 2:17-cv-04012 (C.D. Cal.) (the "California Action"). A true and correct copy of the original class action complaint and the operative first amended class action complaint (the "FAC") are attached hereto as Exhibits 1 and 2.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this Petition based on 28 U.S.C. § 1332(a)(1) because the parties are completely diverse and the amount in controversy, as set forth in the FAC, exceeds \$75,000, exclusive of interest and costs, and

based on 28 U.S.C. § 1367 because the state law claims alleged in the California Action arise from the same case and controversy as Respondents' federal law claims. *See* 9 U.S.C. § 4 ("A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action . . . for an order directing that such arbitration proceed in the manner provided for in such agreement").

GENERAL ALLEGATIONS

I. Respondents Assent to the Terms and Conditions of Market America's Distributor Agreement.

8. Market America sells products through a network of independent distributors known within Market America as Independent UnFranchise Owners ("Distributors").

9. Since 1992, Market America has required all Distributors to sign an agreement that is now known as the "Independent UnFranchise Application and Agreement" (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit 3.¹

¹ The version of the Agreement submitted as Exhibit 3 to this Petition is the same version that Respondents' attorney submitted as an exhibit to his declaration in support of a brief filed in the Central District of California. *Chuanjie Yang, et al. v. Market America, Inc., et al.*, Case No. 2:17-cv-04012-GW-JEM, Dkt. No. 43-9 (C.D. Cal.). Although the Agreement has changed in minor ways over the years, the arbitration provision and the choice of law provision have remained the same since 2010.

10. Distributors can sign the Agreement with Market America online or in paper form. To sign up online, a Distributor has to fill out his or her personal information before being presented with a copy of the Agreement. Before the Distributor can submit the Agreement, the Distributor must click a box indicating that he or she assents to the Agreement's Terms and Conditions. The Terms and Conditions are not presented in a hyperlink; rather, the Terms and Conditions are presented on the same page as the checkbox.

11. Similarly, if a Distributor signs up using a paper form, the Terms and Conditions are listed on the back of the Agreement, and the Distributor must sign the form acknowledging that he or she agrees to the terms.

12. Market America's records show that respondent Chuanjie Yang signed up as a Distributor online in May 2010 and remained a Distributor until August 2015.² Respondent Yang renewed his Agreement in 2010 and 2011. Beginning in 2012, Market America's records indicate that Yang opted in to automatically renew ("Auto Renewal") online by clicking "I agree" to the following terms:

Acceptance of Amendments to IDA&A. By agreeing to these terms and conditions for Auto Renewal, you agree to the incorporation by reference of all amendments and/or revisions of the IDA&A as you agreed to it originally, as provided during the previous year in official Market America literature. Renewal of the IDA&A and Forms 925/1001. You renew your IDA&A with Market America. You agree to be bound by the Terms and Conditions of that Agreement . . . as amended from time to time."

² In a declaration filed in the California Action Respondent Yang denied that he signed up online as Market America's records indicate, but admitted, nonetheless, that he signed a one-page piece of paper. Irrespective of whether Mr. Yang signed up online or by paper form, he would have assented to the Agreement's Terms and Conditions.

13. Respondent Ollie Lan signed up online in November 2015, but did not renew the Agreement in November 2016 and is currently listed as inactive in Market America's system.

14. Respondent Liu Liu signed up online on March 1, 2016, but did not renew the Agreement in March 2017, and is currently listed as inactive in Market America's system.

15. Market America's records indicate that all three Respondents assented to the Terms and Conditions of the Agreement by clicking "I agree" next to the Agreement's Terms and Conditions.

II. The Agreement Includes An Enforceable Arbitration Provision That Applies to "Any Controversy or Claim Arising Out Of or Relating To" the Agreement.

16. By assenting to the Terms and Conditions of the Agreement, Market America and the Respondents agreed to arbitrate any disputes arising out of or relating to the agreement in an arbitration administered by the American Arbitration Association.

The relevant provision provides as follows:

Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. You understand that this arbitration provision means you are giving up the right to have any dispute you have regarding this Agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of

Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy.

(Exhibit 3, § 29.)

17. The Agreement further provides that “North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions.” (Exhibit 3 § 28.)

18. Market America did not change the Arbitration Provision or the choice of law provision between 2010 and 2016, and all three Respondents assented to both provisions when they signed up to be Distributors.

19. As a written provision in a contract that involves interstate commerce, the Arbitration Provision is valid and enforceable against Respondents. *See* 9 U.S.C. § 2 (“A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable . . .”); *Zandford v. Prudential-Bach Secs., Inc.*, 112 F.3d 723, 726 (4th Cir. 1997) (noting that there is a “federal policy strongly favoring arbitration”).

III. Respondents File a Lawsuit Against Petitioners in California That Arises Out Of and Relates to Their Agreements with Market America.

20. Despite the Arbitration Provision, Respondents Chuanjie Yang and Ollie Yan filed the California Action on May 30, 2017. (Exhibit 1.)

21. Respondents amended their complaint on July 20, 2017, to add Respondent Liu Liu. (Exhibit 2.)

22. The FAC asserted eight claims for relief against Petitioners: (1) judgment declaring the Arbitration Provision unenforceable; (2) endless chain scheme under California Penal Code § 927 and California Civil Code § 1689.2; (3) unfair and deceptive practices claims under California Business & Professional Code § 17200, et seq.; (4) false advertising under California Business & Professional Code § 17500, et seq.; (5) violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(a); (6) RICO, 18 U.S.C. § 1962(c); (7) RICO, 18 U.S.C. § 1962(d); and (8) federal securities fraud. In short, the FAC alleges that Market America’s relationship with its Distributors constitutes an unlawful pyramid and/or fraudulent endless chain in violation of California state law and federal law.

23. Because the Agreement with Respondents is essential to their claims against Petitioners, the Agreement’s broad Arbitration Provision applies to all eight causes of action in the FAC. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967) (describing an arbitration clause that applied to “[a]ny controversy or claim arising out of or relating to this Agreement” as a “broad arbitration clause”); *Muriithi v. Shuttle Exp., Inc.*, 712 F.3d 173, 179 (4th Cir. 2013) (“Any uncertainty regarding the scope of arbitrable issues agreed to by the parties must be resolved in favor of arbitration.”).

24. Petitioners moved, over Respondents’ opposition, to transfer the California Action to this district pursuant to the Arbitration Provision. In a tentative ruling, the

Central District of California invited Petitioners to file this petition. (Exhibit 4, p. 5, fn.6.)³

25. A true and correct copy of the Central District of California's Minutes of its November 6, 2017, hearing, which encloses the Court tentative ruling, is attached hereto as Exhibit 4.

26. Petitioners intend to inform the Central District of California that they have filed this Petition and to ask the court to, among other options, stay the California Action until this Court can decide whether to compel arbitration in North Carolina.

CLAIM FOR SPECIFIC RELIEF

Specific Performance of Arbitration Provision

27. Respondents breached the Arbitration Provision by ignoring the Arbitration Provision and filing the California Action. Pursuant to 9 U.S.C. § 4, Petitioners are entitled to an order requiring Respondents to comply with the Arbitration Provision and directing that arbitration proceed in the manner provided for in the Arbitration Provision.

WHEREFORE, Petitioners pray as follows:

1. That Respondents be ordered to arbitrate all claims alleged against Petitioners in *Chuanjie Yang et al. v. Market America, Inc. et al.*, Case No. 2:17-cv-04012 (C.D. Cal.);

2. That Petitioners be awarded such other relief as the Court deems proper.

³ As described in the tentative ruling, Petitioners first asked the Central District of California to compel arbitration, but re-styled their motion as a motion to transfer to this District based on Ninth Circuit precedent that could be read to suggest that the Central District of California cannot compel arbitration in North Carolina.

Respectfully submitted this the 5th day of October, 2017.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

/s/ Pressly M. Millen

Pressly M. Millen

N.C. State Bar No. 16178

555 Fayetteville Street, Suite 1100

Telephone: (919) 755-2100

Facsimile: (919) 755-2150

Email: pmillen@wcsr.com

*ATTORNEYS FOR PETITIONERS MARKET
AMERICA, INC.; MARKET AMERICA WORLDWIDE,
INC; JAMES HOWARD RIDINGER; LOREN
RIDINGER; and MARC ASHLEY*

Declaration of Eugene Wallace

I, Eugene Wallace, hereby declare as follows:

1. I am an adult resident of the State of North Carolina and competent to make this declaration. I am currently the Chief Technology Officer at Market America, Inc. ("Market America"), where I focus on information technology and Internet issues. I have worked for Market America for nineteen years. Before serving as Chief Technology Officer, my roles at Market America included Senior Applications Engineer, Vice President of Business Solutions, Project Manager, and Vice President of Project Management. I have over twenty years of experience in information technology, including ten years with the United States Navy as a Special Weapons Technician. My testimony herein is based upon my personal knowledge.

2. Market America is a product brokerage company that sells its products through a network of independent distributors, known within Market America as Independent UnFranchise Owners ("Distributors"). Market America Worldwide, Inc. is the parent company of Market America and both companies are North Carolina corporations headquartered in Greensboro, Guilford County, North Carolina. Individual Defendant James Howard Ridinger founded Market America in 1992 and he serves as Market America's Chief Executive Officer. Defendant Loren Ridinger is the Senior Executive Vice President of Market America and Defendant Marc Ashley is the President and Chief Operating Officer of Market America. James Howard Ridinger and Loren Ridinger are residents of Miami, Florida. Marc Ashley is a resident of North Carolina.

3. Distributors have the option to sign up as a Distributor online by executing the Independent Distributor Application and Agreement, now known as the Independent UnFranchise Application and Agreement, (the "Agreement") through a Sign-Up Wizard or to fill out a paper Agreement and mail the executed Agreement to Market America. Both methods require applicants to agree to the

1 Terms and Conditions of the Agreement. Market America's system keeps electronic
2 records, which can be accessed to determine the date and time a Distributor signed
3 up online. Chuanjie Yang, Ruoning Lan and Liu Liu all signed up online through
4 the Sign-Up Wizard.

5 4. Exhibit A is a screenshot of Market America's electronic record of
6 Chuanjie Yang's sign up. Yang's Distributor ID is located in the red box in the top
7 right of the screenshot. The date in the second red box indicates the date that Yang
8 selected "I agree" to the Terms and Conditions and submitted the Agreement. The
9 third red box indicates the time that Yang selected "I agree" and submitted the
10 Agreement. Yang agreed to the Terms and Conditions of the Agreement and signed
11 up online on May 15, 2010 at 3:06 pm (Eastern).

12 5. Exhibit B is a screenshot of Market America's electronic record of
13 Lan's sign up. Lan's Distributor ID is located in the second red box. The date and
14 time in the first red box indicates that the date and time that Lan selected "I agree"
15 to the Terms and Conditions and submitted the Agreement. Lan agreed to the
16 Terms and Conditions of the Agreement and signed up online on November 13,
17 2015 at 6:20pm (Eastern).

18 6. According to Market America's system, when Lan signed up as a
19 distributor with Market America, her address was listed as Houston, Texas. Exhibit
20 C shows the information associated with Lan's distributorship

21 7. Exhibit D is a screenshot of Market America's electronic record of
22 Liu's sign up. Liu's Distributor ID is located in the first red box. The date and time
23 in the second red box indicates that the date and time that Liu selected "I agree" to
24 the Terms and Conditions and submitted the Agreement. Liu agreed to the Terms
25 and Conditions of the Agreement on March 1, 2016 at 1:25 p.m. (Eastern).

26 8. The following is the process by which a Distributor signs up online:
27 Applicants fill out personal information including, but not limited to, their
28 name, mailing address, shipping address, social security number, phone number,

--

DECLARATION OF EUGENE WALLACE

2.

1 email address and sponsor information (see Exhibits G and H for the 2010 and 2015
2 - present online forms). Before being permitted to submit the Agreement, applicants
3 are presented with a checkbox at the end of the Agreement (Exhibits E and F). This
4 checkbox indicates a requirement to agree to the "Terms and Conditions" of the
5 Agreement to become an Independent Distributor by selecting the checkbox. The
6 Terms and Conditions of the Agreement are not contained in a hyperlink that
7 requires users to visit another page. The Terms and Conditions of the Agreement
8 are presented to Applicants on the same page as the checkbox.

9 9. The Agreement grants Distributors the right to sell certain products
10 offered by Market America. Distributors are independent contractors, not
11 employees of Market America.

12 10. The Terms and Conditions of the Agreement grant both parties the
13 right to terminate the Agreement for any reason by providing thirty days written
14 notice.

15 11. The Terms and Conditions of the Agreement give Market America the
16 discretion to modify the Agreement's terms and conditions, but require Market
17 America to notify Distributors that it is modifying the Agreement. The
18 modification provision states as follows:

19
20 "Modification. Market America, at its discretion, may amend the
21 MPCP, the policies and procedures in Part 2 of the Career Manual,
22 and terms of this Agreement, and shall notify you of any such
23 amendments in the UnFranchise Owner Magazine or other official
24 Company publications or communications."

25 12. The Agreement's choice of law provision reads as follows:

26 "Choice of Law. North Carolina law shall govern any dispute arising
27 out of, or related to, this Agreement notwithstanding its choice of law
28 provisions."

13. The Agreement's arbitration provision reads as follow:

1 “Arbitration. Any controversy or claim arising out of or relating to this
2 Agreement, or the breach thereof, shall ultimately be settled by
3 arbitration administered by the American Arbitration Association in
4 accordance with its Commercial Arbitration Rules and judgment on
5 the award rendered by the arbitrators may be entered in a court of
6 competent jurisdiction. You understand that this arbitration provision
7 means you are giving up the right to have any dispute you have
8 regarding this Agreement heard by a jury and determined in a court of
9 law. The arbitration shall be heard by one arbitrator, and it shall take
10 place in Greensboro, North Carolina. Either party may seek emergency
11 or provisional relief in the General Court of Justice, Guilford County,
12 North Carolina, prior to invoking the arbitration remedy.”

13 14. Market America did not make any changes to the arbitration provision
14 or the choice of law provision from 2010 to 2016.

15 15. Until the checkbox was selected, Yang, Lan, and Liu were not able to
16 submit the Agreement or complete the application. As indicated above and pursuant
17 to Exhibits A, B, and D Yang, Lan, and Liu clicked the checkbox indicating the
18 acceptance of the Terms and Conditions of the Agreement, which specifically
19 designates arbitration as the sole method for resolving any disputes arising out of or
20 relating to the Agreement, and chooses North Carolina as the governing law and
21 sole venue. This same requirement and functionality has been in place from 2010 to
22 the present day. The only difference was that the 2016 and 2015 Agreement Terms
23 and Conditions are presented in a scroll box on the webpage and the 2010
24 Agreement Terms and Conditions are not contained in a scroll box.

25 16. Prior to 2012, Distributors had to mail in an Annual Renewal Form to
26 Market America in order to renew the Agreement. Starting in 2012, however,
27 Distributors were able to opt in to Auto Renew their Agreements. But, similar to
28 signing up online, Distributors could not opt in to Auto Renew their Agreement
unless and until they selected an “I agree” checkbox, which indicated that they
agreed to the Terms and Conditions of the Annual Renewal and to the Terms and
conditions of the Independent Distributor Application and Agreement. Yang

1 renewed his Agreement with Market America each year until 2015. In 2010 and
2 2011—i.e. before Auto Renewal was an option—Yang signed and mailed his
3 Annual Renewal Form to Market America (Exhibit I). The Annual Renewal forms
4 both contain the following language, which Yang agreed to:

5
6 **“By signing this form I acknowledge the incorporation by**
7 **reference of all changes and/or revisions delineated in official**
8 **company literature that alter the Independent Distributor**
9 **Application and Agreement I originally signed.** I, the above-named
10 Market America Independent Distributor, do hereby renew my
11 Independent Distributor Application and Agreement with Market
12 America as provided in the Independent Distributor Application and
13 Agreement, and I agree to be bound by the terms and conditions of
14 that agreement . . . as amended from time to time.”

15 17. In 2012, Yang opted in to Auto Renew his Agreement each year.
16 Before opting in to Auto Renew, Yang clicked “I agree” to the following Terms:

17 “Acceptance of Amendments to IDA&A. By agreeing to these terms
18 and conditions for Auto Renewal, you agree to the incorporation by
19 reference of all amendments and/or revisions of the IDA&A as you
20 agreed to it originally, as provided during the previous year in official
21 Market America literature. Renewal of the IDA&A and Forms
22 925/1001. You renew your IDA&A with Market America. You agree
23 to be bound by the Terms and Conditions of that Agreement . . . as
24 amended from time to time.”

25 18. Distributors can access the Terms and Conditions of the Agreement at
26 any time on UnFranchise.com.

27 19. On August 2, 2015, Yang faxed a letter to Market America requesting
28 to cancel his distributorship (Exhibit J).

20. Market America’s records indicate that Lan did not renew the
Agreement in November of 2016. Therefore, Lan is currently listed as inactive in
Market America’s system.

EXHIBIT A

Chuanjie Yang sign up date and time.

```

wIntegrate U2 SSH: dmc02 - Open
File Edit Setup Run Help
=====
Exiting to TCL - type account name to return to the menu!
06-24-17 09:09:26 eugenew>SELECT UFSIGNUP.WZD.HST = "[*112180880"
1 record(s) selected to SELECT list #0.
06-24-17 09:10:04 eugenew>>LIST-ITEM UFSIGNUP.WZD.HST

LIST.ITEM UFSIGNUP.WZD.HST 09:10:14am 24 Jun 2017 PAGE 1

598948644*112180880
001 APPUFMS.SPLASHEUFMSTRANSFER.BUYEPATLIVEORDERFORM925FORM1001
002 15476154761547615476154761547615476154761547615476
003 1120911261113061154611582132051322813253
004 1120911261113061154611582132051322813253
005 CHSUB300USATECHINESE2005050
06-24-17 09:10:14 eugenew>DATE.O
ENTER INTERNAL DATE: 15476
05-15-2010
06-24-17 09:10:43 eugenew>TIME.O
ENTER INTERNAL TIME: 11209
03:06:49
06-24-17 09:10:52 eugenew>

```

EXHIBIT B

Ruoning Lan sign up date and time.

```

wIntegrate U2 SSH: dmc - Open
File Edit Setup Run Help
LIST INVITE.W2D.HIST = "438146" STEP.CODE STEP.DATE STEP.TIME DIST.ID 01:41:06pm
11 Jul 2017 PAGE 1
INVITE.W2D.HIST STEP CODE STEP DATE STEP TIME DIST ID..
438146 APP 11/13/15 06:03pm 808128680
UFMS 11/13/15 06:03pm
ORDER 11/13/15 06:20pm
TB 11/13/15 06:21pm
FORM 11/13/15 06:22pm
TICKET 11/13/15 06:22pm
1 records listed.
07-11-17 13:41:06 eugenew>
    
```


EXHIBIT C

Ruoning Lan Distributor Information

```

DM8300.CS.V1          *** DISTRIBUTOR INQUIRY ***          SC-1
MEMBER/ID: 808128680-001          ENTRY/DATE: 11/13/15
PRO-0429941          V ACCT#:
1 -NAME: LAN, RUONING          30-STATUS: I-INACTIVE QF:
2 -REP/ID: 7996036          PSWDS: REDACTED          31-$/DATE: 03/02/16
3 -MAIL/ADDR1: REDACTED          270 Date: 11/15/16
4 -MAIL/ADDR2: REDACTED          270 Days Left:
6 - MAIL/CITY: HOUSTON          7 -STATE: TX          5 -ZIP: 77036
8 -SHIP/ADDR1: REDACTED          HCC: USA
9 -SHIP/ADDR2:
11- SHIP/CITY: HOUSTON          1-STATE: TX          1-ZIP: 77036
13-HOME/PHONE: 6268619403          20-START/DATE: 11/13/2015          MAIL/LOG/ID
14- BUS/PHONE:          21- RENEWAL: 11/13/2015
15- FAX/PHONE:          22- RNWL/BLK:          RNWL/FEE:
16-EMAIL/ADDR: REDACTED          23-C/ID: 11/13/15          11-ACH/TB:
17- PLC/ID:          18-PLC/LEG: 2          24-TYPE: R          26- BT#:
NAME:          25-SP/C:
19-SPONSOR/ID:          27-BAD/AD: -
NAME:          29-SSN/ID:
33-COMMENTS:
F1=PUR F2=1099 F3=D/V F4=CI F5=Z F6=HLDS F7=CR F8=PUR? F9=UFO F10=VCR F11=BC F
13=QT F14=GUI:

```

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit D

Liu Liu's sign up date and time.

```
LIST INVITE.W2D.HIST DIST.ID STEP.CODE STEP.DATE STEP.TIME 07:49:09am
21 Jul 2017 PAGE 1
INVITE.W2D.HIST DIST ID.. STEP CODE STEP DATE STEP TIME

483527 026367789 APP 03/01/16 01:25pm
UFMS 03/01/16 01:25pm
ORDER 03/01/16 01:33pm
TB 03/01/16 01:37pm
FORM 03/01/16 01:37pm
TICKET 03/01/16 01:37pm

1 records listed.
07-21-17 07:49:09 eugeneu>
```

Exhibit E

"I Agree" required Checkbox on Independent Agreement for Year 2010.

Internet Explorer

unfranchise.com/index.cfm?action=forms.dstApp

Tools Help McAfee SiteAdvisor

trade secrets of Market America. You agree not to use or disclose such information and material to anyone except for the purpose of promoting and developing your Market America business. You further agree not to use or disclose such information and material for the purpose of developing or promoting your business as a distributor for any other Internet One-To-One Marketing Company (as defined in Section 17 above).

22. **Protection of Market America Sales Force.** You recognize that Market America has invested substantial effort and money in training, building, supporting and maintaining its sales force and that protecting the Market America sales force from unfair competition is important to both Market America and the other Distributors in its sales force. You agree that the restrictions contained in this Agreement are a fair and reasonable way to help protect the Market America sales force from unfair competition. You agree that violations of the restrictions contained in this Agreement will cause irreparable injury to Market America and that Market America is entitled to seek preliminary and permanent injunctive relief to remedy such violations.

23. **Non-Competition.** While you are a Market America Distributor, you agree to the following limited restrictions:

(A) You will not solicit, directly or indirectly, any Market America Distributor, whether or not personally sponsored by you, into any other Internet One-To-One Marketing Company (as defined in Section 17 above). Examples of indirect solicitation include, but are not limited to, request to review the products or marketing plan, discussing good experiences with the company, and putting a Market America Distributor in contact with a third party who solicits that Distributor.

(B) You will not sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above), to any Market America Distributor except those who are personally sponsored by you.

(C) You will not induce any Market America Distributor, including those personally sponsored by you, to sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above).

(D) You will not, directly or indirectly, solicit any Market America Distributor to leave or reduce his or her activity with Market America.

(E) You will not market the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above) to your retail customers at the same time as you market Market America products to the same customers. The purpose of this provision is to avoid any confusion between Market America's products and the products of the other Internet One-To-One Marketing Company (as defined in Section 17 above).

(F) You will not commingle the business of any other Internet One-To-One Marketing Company (as defined in Section 17 above) with your Market America business. You will keep each business totally separate and distinct from the other.

24. **Non-Competition after Termination.** For a period of six (6) months after termination of your Market America Distributorship, whether by voluntary termination, involuntary termination, or non-renewal, you will not contact or communicate with any Market America Distributor, or any of your former retail customers of Market America products, or any retail customers of anyone in your former Market America downline, on behalf of any other Internet One-To-One Marketing Company (as defined in Section 17 above):

(A) within 100 miles of your residence during the time you were a Distributor, or

(B) within 100 miles of the residences of any of your personally sponsored Distributors, or

(C) within 100 miles of any Distributor in your Market America downline who achieved the level of Certified Executive Coordinator or above during the time that you were a Market America Distributor.

In calculating the six-month time period provided in this Section, the time shall be suspended during any period in which you are not in compliance with this Agreement.

25. **Indemnification.** You agree to defend, indemnify and hold harmless Market America, its owners, representatives, officers, employees, agents, and assigns from and against any and all liability, actions, claims, judgments, lawsuits, demands, costs and expenses (including attorney's fees) arising out of, resulting from or in any way connected to your performance under this Agreement, whether occasioned by the actions or omissions to act of you or your representatives, contractors, agents, employees or invitees. This indemnity clause shall apply without regard to whether or not Market America is actively or passively negligent with respect to the liability, action, claim, judgment, lawsuit and/or demand. You will provide the defense of any and all such actions, claims, lawsuits and/or demands, and will employ counsel who is satisfactory to Market America for that purpose. Alternatively, Market America may, in its sole discretion, provide its own defense at your expense.

26. **Non-Waiver.** Any failure to enforce any right hereunder shall not constitute a waiver of any right granted herein or existing under North Carolina law.

27. **Unenforceable Terms.** In the event any one or more of the terms contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term had never been contained herein.

28. **Choice of Law.** North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions.

29. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. You understand that this arbitration provision means you are giving up the right to have any dispute you have regarding this Agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy.

30. **Entire Agreement.** This Agreement and Part 2 of the Career Manual constitute the entire agreement between you and Market America. Market America has not made any additional promises, representations, guarantees or agreements to or with you. You agree that you shall not rely on any representation made by a Distributor, whether verbal or written, regarding the terms and conditions of this Agreement, as the basis for a claim of misrepresentation against Market America. To the extent that there is any inconsistency between this Agreement and Part 2 of the Career Manual, this Agreement controls. No additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by an authorized officer of Market America.

I agree to the above indicated information and I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THE TERMS SET FORTH ON THIS FORM, AS EVIDENCED BY COMPLETING THIS FORM.

☐ I Agree

Internet

EXHIBIT F

“I agree” required Checkbox on Independent Agreement for Year 2015 – Present.

City State

Zip Code Mailing Country

Note: This address will also be used when shipping your initial order.

Additional New Distributor Information

TaxPayer Information

Under penalty of perjury, I certify that:

a. The number shown on this form is my correct Taxpayer Identification Number and

b. I am not subject to back-up withholding because

1. I am exempt from back-up withholding, or

2. I have not been notified by the Internal Revenue Service that I am subject to back-up withholding, as a result of a failure to report all interest or dividends or

3. The IRS has notified me that I am no longer subject to back-up withholding.

Right To Cancel

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of the transaction.

Terms and Conditions

You hereby apply to become an independent UnFranchise® Owner (UFO) or Sales Representative for Market America, Inc. and its affiliates, collectively "Market America". You understand and agree that:

1. **Legal Capacity:** If you are an individual, you are of legal age to enter into legally binding contracts in the jurisdiction in which you enter into this Agreement. If you are a business entity, you are in good standing in the jurisdiction in which you were created, and in all jurisdictions in which you operate. Also, if you are a business entity, the person signing this Agreement on your behalf has the authority to do so.

2. **Acceptance: Right to Sell Products:** You shall become an UnFranchise Owner or Sales Representative upon acceptance of this Agreement.

I agree to the terms and conditions



 

EXHIBIT G

Online Sign Up Form for 2010.

The screenshot shows a web browser window titled "Market America - Windows Internet Explorer". The address bar displays the URL: <https://my.unfranchise.com/index.cfm?action=forms.sWithId=1239910227345>. The browser's menu bar includes "File", "Edit", "View", "Favorites", "Tools", and "Help". The browser's status bar at the bottom shows "Done", "Internet", and "100%".

The website header features the "marketamerica" logo with the tagline "Build on Product. Powered by People." and the "unfranchise.com" logo. A navigation menu on the left includes links for "Home", "Email", "En Español", "Language", "Home", "International", "UFMS Sign Up", "PATLive", "My Account", "Corporate Info", "Sign Up Wizard", "Ordering Services", "Other Services", "Online Forms", "Preferred Customers", "Reports", "Audio Downloads", "Regional IBV", "Transitions LifeStyles", "nutraMetric", "Downloads", "NWTSS", "Links", and "Signoff".

The main content area is titled "Sign Up Wizard" and contains the following text:

The sign up wizard will take you through the steps for enrolling a new American or Canadian distributor. Please click on the button below to get started!

If you experience an interruption in service, or you want to resume a suspended "Sign Up", select the respective distributor from the "New Distributor" selection box and click the "Continue Sign Up Process" button....

The form includes the following fields and options:

- Sponsor ID : 331642520
- Sponsor Name : AURORO CLINIC
- New Distributor : [New Distributor] (dropdown menu)
- Distributor Type : ☒ Distributor ☐ Health Professional Distributor
- Country : ☒ USA ☐ CAN

A "Continue Sign Up Process" button is located at the bottom of the form.

Market America - Windows Internet Explorer

https://my.unfranchise.com/index.cfm?action=forms.dstApp

File Edit View Favorites Tools Help

McAfee SecurityAdvisor

Home Email En Español

Language

Home

International

UFMS Sign Up

PATLive

My Account

Corporate Info

Sign Up Wizard

Ordering Services

Other Services

Online Forms

Preferred Customers

Reports

Audio Downloads

Regional IBV

Transitions LifeStyles

nutraMatrix

Downloads

NMTSS

Link

Signoff

United States Independent Distributor Application and Agreement

For accurate processing, please complete the entire application.

Sign-Up Guide Steps -> The below checkboxes are "Automatically Checked" for each step once you have completed or elected to skip.

1. Application 2. UFMS Info 3. UFMS 4. Transfer Buy 5. PATLive 6. Order 7. Form 923 8. Form 1001 9. Done

Preferred Customer Selection (optional)

If the new distributor is an existing Preferred Customer, use one of the options below.

Note: A PC ID will be created and assigned to the new distributor if there is not one already in existence.

If this Preferred Customer was sponsored by you, please click on the down-arrow and select the PC ID from the list:

Select a Preferred Customer: [v]

If this Preferred Customer was sponsored by another Customer Manager, please enter the seven-digit PC ID in the box below and click GO.

PC ID: [GO]

Personal Information

Please see "Help" for assistance on this form. All fields marked with an "*" Or colored box are required.

If you are signing up as a Company, "Company Name" is required.

Primary Distributor

*Application Type: [Individual v]

Company Name:

Contact Name:

*Gender: [Male v]

*First Name: [NEW]

Middle Initial:

*Last Name: [DISTRIBUTOR01]

*Date of Birth: [MM/DD/YYYY v]

*SSN / Fed Tax ID: [147845988]

*Preferred Language: [English v]

*Subscription Kit Language: [English v]

Please note that your home phone number will not be given out.

*Home Phone: [3366050040]

Business Phone: 3364781234

Fax: 3366050041

For faster communication about your application, please provide your email address.

Email Address: TEST03@AOL.COM

Secondary Distributor

First Name:

Middle Initial:

Last Name:

Entry Classification

Please select classification.

☐ Sales Representative (No fee required. Sales representatives do not earn commission.)

☐ Distributor - Single BDC. Submit current subscription fee. (Initially you will only have one BDC.)

☒ Supervisory Entry Level (\$129.95 plus requires order of 300 BV or greater with 200 BV in 001 and minimum 50 BV in 002 and minimum 50 BV in 003)

Mailing Address

*Street / PO Box: [ASANT RIDGE ROAD]

Apt / Suite: [APT 10]

*City: [GREENSBORO]

*State: [North Carolina v]

*Zip: [27409]

*Country: [USA]

Shipping Address

Only complete if different from mailing address.

Street / PO Box: [10 MAIN STREET]

Apt / Suite: [APT 20]

City: [BEVERLY HILLS]

State: [California v]

Zip: [90210]

Country: [USA]

Done

Internet 100%

Market America - Windows Internet Explorer

https://my.urfanchise.com/index.cfm?action=forms.dstApp

File Edit View Favorites Tools Help



Market America

Sponsor Information
 Distributor's ID : 331642520
 Distributor's Name : AURORA CLINIC

Placement Information (Placement Report)
 Placement of New Distributor.
 *Placement ID : 331642520
 *Placement Ext : 002
 *Leg : ☒ Left ☐ Right

TaxPayer Information
 Under penalty of perjury, I certify that:
 a) The number shown on this form is my correct Taxpayer Identification Number and
 b) I am not subject to back-up withholding because:
 1. I am exempt from back-up withholding, or
 2. I have not been notified by the Internal Revenue Service that I am subject to back-up withholding, as a result of a failure to report all interest or dividends or
 3. The IRS has notified me that I am no longer subject to back-up withholding.
Right to Cancel
 You, the Buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of the transaction.
Check Writing Privileges
 Distributor agrees:
 (1) To comply with the rules of Market America, as may be amended from time to time, including rules requiring payment of applicable reinstatement or other charges;
 (2) To notify Market America of any change in address or personal bank accounts; and
 (3) To surrender this check-writing privilege upon demand by Market America.

Additional New Distributor Information

Drivers License # :
 Drivers License State : ["USA States"]
 I authorize Market America, Inc. to charge my credit card for any non-sufficient funds (check or bank draft) and service charges that are outstanding for over 30 days.
 Credit Card No :
 Credit Card Expiration : MM YY
 Credit Cards Accepted:  

Terms and Conditions
 You hereby apply to become an Independent Distributor or Sales Representative for Market America. You understand and agree that:

- Legal Capacity.** If you are an individual, you are of legal age to enter into legally binding contracts in the jurisdiction in which you enter into this Agreement. If you are a business entity, you are in good standing in the jurisdiction in which you were created, and in all jurisdictions in which you operate. Also, if you are a business entity, the person signing this Agreement on your behalf has the authority to do so.
- Acceptance, Right to Sell Products.** You shall become an Independent Distributor or Sales Representative upon acceptance of this Agreement by Market America. Market America shall accept this Agreement unless it notifies you of rejection within 15 days of its receipt. You shall have the right to sell the products offered by Market America in accordance with the policies and procedures in the Market America Career Manual, which may be amended from time to time.
- Policies and Procedures.** You certify that you have received a copy of the Career Manual from your Sponsor, upline Coordinator, or another source. Also, you have reviewed Part 2 of the Career Manual prior to entering into this Agreement. You have carefully reviewed the Management Performance Compensation Plan (MPCP) and the policies and procedures as set forth in Part 2 of the Career Manual, and you acknowledge that they are incorporated as part of this Agreement in their present form and as modified from time to time by Market America.
- Modification.** Market America, at its discretion, may amend the MPCP, the policies and procedures in Part 2 of the Career Manual, and terms of this Agreement, and shall notify you of any such amendments in the PowerLine Magazine or other official Company publications or communications.
- Sales Representative Option.** If you have elected to become a Sales Representative, you have marked the appropriate box on this Agreement. There is no fee or requirement to become a Sales Representative. As a Sales Representative, you may purchase products at Distributor cost and retail them, but you may not participate in the MPCP or earn commissions or bonuses. You understand that unless you submit the \$129.95 (U.S. Currency) Subscription Fee for Distributors and renew this Agreement annually, you will not receive newsletters, services, or communications from the Company, but you will receive any applicable amendments to this Agreement as described in Section 4.
- Distributor Option: Subscription Kit.** If you have elected to become an Independent Distributor and participate in the MPCP, you agree to pay a Subscription Fee of \$129.95 (U.S. Currency) with this Agreement. You agree that the MPCP has specific reporting and time-sensitive qualification requirements as set forth in the Career Manual. Failure to comply with these requirements may affect your commissions, and Market America cannot make exceptions to the requirements. The Subscription Fee covers set-up costs for your Distributorship, a Career Manual, initial materials, and a subscription to newsletters, mailings, and other services. Start-up materials and subscription services are sold at Company cost, and Distributors do not receive volume credit or commissions on them. The Subscription Fee is not a service or franchise fee, but rather is strictly to offset costs incurred by the Company for educational and business materials necessary to operate a Distributorship. No purchase is necessary to become a Market America Distributor other than the purchase of a Subscription Kit.

Done

Internet 100%

Market America - Windows Internet Explorer

https://my.unfranchise.com/index.cfm?action=forms.distApp

File Edit View Favorites Tools Help

Market America

7. **Term, Renewal.** The term of this Agreement is one year. If you wish to continue as a Distributor, each year you must apply to renew this Agreement and submit the renewal fee in place at the time of renewal. The amount of this fee is subject to change upon written notice in Company publications. You have the right not to seek annual renewal of this Agreement, and Market America has the right to accept or reject your renewal at its discretion. Any renewal not rejected within 15 days of receipt by Market America, or by January 15 of the renewal year, whichever is later, shall be deemed accepted.

8. **Termination.** Either party may terminate this Agreement for any reason and at any time upon thirty (30) days written notice to the other party. However, Market America may terminate this Agreement with less than 30 days written notice for serious violations of the policies and procedures. In accordance with the Corrective Action Procedure described in the Career Manual, the Subscription Fee is fully refundable for a period of 30 days from the date of this Agreement upon the return of the Subscription Kit in good condition and written termination of this Agreement by you. The cost of the Career Manual and initial materials in good condition is \$39.00 (U.S. Currency), and this is refundable for a period of 90 days from the date of this Agreement, upon return of the Manual and materials in good condition and written termination of this Agreement. The balance of the Subscription Fee is not refundable after 90 days, and no refunds are granted after 90 days. For products and materials other than the Subscription Kit, Market America shall refund 90% of the Distributor cost of all resalable products and materials purchased during the one-year period prior to termination. In applying for a refund, you must follow the provisions contained in the Career Manual.

9. **Independent Contractor Status.** Upon acceptance of this Agreement by Market America, you will be an independent contractor responsible for your own business. This Agreement is not intended and shall not be construed to create a relationship of employer-employee, agency, partnership or joint venture between you and Market America, or between you and your sponsor. This Agreement does not constitute the sale of a franchise or a distributorship, and no fees have been or will be required from you for the right to distribute Market America's products pursuant to this Agreement. As an independent contractor, you must:

A. Abide by any federal, state, county and local laws, rules and regulations pertaining to this Agreement and/or the acquisition, receipt, holding, selling, distributing or advertising of Market America products.

B. At your expense, make, execute or file all reports and obtain all licenses as are required by law or public authority with respect to this Agreement and/or the receipt, holding, selling, distributing or advertising of Market America products.

10. **Not an Employee.** You are not considered an employee of Market America under any federal, state or local laws, including but not limited to the Federal Unemployment Tax, Workers' Compensation, income tax withholding, or any other federal, state or local laws. It is your responsibility to pay self-employment, federal, state and local income taxes as required by law.

11. **Retail Sales.** The MDCP is built on retail sales to the end consumer. You may purchase products for your personal or family use, but Market America does not pay commissions on these purchases. You understand that in order to sponsor another Distributor under the MDCP, you must sell \$200 in retail value of products within 30 days of sponsorship and submit receipts to the company with a retail sales report (the Form 1000), or you shall lose sponsorship rights. You must also sell \$200 in retail value of products to end users and submit a Form 1000 prior to receiving any commissions under the MDCP or qualifying to be a Coordinator.

12. **Trademarks, Advertising.** You may not use the Market America trade name or product trademarks except in the advertising material or literature produced or provided to you by Market America, or as otherwise authorized by Market America in writing. Prior written approval from Market America is required to advertise Market America products, or to use or produce any literature other than Market America-produced literature, relating to Market America, its products, or the MDCP.

13. **Sale of NutraMatrix® Product Line.** Only Nutraceutical Anti-Aging Consultants (NAAACs) are eligible to purchase or distribute NutraMatrix Advanced Nutraceutical branded products. NAAACs may only distribute the NutraMatrix products to licensed health professionals. NAAACs are also permitted to purchase the NutraMatrix products for personal consumption.

14. **Public Presentations of the MDCP.** Only Distributors who have achieved a pin level of Certified Executive Coordinator or higher are permitted to make public presentations of the MDCP or the Unfranchise System.

15. **Management Responsibilities, Other Requirements.** You must manage all of the Distributors in your sales organization, regardless of whether their sales volume contributes to your commissions. You must maintain ongoing contact, communication, and management supervision with their sales organizations. Examples of such supervision may include, but are not limited to: personal meetings; telephone contacts; voice mail; email; newsletters; written correspondence; personal training sessions; and accompanying them to Company meetings and training programs. You must provide evidence to the Company, at its request, of ongoing fulfillment of management responsibilities. You understand that you must sign additional agreements in order to advance in management levels in the MDCP or to assume a training and leadership position in the National Meeting, Training, and Seminar System. Upon meeting the qualifications to become a Coordinator, you must submit an Executive Coordinator Application and Qualification Agreement (Form 1001) and an Executive Coordinator Acknowledgment and Agreement (Form 925) within 28 days of qualifying at the Coordinator level (i.e. earning your first commission).

16. **One Distributor per Household.** Prior written approval from Market America is required to have more than one Distributor in a single household. A Distributor will not receive personal sponsorship activation credit for an approved Distributor in the same household.

17. **Cross-Group Sponsorship.** Sponsoring any Market America Distributor, directly or indirectly, into another line of sponsorship, within the Market America MDCP or in any other Internet One-To-One Marketing Company marketing plan, is strictly prohibited. For purposes of this Agreement, an "Internet One-To-One Marketing Company" shall be defined as (i) the business of Internet marketing, or direct sales, multi-level marketing, or network marketing, of consumer products or services through a network of independent distributors who can earn money by purchasing consumer products at wholesale prices and reselling them at retail prices and by building sales organizations of other independent distributors from which they may earn commissions from training and managing those sales organizations or (ii) the business of mass customization and Internet marketing of consumer products or services by identifying preferences of an enterprise's customer base through data mining and similar techniques and sourcing production and distribution to consumers.

18. **Right to Setoff.** If you or anyone in your line of sponsorship is in default on payment for Market America products or services, Market America may setoff/deduct the balance due from any commission or other compensation owed to you by Market America, or against any credit on your account. Default on payments due for purchases from Market America is grounds for termination of this Agreement.

19. **Prior Disciplinary Action.** You represent that you have never been the subject of disciplinary action as a distributor for any other Internet One-To-One Marketing Company (as defined in Section 17 above). If you have been the subject of a disciplinary action, you must send an explanation of the facts and resolution of that action to Market America's Corporate Office (attn: Legal Department) prior to submitting this Agreement.

20. **Distributor Grievances.** You agree to submit any complaint, grievance, or claim against another Distributor or Market America in accordance with the Grievance Procedure set forth in the Career Manual. You agree not to seek arbitration, take legal action except in accordance with the Grievance Procedure, or contact any regulatory agency regarding your Market America Distributorship until all steps of the Grievance Procedure have been completed. If your breach this covenant, you may be liable to Market America for damages and legal costs, including reasonable attorney's fees.

21. **Proprietary and Trade Secret Information.** You acknowledge that certain information and material which may be provided to you while you are a Distributor, including, but not limited to, Distributor lists, Distributor contact information, Distributor financial data, other Distributor personal information (including information related to Distributors in your sales organization), sales organization linkage information ("genealogy reports"), the National Meeting, Training, and Seminar System, Market America's voice mail system, and other matters not made available to the general public and which have been made available to you only because you are a Distributor, are proprietary and constitute

Done

Internet 100%

Market America - Windows Internet Explorer

Address: https://my.unfranchise.com/index.cfm?action=forms.distApp

File Edit View Favorites Tools Help

in: Market America

Once selected for Market America, you agree not to use or disclose such information and material to anyone except for the purpose of promoting and developing your Market America business. You further agree not to use or disclose such information and material for the purpose of developing or promoting your business as a distributor for any other Internet One-To-One Marketing Company (as defined in Section 17 above).

22. **Protection of Market America Sales Force.** You recognize that Market America has invested substantial effort and money in training, building, supporting and maintaining its sales force and that protecting the Market America sales force from unfair competition is important to both Market America and the other Distributors in its sales force. You agree that the restrictions contained in this Agreement are a fair and reasonable way to help protect the Market America sales force from unfair competition. You agree that violations of the restrictions contained in this Agreement will cause irreparable injury to Market America and that Market America is entitled to seek preliminary and permanent injunctive relief to remedy such violations.

23. **Non-Competition.** While you are a Market America Distributor, you agree to the following limited restrictions:

(A) You will not solicit, directly or indirectly, any Market America Distributor, whether or not personally sponsored by you, into any other Internet One-To-One Marketing Company (as defined in Section 17 above). Examples of indirect solicitation include, but are not limited to, request to review the products or marketing plan, discussing good experiences with the company, and putting a Market America Distributor in contact with a third party who solicits that Distributor.

(B) You will not sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above), to any Market America Distributor except those who are personally sponsored by you.

(C) You will not induce any Market America Distributor, including those personally sponsored by you, to sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above).

(D) You will not, directly or indirectly, solicit any Market America Distributor to leave or reduce his or her activity with Market America.

(E) You will not market the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above) to your retail customers at the same time as you market Market America products to the same customers. The purpose of this provision is to avoid any confusion between Market America's products and the products of the other Internet One-To-One Marketing Company (as defined in Section 17 above).

(F) You will not commingle the business of any other Internet One-To-One Marketing Company (as defined in Section 17 above) with your Market America business. You will keep each business totally separate and distinct from the other.

24. **Non-Competition after Termination.** For a period of six (6) months after termination of your Market America Distributorship, whether by voluntary termination, involuntary termination, or non-renewal, you will not contact or communicate with any Market America Distributor, or any of your former retail customers of Market America products, or any retail customers of anyone in your former Market America downline, on behalf of any other Internet One-To-One Marketing Company (as defined in Section 17 above):

(A) within 100 miles of your residence during the time you were a Distributor; or

(B) within 100 miles of any of your personally sponsored Distributors; or

(C) within 100 miles of any Distributor in your Market America downline who achieved the level of Certified Executive Coordinator or above during the time that you were a Market America Distributor.

In calculating the six-month time period provided in this Section, the time shall be suspended during any period in which you are not in compliance with this Agreement.

25. **Indemnification.** You agree to defend, indemnify and hold harmless Market America, its owners, representatives, officers, employees, agents, and assigns from and against any and all liability, actions, claims, judgments, lawsuits, demands, costs and expenses (including attorney's fees) arising out of, resulting from or in any way connected to your performance under this Agreement, whether occasioned by the actions or omissions to act of you or your representatives, contractors, agents, employees or invitees. This indemnity clause shall apply without regard to whether or not Market America is actively or passively negligent with respect to the liability, action, claim, judgment, lawsuit and/or demand. You will provide the defense of any and all such actions, claims, lawsuits and/or demands, and will employ counsel who is satisfactory to Market America for that purpose. Alternatively, Market America may, in its sole discretion, provide its own defense at your expense.

26. **Non-Waiver.** Any failure to enforce any right hereunder shall not constitute a waiver of any right granted herein or existing under North Carolina law.

27. **Unenforceable Terms.** In the event any one or more of the terms contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term had never been contained herein.

28. **Choice of Law.** North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions.

29. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. You understand that this arbitration provision means you are giving up the right to have any dispute you have regarding this Agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy.

30. **Entire Agreement.** This Agreement and Part 2 of the Career Manual constitute the entire agreement between you and Market America. Market America has not made any additional promises, representations, guarantees or agreements to or with you. You agree that you shall not rely on any representation made by a Distributor, whether verbal or written, regarding the terms and conditions of this Agreement, as the basis for a claim of misrepresentation against Market America. To the extent that there is any inconsistency between this Agreement and Part 2 of the Career Manual, this Agreement controls. No additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by an authorized officer of Market America.

I agree to the above indicated information and I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THE TERMS SET FORTH ON THIS FORM, AS EVIDENCED BY COMPLETING THIS FORM.

☐ I Agree

Done

Internet 100%

EXHIBIT H

Online Sign Up Form for 2015 – present.

English 中文 Español Account Settings Welcome COMPANY 001 Sign Out

UnFranchise
Business Account

Ordering My Distributorship My Customers **My Organization** Downloads Help & Training

Signup Wizard Home My Organization Signup Wizard

Incomplete Signups

If you experienced an interruption or you want to resume a "Sign Up", select the respective distributor from the selection box and click the "Continue" button.

Please Select

Start New Sign Up

Sponsor ID: 55555555
Sponsor Name: COMPANY 001

The sign up wizard will take you through the steps for enrolling a new USA, Canada, or Mexico distributor. Please click on the button below to get started!

Start New

© 2017 Market America, Inc.



BUCHALTER NEMER
A PROFESSIONAL CORPORATION
LOS ANGELES

20

EXHIBIT I

Chuanjie Yang Annual Renewal Forms 2010 and 2011

33762617

marketamerica
Built on Product. Powered by People.

ANNUAL RENEWAL FORM
INDEPENDENT DISTRIBUTOR APPLICATION AND AGREEMENT RENEWAL

Name: Chuanjie Yang Market America Distributor ID Number: 11121761810

REDACTED

City: San Gabriel State/Province: CA Zip/Postal Code: 91776

You **MUST** select **ONLY ONE** option below to ensure your Annual Renewal is processed correctly. If a selection is not made or more than one box is selected, your Annual Renewal Form and Fee will be returned to you unprocessed.

☐ **SALES REPRESENTATIVE ANNUAL RENEWAL — This Section ONLY!**
By submitting this form with **no Annual Renewal Fee**, I opt to renew my Independent Distributor Application and Agreement at Sales Representative status.

☒ **DISTRIBUTOR ANNUAL RENEWAL — This Section ONLY!**
By submitting this form along with the appropriate Annual Renewal Fee indicated below, I opt to renew my Independent Distributor Application and Agreement at my current Independent Distributor status. I understand that I must pay for my own Annual Renewal Fee and that no other person, current Independent Distributor or otherwise, may pay the Annual Renewal Fee for me.
US\$99.95/CS\$99.95 Annual Renewal Fee (received August 1 through December 31)
US\$104.95/CS\$104.95 Annual Renewal Fee (received January 1 through January 31)
US\$109.95/CS\$109.95 Annual Renewal Fee (received February 1 through the last day of February)

☐ **nutraMetrix® ANNUAL RENEWAL — This Section ONLY!**
MUST BE A REGISTERED AND APPROVED LICENSED HEALTH PROFESSIONAL WITH MARKET AMERICA
By submitting this form along with the appropriate Annual Renewal Fee indicated below, I opt to renew my Health Professional Independent Distributor Application and Agreement at my current Independent Distributor status. I understand that I must pay for my own Annual Renewal Fee and that no other person, current Independent Distributor or otherwise, may pay the Annual Renewal Fee for me.
US\$129.95 nutraMetrix® Health Professionals Annual Renewal Fee (received August 1 through December 31)
US\$134.95 nutraMetrix® Health Professionals Annual Renewal Fee (received January 1 through January 31)
US\$139.95 nutraMetrix® Health Professionals Annual Renewal Fee (received February 1 through the last day of February)

☐ **GLOBAL ANNUAL RENEWAL — This Section ONLY!**
This section is only to be used if you are currently registered as a Global Independent Distributor in the United States and Canada.
UFMS credit card must be used for all Global Annual Renewals.
By submitting this form along with the appropriate Annual Renewal Fee indicated below, I opt to renew my Global Distributorship. I understand that I must pay for my own Annual Renewal Fee and that no other person, current Independent Distributor or otherwise, may pay the Annual Renewal Fee for me.
US\$99.95/CS\$99.95 Annual Renewal Fee (received August 1 through December 31)
US\$104.95/CS\$104.95 Annual Renewal Fee (received January 1 through January 31)
US\$109.95/CS\$109.95 Annual Renewal Fee (received February 1 through the last day of February)

METHOD OF PAYMENT

☐ Check (check ordering privileges apply)

☒ Credit Card - The last four (4) digits of the **UFMS** credit card number on file are 4362 expiration date (Mo/Yr): 03/12
Use only a UFMS authorized for this section. UFMS policies apply.

All Market America Independent Distributors, nutraMetrix® Independent Distributors and Global Independent Distributors must renew their Independent Distributor Application and Agreement annually with the Annual Renewal Form and **nonrefundable Annual Renewal Fee** in order to maintain their Independent Distributor status and receive *Powerline* (Market America's monthly magazine), corporate announcements, product updates and access to computer information and Market America's voicemail. Sales Representatives must renew their Independent Distributor Application and Agreement annually with the Annual Renewal Form only (no fee). Distributors and Sales Representatives whose applications are received prior to August 1 must renew by December 31 of the same year in order to remain active. Distributors and Sales Representatives whose applications are received August 1 or later will need to renew by December 31 of the next year.

Distributors and Sales Representatives applying prior to August 1 who do not renew will be granted a grace period until the last day of February to submit the Annual Renewal Form and/or increased Annual Renewal Fee. Distributors applying prior to August 1 who do not renew by the last day of February will become Sales Representatives and will lose all accrued Personal and Group Business Volume. Additionally, all upline Distributors will lose the Group Business Volume credit of the purged and unrenewed Distributors. Sales Representatives entering prior to August 1 of the current year who do not renew by the last day of February will lose their Personal Business Volume, and all upline Distributors will lose the Group Business Volume credit of the purged, unrenewed Sales Representatives.

Distributors entering prior to August 1 of the current year who submit an Annual Renewal Form without the Annual Renewal Fee will revert to Sales Representative status after the last day of February. They will lose their accrued Group Business Volume but retain their Personal Business Volume.

If your Annual Renewal Form is not received by the last day of February, your Independent Distributor Application and Agreement will expire and your status will be changed to a Sales Representative, making reapplication and reinstatement from the upline and Market America necessary. In addition, access to your *UnFranchise®* Business Account will be suspended until reapplication process is complete.

Submission of the Annual Renewal Form will satisfy the annual requirements for Form 1001 and Form 925, provided the hard copies of Form 1001 and Form 925 are already on file with Market America.

TO RENEW YOUR INDEPENDENT DISTRIBUTOR APPLICATION AND AGREEMENT: complete and mail this Annual Renewal Form along with payment (if applicable) in the appropriate amount, to Market America, P.O. Box 35364, Greensboro, NC 27425. Make checks payable to Market America. Each Independent Distributor must pay his or her own Annual Renewal Fee. Refer to the current edition of the Market America Career Manual for acceptable methods of payment.

By signing this form I acknowledge the incorporation by reference of all changes and/or revisions delineated in official company literature that alter the Independent Distributor Application and Agreement I originally signed.

I, the above-named Market America Independent Distributor, do hereby renew my Independent Distributor Application and Agreement with Market America as provided in the Independent Distributor Application and Agreement, and I agree to be bound by the terms and conditions of that agreement, including the Market America Career Manual, the Marketing Plan, and the Company's policies and procedures, rules and regulations as amended from time to time. If I am a business entity, the person signing this document has full authority to execute this agreement and legally bind the company. If applicable, I renew my Executive Coordinator Agreement (Form 925) and my Executive Coordinator Qualification and Application (Form 1001), each of which remains in full force by my signing below.

SIGNATURE (Must be original. NO COPIES accepted. Please use blue ink.) Chuanjie Yang Date 12/20/10

U.S. DISTRIBUTORS MAIL TO: Market America, Inc., P.O. Box 35364, Greensboro, NC 27425
CANADIAN DISTRIBUTORS MAIL TO: Market America, Inc., P.O. Box 35306, Greensboro, NC 27425

INTERNAL USE ONLY (Processor initials)
Rev. 02/01/10

26 RECEIVED DEC 27 2010

market

Built on Product: Powered by People

ANNUAL RENEWAL FORM
INDEPENDENT DISTRIBUTOR APPLICATION AND AGREEMENT RENEWAL

Name: CHUAN'IE YANG Market America Distributor ID Number: 112180880

Street Address: REDACTED

City: SAN GABRIEL State/Province: CA Zip/Postal Code: 91776

*nutrametrix and HP1 Renewals must be completed on appropriate form. Please go to your back office for the appropriate form. Please do not use this form for renewing your NM or HP1 Membership.

You MUST select ONLY ONE option below to ensure your Annual Renewal is processed correctly. If a selection is not made or more than one box is selected, your Annual Renewal Form and Fee will be returned to you unprocessed.

☐ SALES REPRESENTATIVE ANNUAL RENEWAL — This Section ONLY:
By submitting this form with no Annual Renewal Fee, I opt to renew my Independent Distributor Application and Agreement at Sales Representative status.

☒ DISTRIBUTOR ANNUAL RENEWAL — This Section ONLY:
By submitting this form along with the appropriate Annual Renewal Fee indicated below, I opt to renew my Independent Distributor Application and Agreement at my current Independent Distributor status. I understand that I must pay for my own Annual Renewal Fee and that no other person, current Independent Distributor or otherwise, may pay the Annual Renewal Fee for me.

US\$99.95/CS\$99.95 Annual Renewal Fee (received August 1 through December 31)
US\$104.95/CS\$104.95 Annual Renewal Fee (received January 1 through January 31)
US\$109.95/CS\$109.95 Annual Renewal Fee (received February 1 through the last day of February)

☒ GLOBAL ANNUAL RENEWAL — This Section ONLY:
This section is only to be used if you are currently registered as a Global Independent Distributor in the United States and Canada.

UFMS credit card must be used for all Global Annual Renewals.

By submitting this form along with the appropriate Annual Renewal Fee indicated below, I opt to renew my Global Distributorship. I understand that I must pay for my own Annual Renewal Fee and that no other person, current Independent Distributor or otherwise, may pay the Annual Renewal Fee for me.

US\$99.95/CS\$99.95 Annual Renewal Fee (received August 1 through December 31)
US\$104.95/CS\$104.95 Annual Renewal Fee (received January 1 through January 31)
US\$109.95/CS\$109.95 Annual Renewal Fee (received February 1 through the last day of February)

METHOD OF PAYMENT

☒ Credit Card - The last four (4) digits of the UFMS credit card number are 4382. I hereby authorize Market America to charge my credit card for the total amount listed above.

☐ Check (check writing privileges apply)

Signature of Cardholder: [Signature]

All Market America Independent Distributors, nutraMetric Independent Distributors and Global Independent Distributors must renew their Independent Distributor Application and Agreement annually with the Annual Renewal Form and nonrefundable Annual Renewal Fee in order to maintain their Independent Distributor status and receive Powerline (Market America's monthly magazine), corporate announcements, product updates and access to computer information and Market America voicemail. Sales Representatives must renew their Independent Distributor Application and Agreement annually with the Annual Renewal Form only (no fee). Distributors and Sales Representatives whose applications are received prior to August 1 must renew by December 31 of the same year in order to remain active. Distributors and Sales Representatives whose applications are received August 1 or later will need to renew by December 31 of the next year.

Distributors and Sales Representatives applying prior to August 1 who do not renew will be granted a grace period until the last day of February to submit the Annual Renewal Form and/or increased Annual Renewal Fee. Distributors applying prior to August 1 who do not renew by the last day of February will become Sales Representatives and will lose all accrued Personal and Group Business Volume. Additionally, all upline Distributors will lose the Group Business Volume credit of the purged and unrenewed Distributors. Sales Representatives entering prior to August 1 of the current year who do not renew by the last day of February will lose their Personal Business Volume, and all upline Distributors will lose the Group Business Volume credit of the purged, unrenewed Sales Representatives.

Distributors entering prior to August 1 of the current year who submit an Annual Renewal Form without the Annual Renewal Fee will revert to Sales Representative status after the last day of February. They will lose their accrued Group Business Volume but retain their Personal Business Volume.

If your Annual Renewal Form is not received by the last day of February, your Independent Distributor Application and Agreement will expire and your status will be changed to a Sales Representative, making reapplication and reinstatement from the upline and Market America necessary. In addition, access to your UnFranchise Business Account will be suspended until reapplication process is complete.

Submission of the Annual Renewal Form will satisfy the annual requirements for Form 1001 and Form 925, provided the hard copies of Form 1001 and Form 925 are already on file with Market America.

TO RENEW YOUR INDEPENDENT DISTRIBUTOR APPLICATION AND AGREEMENT, Complete and mail this Annual Renewal Form along with payment (if applicable) of the appropriate amount, to the address indicated below. Make checks payable to Market America. Each Independent Distributor must pay his or her own Annual Renewal Fee. Refer to the current edition of the Market America Career Manual for acceptable methods of payment.

By signing this form I acknowledge the incorporation by reference of all changes and/or revisions delineated in official company literature that alter the Independent Distributor Application and Agreement I originally signed.

I, the above-named Market America Independent Distributor, do hereby renew my Independent Distributor Application and Agreement with Market America as provided in the Independent Distributor Application and Agreement, and I agree to be bound by the terms and conditions of that agreement, including the Market America Career Manual, the Marketing Plan, and the Company's policies and procedures, rules and regulations as amended from time to time. If I am a business entity, the person signing this document has full authority to execute this agreement and legally bind the company. If applicable, I renew my Executive Coordinator Agreement (Form 925) and my Executive Coordinator Qualification and Application (Form 1001), each of which remains in full force by my signing below.

SIGNATURE (Must be original, NO COPIES accepted. Please use blue ink): [Signature] DEC 12 2011

U.S. DISTRIBUTORS MAIL TO: Market America, Inc., P.O. Box 35065, Greensboro, NC 27425
CANADIAN DISTRIBUTORS MAIL TO: Market America, Inc., P.O. Box 35306, Greensboro, NC 27425

INTERNAL USE ONLY | Processor Initials: [Initials]

EXHIBIT J

Yang Cancellation Request

CA

**MARKET AMERICA
GETTING OUT OF BUSINESS SURVEY**

Month August Rep. ID# _____
(Rep. ID# must be verified if verbal cancellation)

UnFranchise Owner Name Chuanjie Yang UnFranchise Owner ID# 112180880 Country USA

Any Additional ID#(s) (if applicable) _____

Start Date of UnFranchise Business 5-15-10 Date of Call / Mail ☒ Fax ☐ E-mail (Please circle one.) 8-3-15

Sponsor Name Meiling Zhang Sponsor ID# 598948644

Upline Vested Interest Member Name Zaiming Hu UVID# 531851616

Upline Advisory Council Member Name NPH International INC,

Statement: In order to help Market America understand your decision to close your Business Development Center, may we ask you a few questions that would help us to serve our UnFranchise Owners better in the future.

- 1) Why are you resigning? (please indicate by letter) G. No longer wish to continue Survey has not completed.
- A. Requirements or Red Flush B. Product dissatisfaction C. Sponsor or Upline support
D. Time constraints E. Personal situation/health/moving out of country
F. Market America service G. The UnFranchise® Business Plan being too complicated
H. Financial or loss of employment or divorce
I. N/A (refused survey, language, no answer, death)
J. Recruitment K. Ordering L. Delivery
- 2) Did you get to review the UnFranchise® Business Plan policies prior to signing your application? ☐ Yes ☐ No
- 3) On a ten-point scale (with 10 being excellent), please rate the service received from the following:
- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> UnFranchise Services | <input checked="" type="checkbox"/> Commissions | <input checked="" type="checkbox"/> Shipping |
| <input checked="" type="checkbox"/> Product Information | <input checked="" type="checkbox"/> Upline Support | <input checked="" type="checkbox"/> Market America overall |

For any scores below six (6), please provide reasons (if necessary, please attach a separate sheet).

- 4) Did you attend New UnFranchise Owner Training (NUOT)? ☐ Yes ☐ No

Was UnFranchise Owner advised of reinstatement policy? ☐ Y ☒ N

If UnFranchise Owner has a Web Center, does he/she want that cancelled? ☐ Y ☐ N ☐ N/A

Any commission checks owed? ☐ Y ☒ N (UnFranchise Owner should receive any checks earned.)

Z-screen Seq # 7340462

SAD Representative Signature Michael Wang

Date Forwarded to Data Processing 8-4-15

TO BE FILLED OUT BY DATA PROCESSING

Date UnFranchise Owner Canceled in System 8-4-15 Data Processing Signature R

Document #: MA-FD-F-ACD 001.05

Revision: 09-03-14

5444640

美安公司 Market America
my lif number: 112180880
我的经销商号: 112180880
请取消我的经销商 Please cancel my account
cancel my lifo account
杨传杰 - chuanjie yang
8/2/15.

RECEIVED AUG 03 2015

1 **Declaration of Clement D. Erhardt**

2 I, Clement D. Erhardt, hereby declare as follows:

3 1. I am the General Counsel to the defendant Market America, Inc.
4 (“Market America”), a position which I have held since 2013. I have been a
5 member of the Bar of Maryland since 1985. Among other things, I have served as
6 General Counsel to a number of companies, been a partner or principal in several
7 law firms, and served as General Counsel to the U.S. Consumer Product Safety
8 Commission. As General Counsel of Market America, I oversee the Compliance
9 and Ethics Department. I know and have personal knowledge of the contents of
10 this Declaration and am competent to make it. My personal knowledge is based, in
11 part, on my review of the business records kept by Market America in the regular
12 conduct of its activities.

13 2. Market America is celebrating its 25th Anniversary as a product
14 brokerage and Internet one-to-one marketing company. It is also ranked the 66th
15 largest Internet retailer and maintains an A+ rating with the Better Business Bureau.
16 The company has never been accused by any Federal, State, or international
17 regulatory agency as anything other than a legitimate business opportunity selling
18 safe and effective products, such as dietary supplements and cosmetics. Close to
19 600 employees operate out of the headquarters in Greensboro, North Carolina.

20 3. Market America operates globally with business activities and offices
21 in the United States, Canada, Mexico, Taiwan, Hong Kong, Singapore, Australia,
22 United Kingdom, and Spain.

23 **The Agreement Between Market America and its Independent Distributors**

24 4. Market America has a distributor agreement (now known as the
25 “Independent UnFranchise Application and Agreement,” and referred to herein as
26 the “Agreement”) with each and every one of its independent distributors.

27 5. Market America enters into the Agreement when it accepts, at its
28 North Carolina headquarters, the completed documentation from the distributor in

1 either an electronic or paper format. The paper forms include the terms and
2 conditions of the Agreement on the reverse side of the document. The Agreement
3 has a term of one year and must be renewed annually to remain in force. The
4 Agreement has been utilized since the company's inception in Greensboro, North
5 Carolina in 1992.

6 6. The Agreement sets out the general, high-level terms between Market
7 America and its independent distributors. Some of the terms, for example, directly
8 relate to Federal regulatory requirements, such as the company's mandate that
9 distributor compensation be based on retail sales. Other provisions touch upon the
10 status of a distributor as an independent contractor and the tax consequences of that
11 status.

12 7. The formation and execution of the Agreement – again in either
13 electronic or paper format – also serves as the key from which each distributor's
14 personal information is entered into the Market America system. In other words,
15 there is no way to become an independent distributor for Market America except by
16 executing the Agreement and it is only by that process that an individual's status as
17 an independent distributor becomes part of the system by which Market America
18 tracks the activities of those independent distributors.

19 8. Since 1992, the Agreement has had a forum selection clause providing
20 that it is governed by the laws of North Carolina. The original 1992 forum
21 selection clause (attached as Exhibit 1 at p. 10) provided:

22 This agreement shall be governed by the laws of the State of North
23 Carolina and all claims, disputes, and other matters between the
24 parties of this agreement shall be brought in Guilford County District
25 Court, in Greensboro, North Carolina, USA, or in the United States
26 District Court for the Middle District of North Carolina in
27 Greensboro, North Carolina.
28

--

1 **The Career Manual Concerning Internal Company Policies**

2 9. Market America has also published a Career Manual since 1992. The
3 Career Manual lists the internal rules, regulations, policies, procedures and
4 standards of conduct for serving as an independent distributor of Market America.
5 Stated another way, it is a detailed blueprint for how to run the business. The
6 Career Manual gets quite granular, listing details not included in the Agreement and
7 covering step-by-step procedures that the distributor must follow. The Career
8 Manual teaches policies related to the generation of commissions, customer orders,
9 advertising, and many other business practices that a distributor faces on a day-to-
10 day basis.

11 10. The Career Manual, therefore, functions both as a “how-to” guide for
12 conducting operations, and an internal rulebook. Market America prides itself on
13 being systematized and standardized, and the Career Manual is an important part of
14 what the company refers to as its “UnFranchise System.”

15 11. Career Manuals, by that or another name, are utilized by virtually
16 every direct sales company. Such handbooks are also used in traditional
17 franchising arrangements. The Career Manual protects Market America’s
18 intellectual property, serves as the basis for distributor training, and defines
19 standards of conduct. Market America’s Career Manual, which is provided to
20 distributors in English, Spanish, and Mandarin Chinese, is detailed, specific, clear,
21 and readable. It helps insure the distributor’s understanding of the business of
22 direct selling.

23 12. The Agreement and the Career Manual, as a contract and handbook
24 respectively, together spell out the rights and responsibilities with respect to the
25 former and rules and responsibilities with respect to the latter of both parties in an
26 open and transparent way.

27 13. The detailed nature of the Career Manual, coupled with an evolving
28

--

DECLARATION OF CLEMENT ERHARDT

3.

1 business model over 25 years, naturally lends itself to questions of interpretation.
2 This is particularly the case because of the de-centralized nature of direct selling,
3 and the interrelationship of people and technology. Inquiries and sometimes
4 disputes can arise regarding matters described in the Career Manual, such as
5 whether volume was properly placed or commissions were accurately computed, or
6 even disputes between distributors. To respond to potential questions and disputes,
7 Market America established a Compliance and Ethics Department and a Distributor
8 Services Department. These corporate employees, like customer service
9 representatives and franchise ombudsmen, answer questions and do their best to
10 resolve distributor inquiries internally.

11 14. These service representatives, however, have limited discretion.
12 Because some questions require more intensive review and consideration, Market
13 America additionally established, as far back as 1992, a distributor grievance and
14 complaint procedure. One level of resolution in that process is garnering the help
15 of senior upline representatives to resolve the issue. If that tack is unsuccessful, the
16 distributor is encouraged to contact the Distributor Services Department. In most
17 cases, controversies are settled at those levels. To the extent they are not, an
18 Appeals Board serves as the next level of review. Beyond that, a Dispute
19 Resolution Board within Market America interprets the Career Manual, and then
20 renders a decision.

21 15. Issues handled by the appeals board and the Dispute Resolution Board,
22 as noted above, are limited to *internal* policies and procedures in the Career
23 Manual, such as sponsorship rights, controversies regarding distributor placement
24 in sales organizations, commission-related matters, activation of distributors,
25 qualification for commission checks, purging of business volume, placement of
26 business volume, distributor training, missing forms, bounced checks, credit card
27 cancellations, and other interpretations of or problems associated with internal
28 Market America policies and procedures...

The Differences between Disputes Arising Under the Agreement and Internal Disputes Arising under the Career Manual

16. The issues handled by the Dispute Resolution Board arise exclusively under the Career Manual, *not under the Agreement*. In the 25-year history of Market America, the grievance procedure has never been considered applicable to anything other than interpretations of Market America's Career Manual.

17. Plaintiffs in this case are challenging the overall legality of Market America's business opportunity and not any granular internal policy of the company. Thus, Market America has never considered, and does not now consider, Plaintiffs' causes of action to fall within the scope of the internal dispute resolution procedure set forth in the Career Manual.

18. Controversies concerning the Agreement itself have always been handled differently. Moreover, since December 1997 when the company published revisions to the terms and conditions of the Agreement effective as of January 1998 (attached as Exhibit 2 at p. 25), disputes arising under the Agreement have been subject to arbitration:

Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment in the award rendered by the arbitrator may be entered in a court of competent jurisdiction. I understand that this arbitration provision means I am giving up the right to have any dispute I have regarding this agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of Justice, Guilford County, prior to invoking the arbitration remedy. North Carolina law shall govern this agreement.

19. The arbitration provision was, and remains, mutual. It binds both Market America as well as its network of independent distributors. It does not set

1 out any fees, limit the scope of arbitration, or shorten any limitations period. And,
2 contrary to Plaintiffs' unsupported suggestion in prior submissions to this Court,
3 Market America does not train any arbitrators nor does it unilaterally select or
4 choose an arbitrator. Instead, under the Commercial Rules of the American
5 Arbitration Association, both parties choose the arbitrator.

6 20. Since the arbitration provision was put in place, Market America has
7 in fact filed several arbitrations against distributors for breach of the Agreement.
8 The company has also occasionally sought, as provided in the Agreement,
9 emergency relief, in the form of a temporary restraining order, prior to invoking
10 arbitration. In addition, Market America distributors have initiated proceedings in
11 the American Arbitration Association against the company.

12 21. In no case regarding the Agreement, however, has Market America
13 required as a condition precedent the use of any conciliation procedure, such as the
14 distributor grievance procedure described in the Career Manual.

15 22. Stated simply, that Career Manual provision does not apply to a
16 dispute, such as here, regarding the legality of the company's operations. Instead, a
17 distributor who accuses Market America of illegal activity arising out of the
18 Agreement is expected – and required – to pursue arbitration rather than file a
19 lawsuit, as provided by the Agreement.

20 23. Loren Ridinger and James Howard Ridinger are Officers of Market
21 America, a North Carolina corporation, and therefore are statutorily subject to
22 jurisdiction under the provisions of N.C. Gen. Stat. § 1-75.4(8).

23 I declare under penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.

25
26 Dated this 3rd day of August, 2017



27
28 Clement D. Erhardt

--

DECLARATION OF CLEMENT ERHARDT

Exhibit 1

CAREER MANUAL



2nd Edition

Copyright 1992 by Market America, Inc. All rights reserved. No part of this publication may be reproduced, transmitted, stored in a retrieval system, or translated into any language or computer language, in any form or by any means, electronic, mechanical, magnetic, optical, chemical, manual or otherwise, without prior permission of Market America, Inc. 7615 Business Park Drive, Greensboro, NC 27409.

The example given in this manual are not guarantees of what a Distributor will earn in his or her area. Individual earnings of Market America Distributors will depend upon their individual efforts, the areas in which they live, and the time which they dedicate to their enterprises.

Market America, Inc. Trademarks are registered properties of Market America, Inc. Market America's trademarks may not be reproduced or used by others without expressed written permission of Market America, Inc.

Social Security Number

Federal ID No.

② 

Name of Representative (Last, First, Initial)

Street Address (Post Office Boxes are not acceptable)

City, Town

State

Zip Code

(Area Code) Home Phone

(Area Code) Business Phone

⑦

(Area Code) Fax Phone

8

SPONSOR INFORMATION (The Distributor who introduced you to the business)
Sponsored By _____

Sponsored By

Social Security Number

PLACEMENT INFORMATION (The Distributor who you are being placed under)

Placement By

Social Security Number

Extension

(Check One)

13	LEFT SIDE	RIGHT SIDE
----	--------------	---------------

OTHER FEATURES: (Set up cost waived with Subscription fee):

- 14 (1) WELCOME AMERICA MEMBERSHIP (Personal Check Guarantee Service)**

By applying for a Welcome America card, Customer agrees (1) to comply with the rules of issuer, as may be amended from time to time, including rules requiring payment of reinstatement charges, (2) of any change in address or personal bank accounts, and (3) to surrender this service upon demand by any issuer host store.

If not completed w/voided check a 10 day hold will be placed on all personal checks.

DRIVER'S LICENSE: STATE

#

Signature _____

- Signature _____
- (15) (2) VOICE MAIL ☐ Y ☐ N I will be billed \$1.00 per month, \$.19/minute (6 second intervals) (\$5.00 per month)

OTHER FEATURES: (Set up cost waived with Subscription fee):

- | | |
|---|---|
| <p>16 (1) Professional Service Package (PSP) \$285.00 fee
Requires completion of PSP agreement flyer. Form #201</p> <p>(2) Power Line Information Network (Included in PSP): \$200.00 per year
see flyer detailed description \$20.00 per month</p> <p>(3) Tape Of The Month (Included in PSP) \$49.95/year</p> | <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> |
|---|---|

I agree to the above indicated information and to be bound by the terms on the reverse side of this application.

19 Approved By _____ Date _____

MAIL ORIGINAL AND 2nd COPY AND \$37.50 SUBSCRIPTION FEE TO:
Market America, Inc. 7615 Business Park Dr., Greensboro, NC 27409
or
P.O. Box 35364, Greensboro, NC 27425

YELLOW COPY: DISTRIBUTOR
PINK COPY: SPONSOR

FOR OFFICE USE ONLY
Date
Accepted By
Data Entry
MA Code

SEE REVERSE SIDE FOR TERMS AND CONDITIONS OF THIS AGREEMENT

Section 2-27

Exhibit 1
9

MARKET AMERICA TERMS AND CONDITIONS

I hereby apply to become a Distributor of Market America and to participate in its marketing program.

As an Independent Distributor, I understand and agree that:

1. I am of legal age in the jurisdiction in which I enter this agreement.
2. I shall become a Market America Distributor upon acceptance of this application. I shall have the right to sell the products offered by Market America in accordance with the marketing program and policies, which may be amended from time to time.
3. Market America, at its discretion, may amend the marketing plan, its policies, and terms of this Distributor agreement, and shall notify its Distributors of any such amendments.
4. I have carefully reviewed the Market America marketing plan and policies and procedures, and acknowledge that they are incorporated as part of this agreement in their present form and as modified from time to time by Market America. I certify that I have received a copy of the marketing plan and policies and procedures from my sponsor, upline, coordinator or from the company.
5. I agree to pay an annual \$25 application processing and subscription fee. The term of the Market America Distributor agreement is one year. Market America Distributors, who wish to continue to be Distributors, must apply to renew their Distributor agreement annually.
6. I understand that in order to sponsor other distributors under the marketing plan I must sell \$200.00 retail value of products within 30 days of sponsoring distributors and submit retail receipts to the company, or I shall lose sponsorship rights. I understand that I must merchandise \$200.00 Bonus Volume to end users prior to receiving commission credit or qualifying as a Coordinator. I agree and understand that upon meeting qualifications to become a Coordinator I must submit a coordinator Application and Agreement and submit a Retail Sales Report Form prior to receiving commissions.
7. A Distributor shall be entitled to cancel participation in the marketing program at any time and for any reason upon written notice to the company. Upon notification of cancellation or termination, the sponsoring Distributor or Market America will repurchase mandatory sales kit materials in accordance with its policies as set forth in the Market America marketing plan, policies, and procedures. No purchase is necessary to become a Market America Distributor other than the purchase of a Distributor sales kit which is sold "at company cost" and which may be required at the company's discretion.
8. Upon acceptance of this application by Market America, I will be an independent contractor responsible for my own business and not an employee of Market America. I will not be treated as an employee in regard to any state or federal laws covering employees, including but not limited to the Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, Workman's Compensation, income tax withholding at source, or any federal or state tax laws. It is my responsibility to pay self-employment, state, and federal income taxes as required by law.
9. I will not use the Market America trade name and/or trademark except in the advertising provided to me by Market America or in other advertising provided to me by Market America. Furthermore, only literature produced or otherwise authorized by Market America may be used. Any use of unauthorized literature is strictly prohibited and is grounds for termination.
10. Any Distributor who sponsors other Distributors must fulfill the obligation of performing a bona fide supervisory, distributing, and selling function in the sale or delivery of product to the ultimate consumer and in the training of those sponsored. Distributors must maintain ongoing contact, communication and management supervision with his or her sales organization. Examples of such supervision may include, but are not limited to : newsletter, written correspondence, personal meetings, telephone contacts, voice mail, electronic mail, training sessions, accompanying individuals to company training, and sharing genealogy information with those sponsored. Distributors must provide evidence to the company at its request, of ongoing fulfillment of supervisory responsibilities.
11. The Market America program is built on retail sales to the ultimate consumer. The company recognizes that Distributors may also wish to purchase product for their own personal or family use. Under the Market America program commissions are not paid on a Distributor's personal purchases of Market America products.
12. The Distributor acknowledges that the Distributor is a wholly independent marketing Distributor who establishes and services retail customers for company products as an independent contractor. The position of Distributor does not constitute either a sale of a franchise or a distributorship, and absolutely no fees have been or will be required from the Distributor for the right to distribute the company's products pursuant to this agreement. This agreement is not intended and shall not be construed to create a relationship of employer-employee, agency, partnership or joint venture between any Distributor, sponsor, and/or the company.

As an independent contractor, the Distributor shall:

- A. Abide by any federal, state, county and local laws, rules and regulations pertaining to this agreement and/or the acquisition, receipt, holding, selling distributing or advertising of company products.
- B. At the Distributors own expense, make, execute or file all such reports and obtain such licenses as are required by law or public authority with respect to this agreement and/or the receipt, holding, selling, distributing or advertising of company products.
- C. Be solely responsible for declaration and payment of all local, state and federal taxes as they accrue because of the Distributors activities in connection with this agreement.
13. If the Distributor has purchased company product and is in default on payments, the company shall be entitled to deduct amounts due from commission earned. In addition, default on payments due for elective purchases from the company shall be grounds for termination of the Distributor and/or such legal action as the company deems appropriate.
14. Prior written approval from Market America is required for the following:
 - A. To advertise Market America products;
 - B. For there to be more than one Distributor in an immediate family, household or business;
 - C. Issuance of an Income Center in a company or corporate name.
 - D. To use or produce any literature other than company produced literature relating to the products, company, or marketing plan.
15. I wish to enter the marketing structure as follows:
 - ☐ Single Income Center
 - ☐ Supervisory Entry Level
 - ☐ Executive Supervisory Entry LevelI understand that option B and C must be approved by the company and have additional qualification requirements as outlined in the Marketing Plan, Career Manual, and Policies and Procedures. Special requests for multiple Income Centers must be made in writing on Market America Form 850, and attached hereto.
16. I understand that only a Coordinator can make a presentation of the Market America Program.
17. I agree to submit any complaint, grievance, claim against a Distributor or the Company to the Dispute Resolution Board for resolution and settlement in accordance with the Policies and Procedures prior to contracting any regulatory agencies or taking any legal action. I agree to allow the Dispute Resolution Board sixty days to handle the claim. I agree that a breach of this covenant on my part will make me liable for damages and legal cost to Market America.
18. I agree that the marketing plan, genealogy reports, Distributor list and official literature are proprietary information and trade secrets of the Company. I agree not to enter into competition with Market America by participating as an Independent Contractor, consultant, officer, shareholder, director, employee or participant of another company or direct sales program using a similar matrix marketing structure or handling similar products to that of Market America or involving a Distributor of Market America in such a program for a period of six months from my written resignation or termination as an Independent Distributor of Market America. I agree that if I breach this covenant, Market America shall be entitled to a restraining order in a court of competent jurisdiction and I shall be liable to pay no less than \$2,000.00 in damages per breach and legal cost.
19. This agreement will be binding upon receipt at the company address, as set forth below and upon the acceptance thereafter by Market America.
20. This agreement shall be governed by the laws of the state of North Carolina and all claims, disputes and other matters between the parties of this agreement shall be brought in Guilford County District Court, in Greensboro, North Carolina, USA, or in the United States District Court for the Middle District of North Carolina in Greensboro, North Carolina.
21. I acknowledge that I have read and understand and agree to the terms set forth in this agreement. This agreement is not in force until accepted by the company.
22. This agreement constitutes the entire agreement between the Distributor and Market America and no other additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing.

SECTION 3

POLICIES AND PROCEDURES

1. Market America, Inc. is a direct selling company marketing Market America™ products through Independent Distributors. The policies and procedures herein are applicable to all Independent Distributors of the company.
2. A Distributor is one who has completed an Independent Distributor Application and Agreement and has been accepted by the company as a Distributor. The company reserves the right to accept or reject anyone as a Distributor. In order to be accepted as a Qualified Distributor, an applicant must make two client sales for at least \$200.00.
3. All Distributors must be the age of majority in the state in which they distribute company products. The company will consider each married couple a single Distributor. The company reserves the right to reject any applications for new Distributor Income Centers or applications for renewal. Should a husband/wife Distributor divorce, they should notify the company as to how the Distributor income center is to be managed thereafter. Otherwise, the company will consider the person who was first listed as Distributor to continue as the Distributor.
4. Distributors are independent marketing Distributors of the company, and are not to be considered purchasers of a franchise or a Distributor Income Center. The agreement between the company and its Distributors does not create an employer/employee relationship, agency, partnership, or joint venture between the company and the Distributors. The Distributor has no authority (expressed or implied), to bind the company to any obligation. Each Distributor shall hold harmless the company from any claims, damages, or liabilities arising out of the Distributor's business practices. Each Distributor is encouraged to set up his/her own hours and to determine his/her own methods of sale, so long as he/she complies with the policies and procedures of the company.
5. In the conduct of his or her business, the Distributor shall safeguard and promote the reputation of the products of the company and shall refrain from all conduct which might be harmful to the reputation of the company. The marketing of such products shall be consistent with the public interest, and shall avoid all discourteous, deceptive, misleading, unethical or immoral conduct or practices.
6. The company program is built upon retail sales to the ultimate consumer. The company recognizes that Distributors may wish to purchase products in reasonable amounts for their own personal consumption. The Distributor, however, will not receive credit for bonus purposes, qualification or advancement for his or her own personal purchases.
7. Any Distributor who sponsors other Distributors must fulfill the obligation of performing a bona fide supervisory, distributing and selling function in the sale or delivery of product to the ultimate consumer and in the training of those sponsored. A Distributor must have ongoing contact, communication and management supervision with his/her sales organization. Failure to fulfill this obligation will result in termination.
8. All Distributors are responsible for paying local, state, and federal taxes due on earnings from commissions generated as a Distributor of the company.
9. Independent Distributors shall not advertise company products and/or marketing plans except as specifically approved by the company. Independent Distributors agree to make no false or fraudulent representation about the company, the products, the company compensation plan, or income potentials. Failure to comply with this obligation will result in termination and possible legal action.

and unrealistic projections.

30. *Representation of Status.* In all cases, any reference the Distributor makes to himself/herself must clearly set forth the Distributors' independent status. For example, if the Distributor has a business telephone, the telephone may not be listed under the Market America, Inc. name, or in any other manner which does not disclose the independent contractor status of the Distributor.

31. *Business Cards and Stationery.* Any printed materials, including business cards and stationery, must be approved by the Company in advance. Criteria for approving these materials will include a judgment regarding the quality of the materials as well as properly setting forth the independent status of the Distributor.

32. *Telephone Solicitation.* Product purchases may not be made by engaging in telephone solicitations. Product and/or product literature must be shown to the prospective customer or Distributor. The use of automated telephone solicitation equipment is strictly prohibited. The use of "boiler room" telemarketing operations to sell product over the telephone or to recruit Distributors over the telephone is strictly prohibited. Telephone solicitation may only be used to set up appointments or to invite prospective customers or Distributors to a presentation.

33. *Press Inquiries.* Any inquiries by the media are to be referred immediately to the company. This policy is to ensure accuracy and consistent public image.

34. Federal and state regulatory agencies neither approve nor endorse direct selling programs. Therefore, Distributors may not represent that the company program has been approved or endorsed by any governmental agency.

35. *Waiver.* The company never gives up its right to insist on compliance with these rules or with the applicable laws governing the conduct of a business. This is true in all cases, both specifically expressed and implied, unless an officer of the

company who is authorized to bind the company in contracts or agreements specifies in writing that the company waives any of these provisions. In addition, any time the company gives permission for a breach of the rules, that permission does not extend to future breaches. This provision deals with the concept of "waiver," and the parties agree that the company does not waive any of its rights under any circumstances short of the written confirmation referred to above.

36. *Governing Laws.* These rules are reasonably related to the laws of the state of North Carolina and shall be governed in all respects thereby. The parties agree that jurisdiction and venue shall lie with the place of acceptance of the Independent Distributor Application and Agreement, the state of North Carolina.

37. *Partial Invalidity.* Should any portion of the Rules and Regulations or Policies and Procedures of the Independent Distributor Application and Agreement, or of any other instruments referred to herein or issued by the company, be declared invalid by a court of competent jurisdiction, the balance of such rules, applications, or instruments shall remain in full force and effect.

38. The Rules and Regulations set forth in this career manual, and as may be amended, form part of the Market America Statement of Policies and Procedures, and part of the Independent Distributor Application and Agreement.

RULES AND REGULATIONS

As a Market America, Inc. Distributor or Coordinator, you are required to comply with all rules, regulations, policies and procedures contained in this manual or that may from time to time be introduced by Market America, Inc. The company reserves the right to amend these Rules and Regulations from time to time.

Market America, Inc. honors all federal, state and local regulations governing good business practices and requires Sales Distributors and Coordinators in the program to do the same. It is,

per day. If a Distributor's check is returned for any reason the check must be made good before any other checks are acceptable or orders released. If a Distributor has checks returned by their bank twice, their checks will no longer be honored under the Welcome America Personal Check Guarantee Service. There is a \$20 charge for returned checks.

19. EXECUTIVE COORDINATOR CERTIFICATION TRAININGS AND REQUIREMENTS FOR CERTIFIED EXECUTIVE COORDINATORS -

All Executive Coordinators are required to attend an Executive Coordinator Certification Training approved by the company within 30 days of earning the Executive Coordinator override commissions. If an Executive Coordinator does not attend and complete the Executive Coordinator Certification Training within 30 days after receiving notification from the company, the Executive Coordinator's checks will be held until they complete the training. By completing the Executive Coordinator Certification Training and passing a test on the career manual an Executive Coordinator becomes a Certified Executive Coordinator. Certified Executive Coordinators are qualified to conduct trainings, speak at meetings under the National Seminar and Meeting System, conduct training for new distributors, train Coordinators, and conduct public marketing plan or opportunity presentations. Executive Coordinator Certification trainings may only be conducted by Market America, Inc. approved Certified Trainers, or Corporate Vice-Presidents. These trainings are published in company newsletters and bulletins, as well as listed on the Powerline Information Network (computerized bulletin board). Any new Distributor having difficulty arranging to attend a scheduled training must contact the company in writing asking for assistance prior to the conclusion of the 30 day period. On receipt of written notice, the company will assist in making arrangements for the new Executive Coordinators to be certified. Verbal requests do not meet this requirement. An Executive Coordinator can be trained and certified by any Company approved Certified Trainer in a non listed or private training and on successful completion of the Executive Coordinator test for

certification. Executive Coordinators must bear the expense of travel to an Executive Coordinator Training. Executive Coordinator Certification Trainings are also conducted at the corporate headquarters once a month. To attend an Executive Coordinator Certification Training at the corporate headquarters reservations must be made in advance with the home office. The standard cost of attending an Executive Coordinator Certificate Training is \$50 and must be paid by the Executive Coordinator prior to the opening of the training. A Distributor may take the Executive Coordinator Certification Training any time after they have qualified at the Coordinator level and have earned a \$300 check.

20. CROSS-GROUP SPONSORING -

Cross group sponsoring is when a Distributor recruits an individual who has already signed an Independent Distributor Application and Agreement within a different line of sponsorship or different multi-level or direct sales program. This activity is strictly prohibited. The use of trade names, DBA's, assumed names, federal ID numbers, or fictitious ID numbers to circumvent this rule is prohibited. If the company discovers cross-group sponsoring, it will return the Distributor to the original line of sponsorship, and adjust commissions and/or bonus volume credits by deducting them from the upline incorrect line of sponsorship, and adjusting to the correct line of sponsorship. Coordinators and Executive Coordinators are responsible to enforce this rule. The first violation or failure to comply with this rule will result in a warning. The second violation or failure to comply will result in termination.

The only exception to the cross-group sponsoring rule is a legal transfer, or where the five Distributors up-line and the Master Coordinators' up-line give written permission submitting to the company authorizing the act.

21. DISTRIBUTOR GRIEVANCES AND COMPLAINTS -

When a Distributor has a grievance or complaint with another Distributor regarding any practice or conduct in relationship to the Market America, Inc. business, they should first report to their up-line Coordinator who should review the matter and try to resolve it with the other party's up-line Coordinator. If the matter is not

resolved, it must be reported in writing to the Distributor Services Department at the Company. The Distributor Services Department will review the facts and try to resolve it. If it is not satisfactorily resolved, it will be referred to the Dispute Resolution Board for final review and determination.

22. DISPUTE RESOLUTION BOARD -

The purpose of the Dispute Resolution Board is to review matters after the response or settlement instituted by Distributor Services has been denied or unresolved by the complainant. The Dispute Resolution Board (DRB) is a judicious forum designed to deliberate, collect, and respond to current exceptional issues on a collective basis.

In order for application of review by the DRB to be approved, three requirements must be met.

A. The DRB review process is 30 days. During the 30 days you concede to waive your right to additional review by any state or federal agencies.

B. The initial review of your grievance or complaint must go through Distributor Services. You must address inquiries to this department.

C. All communication between complainant and Market America, Inc. is required to be in writing. When these requirements are met, the DRB will investigate and execute a response in 30 days.

23. PRESENTATION OF MARKETING AND COMPENSATION PLAN - Only Coordinators who have received company training may make public presentations of the marketing plan. Distributors may do "one on one" or closed presentations but must follow the format provided by the company in official company literature and tapes. Any misrepresentation of the marketing plan will be grounds for termination and for possible legal action. Certified Executive Coordinators may train Coordinators or Distributors to make public presentations.

24. ADVERTISING APPROVAL PROCESS All advertisement copy and promotional literature for any media source or distribution purposes must be submitted to the Company for review and approval. The company has a submission form included in the Career Manual to formalize proposals (see Administration Section, this is form #1050). The request is

forwarded to the Legal and Regulatory Affairs Department. A determinative review process will provide a response in a timely fashion. A \$20 processing fee must be attached to Form #1050 unless the Distributor is a member of the ProPak.

GENERAL GUIDELINES:

A. No income claims of any kind referring to potential may be made.

B. Any Advertisement using the Market America name must clearly reflect and identify that the entity is of an independent basis and must have written authorization from the Company.

C. No language contradictory to the Official Marketing Plan or Policies and Procedures will be allowed.

D. No guarantees or warranties other than what is stated in the official Market America marketing program can be stated.

E. No potential income figures may be quoted. Earnings of any particular individual must not be provided. Any statements regarding income must be limited to the general information that commissions are based on sales and require individual effort, work, and production.

F. Any language that is reflective of "investment" or "return on money" (or any other such language) is strictly prohibited.

25. ADVERTISING AND PROMOTION - Market America encourages advertising and promotion as a viable method for Distributors to build their businesses. However, strict guidelines are necessary to maintain an ethical marketing effort. Therefore, these guidelines are a part of the agreement between Market America and its Distributors. Study the policies on advertising restrictions.

ADVERTISING OVERVIEW

We at Market America, Inc. firmly believe

Exhibit 2

LeaderLine

MONTHLY NEWSLETTER FOR MARKET AMERICA LEADERS

December

1997

Transfer Buying: a Beautiful Success Concept

Market America recently has developed a new method of increasing sales through transfer buying. Transfer buying is a key to success in this business for several reasons.

Transfer buying can be likened to owning a shopping mall and all the stores inside. Why would you go to the same type of stores downtown to buy the same products at retail that you could get off the shelves in your own mall at wholesale? Or, if you owned a grocery store, why would you go to the supermarket to buy the same products at retail that you have on your own shelves at wholesale? In Market America you have access to your own Mall without Walls of products. You can buy the products you use each and every month at tremendous savings rather than shopping somewhere else. This is known as transfer buying because you are simply transferring the dollars you are spending in stores such as supermarkets,

drug stores, nutrition stores, automotive stores, etc. to your own business to purchase the same type of products at wholesale rather than retail. It doesn't cost anything to do this because you are simply transferring the same dollars out of retail stores into your own business and saving money!

On top of the savings, you also get BV credit. If you and everyone else in your organization are involved with transfer buying, it compounds BV like an annuity. It can mean consistently bigger commission checks.

With that in mind, it makes sense to be using Market America products to replace things you are already purchasing.

For instance, there are marvelous, economical and environmentally safe products in the SNAP line that everyone purchases monthly, all of which are very effective, on top of being economical. Do some experiments and demonstrations – they are convincing. SNAP Natural Concentrate can be diluted as much as 32 to 1, believe it or not. It makes water hundreds of times wetter.



Contents

- 3 • From the President
- Motives News
- 4 • 10 in 10
For Fun in Miami
- 6 • Career Manual
Revisions
- 9 • Terms & Conditions
Revisions
- 11 • Leadership
School Agenda

Here is the Home Shopping List currently in development to help you and your downline transfer dollars into BV and Market America products!

Try this demonstration – take a piece of chewing gum and smash it into hair or fabric. A solution of Natural Concentrate lifts it right out. It can be used as a floor cleaner, dishwashing soap, car washing detergent, or liquid hand soap – just to mention a few things.

The SNAP Home and Shop Cloth also works miracles. Find a dirty black penny, or silver coin, or a tarnished piece of silver. With little effort it brings them up shining. It will remove scuffs from furniture, surface scratches from cars, and remove black scuffs from vinyl or fiberglass surfaces. It is amazing. And this is just the tip of the iceberg, not only with these products, but with other lines such as Nature's Life, Royal Spa, Motives, and many others.

For instance, why would any woman in Market America not try, or switch, to Motives? It is equal in quality to department store designer brands. It is also avant-garde, and can be individually customized. The more products one uses and pushes through Market America, the more BV one has to place. The more BV, the bigger the checks.

This leads to an even more significant reason to be on transfer buying using all the products. To be successful you must become a product of the product. Would you eat at a restaurant that the owners don't even eat at? People can see right through someone who does not believe in or use the products.

More product is sold in this industry because of a two word question. More product is sold this way than is sold because of slick Madison

Avenue advertising. People see the product in your house or see you using it and ask, "What's that?" All you need to do is to share your story and tell them your testimonial.

How many times have you met a person that has some type of challenge? Friends, family, and business associates all have challenges. It could be as simple as preventing oil and grease stains on their hands. We know our super skin protectant, Clear Shield, will help prevent this. What about people you know who have allergies? Countless people have been helped with allergy problems by using OPC-3 on a regular basis. Then there is the age-old problem of being overweight. Our first product that continues to grow in popularity (and started our super growth) is a weight management and energy product known as ThermoChrome Select, the original formula.

All you need to do is tell the story when you see or hear about the problem. The result is that they ask where to get it, and you simply take the order. Retail sales – you've gotta love them!

If you duplicate this throughout your organization, the result is a constant volume stream that earns you weekly checks! Do more of it, duplicate it, and the checks will get even bigger. It will not happen unless you and your group are on transfer buying, using the products.

Besides, we are all creatures of habit. We have the tendency to wait until we run out of something, then we run to the local convenience store and pay twice the price for it. Now that is really senseless! This is the age of

home shopping and discount buying. Doesn't it make sense to be on standing order and have those things that you use every month shipped to you automatically on transfer buying? These are the items you will end up selling anyway because people will ask, "What's that?" Even if you have an extra bottle, you will need it to sell because it is inevitable that you will be taking orders.

The final reason to be on transfer buying is to make sure everyone meets their basic monthly requirements. When someone gets busy, they are apt to forget to meet their monthly accrual option or quarterly activity requirement. That is a catastrophe. Why chance it?

It's like someone who forgets to pay his or her insurance policy premium. Their policy accidentally lapses. The next month they have an accident. They call the insurance company to place a claim. The insurance company is very sympathetic, but they won't and can't pay the claim. This is analogous to meeting the monthly accrual option or quarterly activity requirement in Market America. If someone misses the requirement, his or her volume flushes. It is a terrible experience.

The beauty of transfer buying is that it can be set up to take care of these requirements. Absolutely no one should get too busy, miss a requirement, and then flush or purge. Transfer buying is a beautiful thing because it easily prevents this. It is like having insurance against a mishap.

Think about it. For so many reasons, transfer buying makes sense. It saves money.

It provides the convenience of home shopping and delivery. It is automatic. It makes you a product of the product. It puts you in position to tell your testimonial when someone asks, "What's that?" They in turn want some, and they lead to other people. So it leads to more retail sales, customers, and more BV to place. It gives you ongoing BV on your own purchases. When your entire group is doing it, it compounds like an annuity, earning you checks.

Doesn't it make sense for someone to replace all the products they are using or need with products from the Mall without Walls? Why not create a shopping list for yourself and each Distributor you bring into the business? In this way you are able to transfer all the dollars spent in stores into your own business, thereby maximizing savings, maximizing BV accumulations, and having personal experiences with a large range of products.

This puts you in the position to take a lot of orders when people ask, "What's that?" or when someone has a problem that one of the products you are using will solve. It's simply working smarter rather than harder.

You can use our Home Shopping List pictured on the cover to help you and your downline transfer dollars into BV and Market America products. This is a powerful tool that you and your group should definitely try. And watch both your BV and everyone's retailing go through the roof.

Motives Cosmetics News

Here at the end of the year, looking back on the development of the Motives line, it is inspiring to see what all has been accomplished, and what to look forward to in the year to come. There has already been a frenzy of activity with Motives, only a few months after its introduction, and with the implementation of some new ideas and recent developments, it is easy to see the potential of Motives Cosmetics for the year ahead.

Because this is a high-quality product that every woman can use, there are absolutely no limits to where the product can go. The line even works in conjunction with our other popular product lines – you can look and feel better with ThermoChrome or Skintelligence. Motives is a natural tie-in.

And what a great time to be talking about Motives, with the holidays upon us. Of course, there are plenty of Motives gift ideas for Christmas, from customized compacts to the makeup itself, but Motives also ties in with the popular new year's resolution of looking better. So many people resolve to lose weight, improve their appearance and to look better, so why not do this with Motives as well? Give someone some ThermoChrome and some Motives items together. What a great gift idea this could be, in addition to bringing exposure to the product.

Here are some other specific areas that are set to bring more exposure and activity to Motives in 1998:

New Products

When you have a product line like Motives, there is great potential for adding on products, and this type of expansion is to be expected. For instance, we are now developing a specialized lipstick, and possibly blush. These will be to Motives what a product such as Viva Glam (a specialized lipstick), is to its line, Mac Cosmetics.

Also, the new Motives Spring Colors are set to be in by Leadership School. These colors will include three to four lipsticks, a few blushes and some assorted eye shadows. Look for a photo feature of these colors in an upcoming issue of *PowerLine*.

Train the Trainers

The backbone of our campaign to promote Motives is our network of dedicated Motives Certified Trainers. There will be another Motives Train the Trainers class on January 20th and 21st here at the corporate office. Those interested must be an Executive Coordinator or above, and must be able to professionally present the Motives cosmetics line to small groups. If you would like to be considered for a Motives Certified Trainer Position, just send a copy of your résumé and a letter of application to the attention of Bethany Morde by January 5th. If you have already sent in your application for a previous Train the Trainers class, notify Bethany to have your résumé active for reconsideration.



MAKE 1998 YOUR YEAR

by James H. Ridinger
President and CEO

As we approach the Christmas and Hanukkah holiday season, it is a time to count our blessings and refocus on where we are heading for the next year. Let me take this opportunity on behalf of Loren and myself, as well as the entire corporate team, to wish each of you a joyous holiday season and happy new year. This season is a time to rejoice over what we have accomplished, to give thanks for what we have, to appreciate our friends and family, and to reflect on where we have been, while looking forward to a new year and new goals. That's really what Market America is all about.

In a way, life in Market America makes Christmas last all year long, because it is about giving before we receive, living a rich, abundant life both spiritually and economically, new friends, an ever-expanding family, and always looking forward to new goals and new dreams. In fact, it's hard to imagine life without Market America and all the wonderful people and relationships we've developed. We are truly rich because of the people we share our lives and dreams with. More than any other single factor, I think that that is what makes Market America special.

It's true that we have accomplished fabulous things and that we have been blessed with tremendous success, but we would be nothing without each and every one of you. Loren and I will never forget where we came from and I hope that each of you will do the same. Companies don't make people successful – people make companies successful. I want you to reflect on what we have created together. The teamwork, helping each other, the open meetings, and the Market America spirit are all wonderful things.

I don't know of any other company that has what we have, and I guess that is why we are so proud and protective of it. So I want to take the opportunity to thank you for your belief, trust, love, and commitment, which have made Market America a successful company. It is your belief and your dreams that make

Specialized Trainings

The Specialized Trainings all over the country are going very well. These are great introductory tools for spreading the word about Motives, and all of our trainers have been doing fantastic jobs.

Until now, we only offered Motives Basic Trainings. These are the complete trainings to certify Consultants in all Motives aspects, such as color theory, custom blends, application techniques, home clinics, and how to refine sales techniques.

Specialized Trainings focus specifically on the product itself, and how to build your own Motives business, for example, how to recruit and get the attention of people who have been (or already are) involved with other cosmetics. These trainings are utilized through the NMTSS, approved through a Local, District and Regional Coordinator, and are perfect for introducing Motives to your prospects. It is in these trainings that people can experience the product, see a mini-makeover and have their questions answered in one to three hours.

Our trainers are now conducting Specialized Trainings to make even more progress toward promoting the line. Listen to your voice mail for future announcements about a Specialized Training in your area.

Teen Motives

Teen Motives activity has just been phenomenal, and is set to explode in the new year. We have actually found that not only are the kids using it, but that the parents love it as well. Several Distributors are even using Teen Motives as a fundraiser, splitting the profits

with a school or organization – while gaining the BV for themselves. What a fantastic way to generate sales and gain exposure for the product!

All of these accomplishments and future developments are due in part to the dedicated Certified Motives Trainers in the field, spreading the word and promoting the line. It is thanks to the trainers and the quality of the products that the line has developed at such an impressive rate. And with our combined efforts, the more we talk about the product, and the more interest trainers stimulate, the more sales that will be generated. It is all of these factors working together that will get Motives to the top in 1998, and it is destined to happen.

10 in 10 For Fun in Miami

It's the time of the season to reflect and grow. And there is no time like the present to put into action your business plan and kick it into high speed by growing your UnFranchise™ base. In preparing you for an explosive 1998, the Market America Management Team is offering an incentive to any UnFranchise™ owner who is able to sponsor and qualify 10 new Market America UnFranchise™ owners between now and February 13, 1998. To collect this special incentive you will have to be in attendance at the 6th Annual Leadership School in Miami Beach, Florida on February 27, 28 and March 1st. Of course, this is an exceptional challenge to sponsor 10 new Distributors over a 10 week period, but there are many of you who can do it.

Besides getting the benefit of 10 new Distributors in your organization, you will have created 10 more points of distribution to reach that many more customers, translating into an increase in weekly BV totals. You know what that means: more commissions. And of course, you will need to place these new Distributors wisely, leveraging your best current Distributors to help manage these new recruits and be completely in coordination with the National Meeting, Training, and Seminar System to set them up for training, support and motivation.

For those who can sponsor 10 new qualified Distributors by February 13, 1998 there is the reward of a beautiful cruise around Miami on Market America's luxury yacht, Utopia. Utopia is an 80-foot Hatteras cruising yacht that is built for extremes. You will enjoy an afternoon cruise viewing the beautiful skyline of Miami while enjoying conversation with the Management Team.

JR, Loren and the entire Management Team will be focusing on you for responding to the growth challenge. As an added special incentive, Market America will identify the top 10 recruiters from the contest winners and provide a Moving Up Seminar on the motor yacht Utopia – a value worth \$10,000. This will be a two-day seminar that will evaluate your business on a one-to-one level by the very best in our industry. Travel and accommodations are not included, and the Moving Up Seminar will be on a date that will coordinate with the Utopia availability.

Isn't it wonderful to be able to build your business and

have the opportunity to enjoy the excitement of a competition? Everyone that participates in the 10 in 10 competition is a winner because you will be building your business, which will pay off for the rest of your life in ongoing income thanks to the Management Performance Compensation Plan.

Here's an idea of how to start. Take out a piece of paper and create a names list – a possibilities list. Write down the names of people you have wanted to talk to but never did. Of all the new people you have met in the past three months, sit down with them and explain that you are looking for qualified individuals who are looking to earn more income and have their names added to your list. Go back and talk to individuals who said the timing wasn't right and present the program again. You are looking to have 75 to 100 names on this list so you can book 40 appointments over the next few weeks. That is four or five per week, or two per week if you have two or three at an appointment. To make it happen you have to tell your story and tell it often.

To validate that you have sponsored and qualified 10 new Distributors in 10 weeks, send the names of all 10 new qualified Distributors and their ID numbers to Market America, attention: Christy Williams, no later than 5PM, February 13, 1998.

Remember that you can't say the right thing to the wrong person, or the wrong thing to the right person. There's your tip on sponsoring 10 in 10 weeks. See you in Miami. Bon Voyage.

(continued from page 3)

Important Administration Information

The terms and conditions on our Independent Distributor Application and Agreement have been revised to better explain the information that is so very important to any new and current Market America UnFranchise™ owner. Understanding what you can expect from Market America, Inc. and what is expected from you is essential in building a lasting relationship. These revisions have been put into place to support you as you grow your UnFranchise™ business. Read them carefully and use the terms and conditions as selling points to your new prospects coming in to the business. Be proud of the structure and protective measures we have put into place to make this opportunity last. These terms and conditions will appear on the new Independent Distributor Application and Agreement, which should be available in January 1998.

In addition, we are publishing sections of the 5th edition Career Manual to inform you of pertinent revisions being made to the specific areas contained in Chapter 10, to be in effect as of January 1998. Once again, these revisions will offer everyone additional clarification in the areas mentioned. As a recommendation, when the new 5th edition of the Market America Career Manual is made available in January, be sure to purchase several to share with your prospects prior to coming into the business. The most successful Distributors in our business are those that understand our structure and business plan for growth and duplication.

Every Distributor that has renewed to remain part of the Market America program will be

all of this possible for so many people across the country.

The holiday season also marks the coming of a new year. It is time to reflect on where we have been and where we want to go. It is time to refocus and set new goals for 1998. Timing is everything and the timing couldn't be any better for you to make your move.

Regardless of how much or how little you accomplished in the past year, make 1998 your year. Forgive yourself for what you did not do in 1997 and refocus on your plans for 1998. It all starts with setting a goal, making a commitment and writing a goal statement. Don't start the new year without a goal statement.

I believe that 1998 is going to be your year. It will be an explosive year of expansion, growth, new releases, and success stories for Market America. I want to see you be part of it. You deserve it. I recommend that you do three things that will overcome whatever is holding you back to create the momentum you need to break out of the rut and be successful. These three things will empower you to succeed and achieve your goals.

1. A Goal Statement

Write a new goal statement before January 1, 1998, and counsel each of your Distributors on doing their new goal statement for 1998. This is your

New Year's resolution in Market America.

Be at the Leadership School and do everything possible to get two new people in each leg there. Commit by buying your tickets now. Recharge your battery. This is the key to getting started and following through with your goals.

2. New Recruits

Recruit at least two new Distributors in each leg and get each of your Distributors to do the same thing in December and January. December is a fabulous month for personal recruiting because you visit a lot of

people and there is a pause from work schedules. It's a fabulous time to develop possibilities on your list and to do one-on-ones. Start the new year with new blood and new, excited people. New people and new growth is the lifeblood of the business.

Go to the Leadership School with new momentum and a new group. The excitement generated by new people is

Regardless of how much or how little you accomplished in the past year, make 1998 your year.

(continued on back cover)

Exhibit 2

19

bound by the new terms and conditions of the Independent Distributor Application and Agreement. Those Distributors that have entered the business as of August 1, 1997 through the time the new application is put into the field will also be bound by the terms and conditions of the revised Application and

Agreement. Every Distributor and UnFranchise™ owner will be bound by the Career Manual revisions published in this issue, with all of the above requirements in accordance with the current Independent Distributor Agreement.

Career Manual Revisions

CHAPTER TEN: MARKET AMERICA RIGHTS AND OBLIGATIONS

SECTION 1: CORRECTIVE ACTION:

If a Distributor violates his/her Independent Distributor Application and Agreement, including the policies and procedures set forth in this Career Manual, or if the Distributor violates other agreements with Market America, Market America may take corrective action.

(A) Grounds for Corrective Actions

Grounds for invoking the Corrective Action Procedure include, but are not limited to, the following:

- (1) Breach of the Independent Distributor Application and Agreement
- (2) Violation of the law relating to the Distributor's business
- (3) Failure to maintain Company standards
- (4) Falsification of reports
- (5) Forged documents
- (6) Failure to meet retail sales requirements or improper verification of these requirements
- (7) Unauthorized income claims or publishing of commission checks
- (8) Failure to make timely payments to the Company
- (9) Credit card violations:
 - (a) Unauthorized use
 - (b) Chargebacks
- (10) Breach of non-solicitation or trade secret covenants
- (11) Violation of same household rules
- (12) Establishment of fraudulent business development centers
- (13) Inventory loading
- (14) Unauthorized or illegal re-entry
- (15) Misrepresentation of the marketing plan
- (16) Insolvency or bankruptcy
- (17) Cross-group sponsoring (see Ch. 10, Sec. 7 of the Career Manual)
- (18) Conduct which materially impairs the Company's goodwill
- (19) Failure to fulfill management responsibility and fiduciary responsibility as a manager under the MPCP (see the Career Manual for further explanation)
- (20) Violation of the advertising policy, including Company trademark violations
- (21) Unethical practices

The Corrective Action Procedure may result in a range of sanctions against the Distributor including additional training requirements, oral and written warnings, forfeiture of commissions, suspension and termination. The severity, frequency, number of infractions and the impact on the Company and other Distributors' rights and businesses, determine the type of corrective action taken, at the Company's sole discretion. If the violation, in the Company's opinion, cannot be remedied, is broad and damaging, brings irreparable harm, or threatens the reputation and goodwill of the Company or its Distributors, it is grounds for immediate termination. If a Distributor or Sales Representative is issued a verbal or written warning from the Company and repeats the infraction, it is grounds for immediate termination.

(B) Corrective Action Procedure

The following procedure will be applicable to a Distributor subject to corrective action:

- (1) When evidence of a violation comes to the attention of Market America's Legal Counsel, Legal Counsel will notify the Distributor by regular mail, sent to the Distributor's last known address on record with the Company, that the Distributor appears to have engaged in improper conduct and must cease from same immediately.
- (2) Within 20 days, including weekends and holidays (if the 20th day falls on a weekend or holiday, it shall be due the next day), from the postmark date of the Legal Counsel's letter, the Distributor must submit a written response to Market America. If a written response is not received within said 20-day period, the Distributor's contract will be automatically terminated.
- (3) Upon receipt of the response within the 20-day period, the Corrective Action Board will review the response and determine within 15 business days from receipt of same what action is to be implemented. The Corrective Action Board will consist of two senior executives of Market America, two representatives from the Company's legal department, and one representative from the Company's field relations department.
- (4) The Corrective Action Board will notify the Distributor of its decision by Certified Mail, Return Receipt Requested. If the Distributor is satisfied with the decision of the Corrective Action Board, then the decision by the Board shall be immediately implemented by the Distributor.
- (5) If the Corrective Action Board determines suspension of the Distributor is appropriate, the Distributor will be denied the right to sponsor additional Market America Distributors, to receive commission checks, to sell Market America products, to attend Market America or Distributor sponsored meetings, to have access to Pro-Pack, PowerLine, VoiceLink, voice mail, and to represent himself or herself as a Market America Distributor during the period of suspension.
- (6) If the Distributor disagrees with the decision rendered by the Corrective Action Board, he or she may appeal the decision to the Advisory Board. The Distributor must appeal in writing or request an appeal hearing in writing to the Advisory Board.

- (7) All documents submitted in written appeal must be notarized, certified, or otherwise appropriately verified. Written appeals must be submitted to Market America within 15 days, including weekends and holidays (if the 15th day falls on a weekend or holiday, it shall be due the next day), of the date of the decision of the Corrective Action Board. The Advisory Board will render a final decision on a written appeal within 10 days of receipt of the Distributor's appeal.
- (8) If the Distributor elects for an appeal hearing, the Distributor must submit a written request within 10 days, including weekends and holidays (if the 10th day falls on a weekend or holiday, it shall be due the next day), of the date of the Corrective Action Board's decision letter.
- (9) If the Distributor fails to either request an appeal hearing within 10 days or submit a written appeal within 15 days, the decision of the corrective Action Board will be final.
- (10) The Advisory Board will schedule the appeal hearing not less than 14 days, and not more than 30 days, from the date of receipt of the Distributor's appeal request. The Advisory Board will notify the Distributor of the time, date and place of the hearing.
- (11) The Advisory Board will conduct the hearing on the scheduled date and will render a final decision within 5 days from the conclusion of the hearing.

(C) Termination Without Suspension

If a Distributor commits a serious violation of the provisions of the Independent Distributor Application and Agreement or of the policies, procedures, rules and regulations contained in the Career Manual, the Company may, at its discretion, terminate the Distributor's contract in lieu of suspension.

- (1) A Distributor whose contract is terminated loses all the rights, privileges and benefits of a Market America Distributor.
- (2) Market America will notify the Distributor of termination via Certified Mail, Return Receipt Requested, at the latest address for that Distributor shown in Company records.
- (3) Upon receipt of notice of termination, the Distributor may seek an appeal before the Advisory Board, following the same procedural steps outlined under Paragraphs (B)(6) through (B)(11).

(D) Arbitration

If the Distributor disagrees with the decision of the Advisory Board, the Distributor's only recourse is to request arbitration administered by the American Arbitration Association, as provided for in the Independent Distributor Application and Agreement.

SECTION 7: CROSS-GROUP SPONSORING AND SELLING

(A) Cross-Group Sponsoring Defined

Cross-Group Sponsoring shall be defined as a Distributor recruiting another Distributor into any other line of sponsorship either within the Company, or within another network marketing company. Cross-Group Sponsoring occurs when a Distributor uses his association with Market America, or relationships developed by participation in Market America, including access to meetings, people and information, to divert or diminish a Distributor's time and effort away from their current line of sponsorship.

(B) Cross-Group Selling Defined

Cross-Group Selling shall be defined as a Distributor soliciting sales from another line of sponsorship.

(C) Prohibition of Cross-Group Sponsoring and Selling

Cross-Group Sponsoring and Selling is unethical and strictly prohibited. Without the prohibition of Cross-Group Sponsoring and Selling, the lines of distribution and sponsorship would be undermined, and the Marketing Plan could not work. There would be no security or stability within the sales and marketing organization, and there would be no incentive to recruit, train and manage downlines.

(D) Primary Types of Cross-Group Sponsoring and Selling

- (1) Soliciting, recruiting, or sponsoring Market America Distributors or Sales Representatives, other than one's own personally sponsored Distributors and Sales Representatives, into another network marketing company. Such activity is a serious violation and grounds for corrective action including termination.
- (2) Selling products or sales aids of another network marketing company to Market America Distributors or Sales Representatives other than one's personally sponsored Distributors. Such infractions must be reversed and remedied and are grounds for corrective action, including termination of the Distributor's contract.
- (3) Selling Market America products to any Market America Distributors or Sales Representatives, other than one's personally sponsored Distributor, without proper credit of sales volume or BV.
- (4) Sponsoring or moving existing Distributors or Sales Representatives, including their efforts, recruiting activity, sales activity, or volume production, to another line of sponsorship or position in the organizational genealogy, without complying with policies and procedures for transfer of sponsorship as provided in the Career Manual. This includes attempts to divert a Distributor's volume, effort, production, or activity under the MPCR, to another person or location in the organizational genealogy, thereby depriving anyone upline in the original line of sponsorship of the volume credit they would have been due, by use of any device, mechanism, agreement, or arrangement. If the Company discovers such cross-group sponsoring within the Company, it will return the Distributor and/or sales volume to the original line of sponsorship and adjust commission and/or group business volume by deducting the volume from the incorrect upline or sponsorship and adding it to the correct upline or sponsorship. The Company may take additional corrective action, including possible termination of the Distributor's contract.

(E) Attempts to Circumvent

The use of any device, mechanism, or arrangement such as trade names, DBA's, assumed names, federal identification numbers, fraudulent social security numbers, fabricated business development centers, or agreements or contracts to circumvent this rule is strictly prohibited and grounds for corrective action, including termination.

(F) Enforcement Responsibility

All Coordinators and higher pin levels in the line of sponsorship are responsible for enforcing this rule by reporting any evidence of such activity to the Company's Director of Field Relations or filing a grievance.

SECTION 8: DISTRIBUTOR GRIEVANCES AND COMPLAINTS

Distributors having grievances or complaints regarding business practices or conduct relative to their Market America, Inc. business should first report it to their upline leadership, who should review the matter and try to resolve it in the field.

(A) Reporting

If the matter cannot be resolved in the field, it can be reported in writing to the Market America Appeals Board.

- (1) The Appeals Board will review the facts and attempt to resolve the matter. If it is not satisfactorily resolved, it may be referred to the Dispute Resolution Board (DRB) for final review and determination.
- (2) The Distributor agrees to submit any complaint, grievance or claim against a Distributor or the Company to the Appeals Board and Dispute Resolution Board for settlement prior to contacting any regulatory agency or taking any legal action.

SECTION 9: DISPUTE RESOLUTION BOARD

The Dispute Resolution Board (DRB) is the final appeal process regarding company rulings or decisions concerning policies, procedures, rules, and regulations. The DRB only reviews facts and enforces company policies and procedures.

(A) Responsibilities

The DRB does not set policy, change policy, or make exceptions to rules and regulations. It functions to interpret policies, procedures, rules, and regulations where no precedent exists or where unique mitigating circumstances are encountered.

(B) Reporting

Distributors must communicate complaints, grievances, or claims to their upline leadership (Certified Executive Coordinator, Certified Trainer, and Advisory Council Member) for resolution.

(C) Appeal Process

If the Distributor's upline leadership cannot resolve issues, the Distributor must implement the following process:

- (1) The Distributor must submit their claim or complaint in writing to the Market America Appeals Board. The written submission must: clearly state the nature of the claim or complaint; provide the exact date of the incident; clearly set forth the facts; contain copies of all supporting written documentation; site policies and procedures affected; describe precisely and accurately the verbal/written response being challenged; and provide the names and dates of all Distributors involved.
- (2) All elements required above must be included for the review process or it will be returned.
- (3) If not satisfied with the written response from the Appeals Board, the Distributor may appeal to the Dispute Resolution Board.
- (4) Formal appeal to the DRB requires completing and submitting the DRB Appeal Submission Form (located in the Career Manual), a notarized statement (affidavit), all documentation, evidence, and a \$50.00 filing fee for the review process.
- (5) The DRB reviews all appeals and submissions quarterly (January, April, July and October).
- (6) If the Distributor disagrees with the decision of the DRB, the Distributor's only recourse is to request arbitration administered by the American Arbitration Association, as provided in the Independent Distributor Application and Agreement.

(D) Implementation Requirements

The process described above must be followed in sequence in order for a claim or complaint to be reviewed by the DRB.

(E) Commission Claims/Adjustments

Cut-off on commission claims and adjustments will not be in effect provided the DRB process was started within 45 days of the respective commission week.

SECTION 17: MANAGEMENT PERFORMANCE COMPENSATION PLAN PARTICIPATION (MPCP)

The following are the minimum requirements when making application for a Distributorship and participation in the MPCP.

(A) Single Business Development Center Entry

Completion of Independent Distributor Application and Agreement and purchase of a subscription kit. Upgrades to Supervisory Entry (3 BDCs) shall not be permitted.

(B) Supervisory Entry (3 Business Development Centers)

Completion of Independent Distributor Application and Agreement. Approval of Upline Certified Executive Coordinator, 200 BV ordered in extension 001, a minimum of 50 BV ordered in extension 002, and a minimum of 50 BV ordered in extension 003 on the first order only. This first order must be submitted with the completed application and shipped to one address. Multiple orders will not be added together to satisfy the minimum 300 BV. An order of less than 300 BV will be assigned to the BDC -001 and only one BDC shall be awarded.

(C) Earning Commissions/Bonuses

Distributors are paid commissions for managing, training, supplying, supporting, and motivating their organizations to produce retail sales volume. There must be an ongoing sales and supervisory function. A Distributor does not earn commission under the MPCP solely on production. Distributors are paid for managing their organizations producing retail sales. Distributors must be able to provide documentation demonstrating execution of these functions upon request by Market America, Inc. The following guidelines apply to a Distributor's responsibilities under the MPCP. Failure to demonstrate performance of the management responsibilities described below is grounds for corrective action by the Company, including, but not limited to, forfeiture or reversal of commission checks, required additional training and, in the case of a blatant refusal to remedy the situation, termination of the Distributor's contract.

- (1) Distributor - Has the ultimate responsibility for ensuring their desired level of success. They have the responsibility for being knowledgeable about the Market America Career Manual contents (i.e., policies, procedures, rules and regulations).
- (2) Sponsor - Has the specific responsibility to comply with all provisions relating to sponsorship described in the Terms and Conditions of the Independent Distributor Application and Agreement, as well as other applicable policies and procedures.
- (3) Coordinator - In addition to those responsibilities specified in "Sponsor" above, a Coordinator must train and work with all Distributors in their organization down to the next active Coordinator. Additionally, they must supervise the downline Coordinators and make sure these Coordinators are supporting and training all Distributors in their organizations. A Coordinator is responsible to present the Marketing Plan for new Distributors.
- (4) Executive Coordinator - In addition to those responsibilities specified in "Sponsor" above, an Executive Coordinator is contractually bound (i.e., Executive Coordinator Acknowledgment and Agreement) to enforce the policies, procedures, buy-back guarantee, return merchandise policy, and rules and regulations to the level of the next Executive Coordinator in their downline organization. If the next downline Executive Coordinator is not fulfilling these responsibilities, the upline Executive Coordinator must notify their upline leadership, and must fulfill the responsibilities of the non-compliant downline Executive Coordinator until another downline Executive Coordinator is developed in that organization and assumes/fulfills those responsibilities for the organization.
- (5) Certified Executive Coordinator - In addition to those responsibilities specified in "Sponsor" and "Executive Coordinator" above, a Certified Executive Coordinator must provide Basic Five Trainings for all Distributors in their organization down to the next Certified Executive Coordinator. Only Certified Executive Coordinators (i.e., Executive Coordinators who have passed the Executive Coordinator Certification Training) may conduct publicly held Second Look Meetings, New Distributor Trainings, and Basic Five Trainings.

Terms and Conditions Revisions

MARKET AMERICA TERMS AND CONDITIONS

I hereby apply to become an Independent Distributor for Market America and to participate in its marketing program. As an Independent Distributor, I understand and agree that:

1. I am of legal age in the jurisdiction in which I enter this agreement.
2. I shall become an Independent Distributor upon acceptance of this application by Market America. I shall have the right to sell the products offered by Market America in accordance with the marketing program and policies, which may be amended from time to time.
3. Market America, at its discretion, may amend the Marketing Plan, its policies, and terms of this Distributor agreement, and shall notify its Distributors of any such amendments in the PowerLine Magazine, LeaderLine Newsletter, or other official Company publications and mailings.
4. I have carefully reviewed the Market America Marketing Plan and policies and procedures as set forth in Part 2 of the Market America Career Manual, and I acknowledge that they are incorporated as part of this agreement in their present form and as modified from time to time by Market America. I certify that I have received a copy of the Marketing Plan policies and procedures from my sponsor, upline Coordinator, or from the Company. I also understand that I may not rely on any representation made by a Distributor, whether verbal or written, regarding the terms and conditions of this agreement, as the basis for a claim of misrepresentation against Market America.
5. If I have elected to be a Sales Representative only, I have marked the appropriate box on the front of this application. There is no fee or requirement to become a Sales Representative. As a Sales Representative, I may purchase products at Distributor cost and retail them, but I may not participate in the Management Performance Compensation Plan (MPCP) or earn commissions or bonuses. Only Distributors may participate in the MPCP, and they must comply with Paragraph 6 of this agreement. I understand that unless I submit the \$69.95 subscription fee for Distributors and renew this agreement annually, I will not receive newsletters, services, or communications from the Company, but I will receive any applicable amendments to this agreement as described in Paragraph 3.
6. If I have elected to become an Independent Distributor and participate in the MPCP, I agree to pay an application and first year subscription fee of \$69.95 (U.S. Currency) with this agreement. This is for data processing set up, a Career Manual, initial materials, and a subscription to newsletters, mailings, and other specified services. This fee is fully refundable for a period of 30 days from the date of this agreement upon the return of the Career Manual kit in good condition and termination of this agreement in writing. The cost of the Career Manual and initial materials in good condition is \$39.00, and this is refundable for a period of 90 days from the date of this agreement, upon return of the Manual and materials in good condition and written termination of this agreement. The balance of the subscription fee is not refundable after 30 days and no refunds are permissible after 90 days. Start-up materials and subscription services are sold at "Company cost" and Distributors do not receive volume credit or commissions on it. This sum is not a service or franchise fee, but rather is strictly to offset cost incurred by the Company for educational and business materials necessary to operate a Distributorship. The term of the Market America Independent Distributor Agreement is one year. Market America Distributors who wish to continue as Distributors must apply to renew their Agreement and submit a renewal fee of \$49.95 (U.S. currency) per year. The amount of this fee is subject to change upon written notice in company publications. I have the right not to seek annual renewal of this agreement, and Market America has the right to accept or reject my renewal at its discretion. If Market America rejects my renewal, it will do so within 15 days of receipt.
7. I understand that in order to sponsor other Distributors under the Marketing Plan, I must sell \$200.00 retail value of products within 30 days of sponsoring Distributors and submit retail receipts to the Company with a Form 1000, or I shall lose sponsorship rights. I understand that I must sell \$200.00 retail value of products to end users and submit a Retail Sales Report (Form

1000) prior to receiving commissions or qualifying as a Coordinator. I agree and understand that upon meeting qualifications to become a Coordinator, I must submit an Executive Coordinator Application and Qualification Agreement (Form 1001) and an Executive Coordinator Acknowledgment and Agreement (Form 925) within 28 days of qualifying at the Coordinator level (i.e. earning my first commission). Sponsoring any Market America Distributor, directly or indirectly, into another line of sponsorship, whether within the Company or in another network marketing company (Cross-Group Sponsoring), is strictly prohibited. See the Career Manual for further explanation of the restrictions on Cross-Group Sponsoring.

8. Either party may terminate this agreement for any reason and at any time upon 30 days written notice to the other party. However, Market America may terminate this agreement with less than 30 days written notice for serious violations of the policies and procedures, in accordance with the Corrective Action Procedure described in the Career Manual. Upon receiving written notification from the Distributor to terminate this agreement, the sponsoring Distributor or Market America will repurchase subscription kit materials in accordance with its policies set forth in the Market America Marketing Plan, and policies and procedures. No purchase is necessary to become a Market America Distributor other than the purchase of a Distributor subscription kit which is sold "at cost" and which may be required at the Company's discretion. Except as provided in paragraph 6 above, the Company's policy is to refund 90% of the Distributor's cost of all resalable materials and products purchased within one year of termination. In applying for a refund, you must follow the provisions contained in the Career Manual.

9. Upon acceptance of this application by Market America, I will be an independent contractor responsible for my own business and not an employee of Market America. I will not be treated as an employee in regard to any federal, state or local laws covering employees, including but not limited to the Federal Unemployment Tax, Worker's Compensation, income tax withholding at source, or any federal, state or local tax laws. It is my responsibility to pay self-employment, federal, state and local income taxes as required by law.

10. I will not use the Market America trade name and/or trademark except in the advertising material provided to me by Market America or in literature produced or otherwise authorized by Market America in writing, as described in the Career Manual.

11. Any Distributor who sponsors other Distributors must fulfill the obligation of performing a bona fide supervisory, distributing, and selling function in the sale or delivery of product to the ultimate consumer and in the training of those sponsored. Distributors must maintain ongoing contact, communication and management supervision with his or her sales organization. Examples of such supervision may include, but are not limited to: newsletter, written correspondence, personal meetings, telephone contacts, voice mail, electronic mail, training sessions, accompanying individuals to company training, and sharing genealogy information with those sponsored. Distributors must provide evidence to the Company, at its request, of ongoing fulfillment of supervisory responsibilities.

12. I understand that, in order to receive commissions on the retail sales of Distributors in my downline, I must fulfill a bona fide management and supervisory function as described in the Career Manual. Also, I understand that I must sign additional agreements in order to advance in management levels in the Management Performance Compensation Plan, or if I choose to assume training and leadership positions within the National Meeting, Training and Seminar System. Information on these additional agreements is provided in the Career Manual.

13. The Market America program is built on retail sales to the ultimate consumer. The company recognizes that Distributors may also wish to purchase product for their own personal or family use. Under the Market America program, commissions are not paid on a Distributor's personal or family purchases of Market America products.

14. The Distributor acknowledges that the Distributor is a wholly independent marketing Distributor who establishes and services retail customers for company products as an independent contractor. The position of Distributor does not constitute either a sale of a franchise or a Distributorship, and

absolutely no fees have been or will be required from the Distributor for the right to distribute the Company's products pursuant to this agreement. This agreement is not intended and shall not be construed to create a relationship of employer-employee, agency, partnership or joint venture between any Distributor and the Company, or between any Distributor and a sponsor.

As an independent contractor, the Distributor shall:

- A. Abide by any federal, state, county and local laws, rules and regulations pertaining to this agreement and/or the acquisition, receipt, holding, selling, distributing or advertising of Company products.
- B. At the Distributor's own expense, make, execute or file all such reports and obtain licenses as are required by law or public authority with respect to this agreement and/or the receipt, holding, selling, distribution or advertising of company products.

15. If the Distributor or anyone in Distributor's line of sponsorship has purchased Market America products and is in default on payment for these products, the Company shall be entitled to set off/deduct such amounts due from any commission or other compensation owed to the Distributor by Market America or against any credit on the Distributor's account, in accordance with the Career Manual. In addition, default on payments due for elective purchases from the Company shall be grounds for termination of the Distributor's agreement.

16. Prior written approval from Market America is required for the following:

- A. To advertise Market America products;
- B. For there to be more than one Distributor in an immediate family, household or business;
- C. Issuance of a business development center to any entity other than an individual person;
- D. To use or produce any literature other than Company produced literature relating to the products, company or marketing plan.

17. I wish to enter the marketing structure as follows:

- ☐ Single Business Development Center
- ☐ Supervisory Entry Level

I understand that the Supervisory Entry Level option must be approved by the Company and has additional qualification requirements as outlined in the marketing plan, Career Manual, and policies and procedures. If I want to enter at the Supervisory Entry Level, I must have a Certified Executive Coordinator sign in the "Approved By" space on the front of this agreement, or I must submit a Form 901 attached hereto.

18. I understand that only a Certified Executive Coordinator can make a public presentation of the Market America UnFranchise[®] System and the Management Performance Compensation Plan.

19. I agree to submit any complaint, grievance, or claim against a Distributor or the Company in accordance with the Grievance Procedure outlined in the Career Manual. I agree not to seek arbitration or take legal action except in accordance with the Grievance Procedure. I further agree not to contact any regulatory agency regarding Market America before the Grievance Procedure is concluded. A breach of this covenant on my part will render me liable to Market America for damages and legal costs, including reasonable attorney's fees.

20. I understand and agree that the Management Performance Compensation Plan has specific reporting and time sensitive qualification requirements as set forth in the Career Manual. It is my responsibility to understand these and comply. Failure to do so may affect my commissions, and no exceptions can be made. I further agree that there are additional responsibilities and requirements at the Coordinator level and Executive Coordinator management levels with which I agree to abide. These include, but are not limited to, subscribing to the Professional Service Package (\$299.00) at the Executive Coordinator level and (\$499.00) annually thereafter. These requirements are necessary for administration of the business at the management level for which I am being paid management bonuses.

21. This agreement will be binding upon receipt at the Company address as set forth below and upon the acceptance thereafter by Market America. Market America will notify you of rejection of your Independent Distributor Application and Agreement within 15 days of its receipt.

22. I recognize that Market America has invested substantial effort and money in training, building, supporting and maintaining its sales force and that protecting the Market America sales force from unfair competition is important to both Market America and the other Distributors in its sales force. I agree that the restrictions contained in this agreement are a fair and reasonable way to help protect the Market America sales force from unfair competition. I agree that violations of the restrictions contained in this agreement will cause (and thereby constitute) irreparable injury to Market America and that Market America is entitled to seek preliminary and permanent injunctive relief to remedy such violations.

23. I understand that, while I am a Market America Independent Distributor, I may personally sell products marketed by another network marketing company subject, however, to the following restrictions:

- A. I shall not market the products of another network marketing company to my retail customers at the same time as I market Market America products to the same retail customers lest these customers be led to believe erroneously that said products are Market America products.
- B. I shall not sell the products of another network marketing company to any Market America Independent Distributor except those who are personally sponsored by me.
- C. I shall not induce any Market America Independent Distributor, including those personally sponsored by me, to sell the products of another network marketing company.
- D. I shall not, directly or indirectly, solicit any Market America Independent Distributor to leave or reduce his or her activity with Market America.

24. In the event that, while I am a Market America Independent Distributor, I become a Distributor for another network marketing company, I will not:

- A. Commingle the business of that company with my Market America business, but will keep each business totally separate and distinct from the other.
- B. Sponsor any Market America Independent Distributor, whether or not personally sponsored by me, into another network marketing company.

25. I acknowledge that certain information and material provided to me while I am a Market America Independent Distributor, including, but not limited to, Distributor lists, sales organization linkage information ("genealogy reports"), The National Meeting, Training, and Seminar System Regional Meeting Guide, financial data concerning other Market America Independent Distributors (including my downline), Market America's voice mail system, and other matters not made available to the general public and which have been made available to me only because I am a Market America Independent Distributor, are proprietary and constitute trade secrets of Market America. I agree not to use or disclose such information and material to anyone except for the purpose of promoting and developing my Market America business. I further agree not to use or disclose such information and material for the purpose of developing or promoting my business as a distributor for any other network marketing company.

26. In the event that I cease to be a Market America Independent Distributor, whether by reason of voluntary termination, involuntary termination, or non-renewal, and for a period of six months thereafter, I will not contact or communicate with any Market America Independent Distributor, or any of my former retail customers of Market America products, or any retail customers of anyone in my former Market America downline, on behalf of another network marketing company: (a) within 100 miles of my residence during the time I was a Market America Independent Distributor, or (b) within 100 miles of the

residences of any of my personally sponsored Market America Independent Distributors, or (c) within 100 miles of any Market America Independent Distributor in my downline who has achieved the level of Executive Coordinator or above during the time that I was a Market America Independent Distributor. In calculating the 6-month time period provided in this paragraph, the time shall be suspended during any period in which I am not in compliance with this agreement.

27. I acknowledge that I have never been the subject of disciplinary action as a Distributor for another direct sales or network marketing company. If I have been the subject of a disciplinary action, an explanation of the circumstances and resolution of that action is attached on a separate page.

28. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. I understand that this arbitration provision means I am giving up the right to have any dispute I have regarding this agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy. North Carolina law shall govern this agreement.

29. I agree to indemnify Market America and hold the Company harmless against any claim which may be made against Market America as a result of my performance of, or my failure to perform, any of my responsibilities under this agreement.

30. Any failure to enforce any right hereunder shall not constitute a waiver of any right granted herein or existing under North Carolina law.

31. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

32. This agreement, and Part 2 of the Career Manual, constitute the entire agreement between the Distributor and Market America and no additional promises, representations, guarantees or agreements have been made. To the extent that there is any inconsistency between this agreement and Part 2 of the Career Manual, this agreement controls. No additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by an officer of Market America.

**The following language will appear on the front of the agreement just above the signature line:

I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THE TERMS SET FORTH ON THE BACK OF THIS AGREEMENT, AS EVIDENCED BY MY SIGNATURE BELOW.

Also included on the front of the agreement, near the signature line, the following:

Under penalty of perjury, I certify that:

1. The number shown on this form is my correct Taxpayer Identification Number, and
2. I am not subject to back-up withholding because:
 - a. I am exempt from back-up withholding, or
 - b. I have not been notified by the Internal Revenue Service that I am subject to back-up withholding, as a result of a failure to report all interest or dividends, or
 - c. The IRS has notified me that I am no longer subject to back-up withholding.

Market America's 1998 Leadership School



The James L. Knight Convention Center
Miami, Florida

1998 Leadership School Basic Agenda As of 12-10-97

Thursday Feb. 26

Registration	Knight Center	3-9 PM
Certified Motives Meeting	Hyatt	6-7 PM
Certified Trainers Meeting	Hyatt	7-10 PM

Friday Feb. 27

Late Registration	Knight Center	7-10 AM
General Session	Knight Center	8:30-5 PM
Recruiting		
Product Merchandising		
Preferred Customer		
Product Update		
Profiles of Success	Knight Center	7:00-8:30 PM
Pres. Challenge Reception	Utopia/Patio	9:45-10:45 PM
Entertainment		8:00-12:00 AM

Saturday Feb. 28

General Session	Knight Center	8:30-5:15 PM
Sponsoring		
Speakers		
Awards/Recognition		
Close		
Advisory Council Meeting	Utopia	7-10 PM

Sunday March 1

General Session	Knight Center	9-1 PM
NMTSS		
Recruiting Reception	Utopia	3-5 PM
(10 in 10)		



Exhibit 2
25

LEADERLINE

(continued from page 5)

contagious and motivates the entire group upline! So often I hear people say, "Well JR, my group just isn't growing because they aren't bringing anyone new in." My answer to that is simply, "Well, it looks like you duplicated yourself."

It's funny, but it is the truth. We have to lead by example and to do that we must keep sponsoring. To keep sponsoring, we need to keep recruiting. And to keep on recruiting we always have to be prospecting or adding possibilities to our list. Only then will you have anyone to show the plan to or bring to meetings.

3. Video Recruiting

Video recruiting is the best way I know of to double the size of your organization by Leadership School. Imagine how exciting that would be. What a way to start 1998! All you need do is to get five sets of videos yourself and master the technique of touching the bases. Learn how to do it. Once you are doing it and getting results, it's easy to get your group

to do it. If everyone in your group just got five sets of videos and circulated them twice every week for two months, you would have thousands of people exposed to the business!

Even the new person can do it. They don't even need to know how to show the plan. The result would be that you would go to Leadership School at a new pin level with hundreds of new people in your organization. 1998 will be the year it happens for you.

You must succeed so that others can realize their dreams. Happy holidays! Keep growing!

**You must
succeed so that
others can
realize their
dreams.
HAPPY HOLIDAYS!**

I believe in you,



JR Ridinger
President and CEO

LeaderLine is published monthly for Independent Distributors of Market America who have an active Distributorship and have (1) earned a commission check or (2) a Pro-Pack subscription. Direct questions/comments regarding the content of this magazine in writing to Market America, Attention: Publications Department; for questions regarding distribution, contact Distributor Services. As a responsible member of the Direct Selling Association, Market America adheres to the DSA Code of Ethics. Information contained in LeaderLine is proprietary information of Market America, Inc., and is considered trade secrets of the company as construed in N.C.G.S. Section 66-152. © 1997 Market America, Inc.



7605 Business Park Drive
Greensboro, NC 27409-9326



<http://www.marketamericausa.com>

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
SO. FLORIDA, FL
Permit No. 1492

Declaration of Jonathon D. Townsend

I, Jonathon D. Townsend, declare as follows:

1. I am an attorney admitted to practice in North Carolina and California. I am an associate in the law firm Womble Carlyle Sandridge & Rice, LLP, and counsel to Defendants Market America, Inc., Market America Worldwide, Inc., James Howard Ridinger, Loren Ridinger, and Marc Ashley (collectively, "Defendants") in this action. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. On August 3, 2017, I visited the website for the American Arbitration Association and downloaded the Commercial Arbitration Rules and Mediation Procedures. A true and correct copy of the rules is attached hereto as Exhibit A. A copy may also be downloaded by visiting <https://www.adr.org/sites/default/files/Commercial%20Rules.pdf>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 3rd day of August, 2017, at Raleigh, North Carolina.



Jonathon D. Townsend

Exhibit A

COMMERCIAL

Commercial

Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/commercial

Rules Amended and Effective October 1, 2013

Fee Schedule Amended and Effective July 1, 2016

Exhibit A

Regional Vice Presidents

States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia
P. Jean Baker, Esq.
Vice President
Phone: 202.223.7093
Email: BakerJ@adr.org

States: Oklahoma, Texas
Andrew Barton
Vice President
Phone: 210.998.5750
Email: BartonA@adr.org

States: Alabama, Georgia
John M. Bishop
Vice President
Phone: 404.320.5150
Email: BishopJ@adr.org

States: City of Houston, Louisiana, Mississippi
Ingeuneal C. Gray, Esq.
Vice President
Phone: 832.308.7893
Email: GrayI@adr.org

States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Karen Jalkut
Vice President
Phone: 617.695.6062
Email: JalkutK@adr.org

States: Alaska, California, Hawaii, Oregon, Washington
Serena K. Lee, Esq.
Vice President
Phone: 415.671.4053
Email: LeeS@adr.org

States: Indiana, Kentucky, North Carolina, Ohio, South Carolina, Tennessee, West Virginia
Michelle M. Skipper
Vice President
Phone: 704.643.8605
Email: SkipperM@adr.org

States: Florida
Rebecca Storrow, Ph.D.
Vice President
Phone: 954.372.4341
Email: StorrowR@adr.org

States: Arizona, Colorado, Kansas, Idaho, Montana, Nebraska, Nevada, New Mexico, Utah, Wyoming
Lance K. Tanaka
Vice President
Phone: 303.831.0824
Email: TanakaL@adr.org

States: Arkansas, Illinois, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, Wisconsin
A. Kelly Turner, Esq.
Vice President
Phone: 312.361.1116
Email: TurnerK@adr.org

States: New York
Jeffrey T. Zaino, Esq.
Vice President
Phone: 212.484.3224
Email: ZainoJ@adr.org

Case Management Vice Presidents and Assistant Vice Presidents

Jeffrey Garcia
Vice President
Phone: 559.490.1860
Email: GarciaJ@adr.org
Administers cases in: AK, AZ, AR, CA, CO, HI, ID, IL, IA, KS, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY

John M. Bishop
Vice President
Phone: 404.320.5150
Email: BishopJ@adr.org
Administers cases in: AL, DC, FL, GA, IN, KY, MD, NC, OH, SC, TN, VA

Yvonne Baglini
Assistant Vice President
Phone: 866.293.4053
Email: BagliniY@adr.org
Administers cases in: CT, DE, MA, ME, MI, NH, NJ, NY, PA, RI, VT, WV

Table of Contents

Important Notice	7
Introduction	7
Standard Arbitration Clause	8
Administrative Fees	8
Mediation	8
Large, Complex Cases	9
 Commercial Arbitration Rules	 10
R-1. Agreement of Parties.	10
R-2. AAA and Delegation of Duties.	11
R-3. National Roster of Arbitrators.	11
R-4. Filing Requirements.	11
R-5. Answers and Counterclaims	12
R-6. Changes of Claim	13
R-7. Jurisdiction	13
R-8. Interpretation and Application of Rules.	14
R-9. Mediation	14
R-10. Administrative Conference	14
R-11. Fixing of Locale	14
R-12. Appointment from National Roster	15
R-13. Direct Appointment by a Party	16
R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties.	16
R-15. Nationality of Arbitrator	17
R-16. Number of Arbitrators.	17
R-17. Disclosure	17
R-18. Disqualification of Arbitrator	18
R-19. Communication with Arbitrator	18
R-20. Vacancies	19
R-21. Preliminary Hearing	19
R-22. Pre-Hearing Exchange and Production of Information	19
R-23. Enforcement Powers of the Arbitrator	20
R-24. Date, Time, and Place of Hearing	20
R-25. Attendance at Hearings	21
R-26. Representation	21
R-27. Oaths	21

R-28. Stenographic Record.	21
R-29. Interpreters.	22
R-30. Postponements	22
R-31. Arbitration in the Absence of a Party or Representative	22
R-32. Conduct of Proceedings	22
R-33. Dispositive Motions.	23
R-34. Evidence.	23
R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence	23
R-36. Inspection or Investigation	24
R-37. Interim Measures	24
R-38. Emergency Measures of Protection	24
R-39. Closing of Hearing.	25
R-40. Reopening of Hearing.	26
R-41. Waiver of Rules.	26
R-42. Extensions of Time	26
R-43. Serving of Notice and Communications	26
R-44. Majority Decision.	27
R-45. Time of Award	27
R-46. Form of Award	27
R-47. Scope of Award	28
R-48. Award Upon Settlement—Consent Award	28
R-49. Delivery of Award to Parties	28
R-50. Modification of Award.	28
R-51. Release of Documents for Judicial Proceedings.	29
R-52. Applications to Court and Exclusion of Liability	29
R-53. Administrative Fees.	29
R-54. Expenses.	29
R-55. Neutral Arbitrator's Compensation	30
R-56. Deposits	30
R-57. Remedies for Nonpayment.	30
R-58. Sanctions	31

Preliminary Hearing Procedures	32
P-1. General	32
P-2. Checklist	32
Expedited Procedures	34
E-1. Limitation on Extensions	34
E-2. Changes of Claim or Counterclaim	34
E-3. Serving of Notices	34
E-4. Appointment and Qualifications of Arbitrator	34
E-5. Exchange of Exhibits	35
E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission	35
E-7. Date, Time, and Place of Hearing	36
E-8. The Hearing	36
E-9. Time of Award	36
E-10. Arbitrator's Compensation	36
Procedures for Large, Complex Commercial Disputes	37
L-1. Administrative Conference	37
L-2. Arbitrators	37
L-3. Management of Proceedings	38
Administrative Fee Schedules (Standard and Flexible Fees)	38
Commercial Mediation Procedures	39
M-1. Agreement of Parties	39
M-2. Initiation of Mediation	39
M-3. Representation	39
M-4. Appointment of the Mediator	40
M-5. Mediator's Impartiality and Duty to Disclose	40
M-6. Vacancies	41
M-7. Duties and Responsibilities of the Mediator	41
M-8. Responsibilities of the Parties	42
M-9. Privacy	42
M-10. Confidentiality	42
M-11. No Stenographic Record	43

M-12. Termination of Mediation.	43
M-13. Exclusion of Liability.	43
M-14. Interpretation and Application of Procedures	43
M-15. Deposits	43
M-16. Expenses	44
M-17. Cost of the Mediation	44

Commercial Arbitration Rules and Mediation Procedures

(Including Procedures for Large, Complex Commercial Disputes)



Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA®. To ensure that you have the most current information, see our web site at **www.adr.org**.

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on various forms of alternative dispute resolution.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following Controversy: (describe briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute upon the administration of the arbitration or at any time when the arbitration is pending. In mediation, the neutral mediator assists the parties in

reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional filing fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

Although these rules include a mediation procedure that will apply to many cases, parties may still want to incorporate mediation into their contractual dispute settlement process. Parties can do so by inserting the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission agreement:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs. The key features of these procedures include:

- > A highly qualified, trained Roster of Neutrals;
- > A mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;
- > Broad arbitrator authority to order and control the exchange of information, including depositions;
- > A presumption that hearings will proceed on a consecutive or block basis.

Commercial Arbitration Rules

R-1. Agreement of Parties*

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.

(e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* A dispute arising out of an employer-promulgated plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures. A dispute arising out of a consumer arbitration agreement will be administered under the AAA's Consumer Arbitration Rules.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Filing Requirements

- (a) Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration.
- (b) Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract which provides for arbitration.
 - i. The filing party shall include a copy of the court order.
 - ii. The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
 - iii. The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to R-32.
- (c) It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

- (d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written submission agreement and the administrative filing fee. To the extent that the parties' submission agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.
- (e) Information to be included with any arbitration filing includes:
 - i. the name of each party;
 - ii. the address for each party, including telephone and fax numbers and e-mail addresses;
 - iii. if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
 - iv. a statement setting forth the nature of the claim including the relief sought and the amount involved; and
 - v. the locale requested if the arbitration agreement does not specify one.
- (f) The initiating party may file or submit a dispute to the AAA in the following manner:
 - i. through AAA WebFile, located at **www.adr.org**; or
 - ii. by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.
- (g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.
- (h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.
- (i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

R-5. Answers and Counterclaims

- (a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

- (b) A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in Rule R-6. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.
- (c) If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.
- (d) If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

R-6. Changes of Claim

- (a) A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.
- (b) Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-9. Mediation

In all cases where a claim or counterclaim exceeds \$75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of this rule upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

- (a) When the parties' arbitration agreement is silent with respect to locale, and if the parties disagree as to the locale, the AAA may initially determine the place of

arbitration, subject to the power of the arbitrator after appointment, to make a final determination on the locale.

- (b) When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.
- (c) If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

R-12. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a) The AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.
- (b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.
- (c) Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-13. Direct Appointment by a Party

- (a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.
- (b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.
- (c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.
- (d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.
- (b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.
- (c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-15. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-16. Number of Arbitrators

- (a) If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.
- (b) Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the R-6 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

R-17. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-41.
- (b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) Disclosure of information pursuant to this Section R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
 - i. partiality or lack of independence,
 - ii. inability or refusal to perform his or her duties with diligence and in good faith, and
 - iii. any grounds for disqualification provided by applicable law.
- (b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.
- (c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-19. Communication with Arbitrator

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.
- (b) Section R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.
- (d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-20. Vacancies

- (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-21. Preliminary Hearing

- (a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.
- (b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

- (a) *Authority of arbitrator.* The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.
- (b) *Documents.* The arbitrator may, on application of a party or on the arbitrator's own initiative:
 - i. require the parties to exchange documents in their possession or custody on which they intend to rely;
 - ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
 - iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

- iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.

R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation:

- (a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;
- (b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
- (c) allocating costs of producing documentation, including electronically stored documentation;
- (d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and
- (e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

R-26. Representation

Any party may participate without representation (*pro se*), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

- (a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.
- (b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.
- (c) If the transcript or any other recording is agreed by the parties or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- (d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-31. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

- (a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (c) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.
- (d) The parties may agree to waive oral hearings in any case and may also agree to utilize the Procedures for Resolution of Disputes Through Document Submission, found in Rule E-6.

R-33. Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

- (a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.
- (c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

- (a) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider to be just and reasonable.
- (b) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.
- (c) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
- (b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.
- (c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-38. Emergency Measures of Protection

- (a) Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.
- (b) A party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile or e-mail or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
- (c) Within one business day of receipt of notice as provided in section (b), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (d) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.
- (e) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.
- (f) Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.
- (g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.
- (h) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in this rule and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.
- (i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

R-39. Closing of Hearing

- (a) The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- (b) If documents or responses are to be filed as provided in Rule R-35, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.

- (c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

R-40. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

R-41. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-42. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-43. Serving of Notice and Communications

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by e-mail or other methods of communication.

- (c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.
- (f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. Majority Decision

- (a) When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement or section (b) of this rule, a majority of the arbitrators must make all decisions.
- (b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-45. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

- (a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.
- (b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-47. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- (b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.
- (c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- (d) The award of the arbitrator(s) may include:
 - i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
 - ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-48. Award Upon Settlement—Consent Award

- (a) If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.
- (b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

R-49. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-50. Modification of Award

Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other

parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-52. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.
- (e) Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

R-53. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and

the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-55. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.
- (b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.
- (c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-56. Deposits

- (a) The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.
- (b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

R-57. Remedies for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment.

- (a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.
- (b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue their claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

- (c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.
- (d) In the event that the arbitrator grants any request for relief which limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.
- (e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.
- (f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

R-58. Sanctions

- (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.
- (b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.

Preliminary Hearing Procedures

P-1. General

- (a) In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case.
- (b) Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive and more expeditious.

P-2. Checklist

- (a) The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:
 - (i) the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;
 - (ii) whether all necessary or appropriate parties are included in the arbitration;
 - (iii) whether a party will seek a more detailed statement of claims, counterclaims or defenses;
 - (iv) whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;
 - (v) which
 - (a) arbitration rules;
 - (b) procedural law; and
 - (c) substantive law govern the arbitration;
 - (vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation,
 - (a) any preconditions that must be satisfied before proceeding with the arbitration;
 - (b) whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
 - (c) consolidation of the claims or counterclaims with another arbitration; or
 - (d) bifurcation of the proceeding.

- (vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;
 - (viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;
 - (ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;
 - (x) whether any measures are required to protect confidential information;
 - (xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;
 - (xii) whether, according to a schedule set by the arbitrator, the parties will
 - (a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;
 - (b) exchange and pre-mark documents that each party intends to submit; and
 - (c) exchange pre-hearing submissions, including exhibits;
 - (xiii) the date, time and place of the arbitration hearing;
 - (xiv) whether, at the arbitration hearing,
 - (a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;
 - (b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
 - (xv) whether any procedure needs to be established for the issuance of subpoenas;
 - (xvi) the identification of any ongoing, related litigation or arbitration;
 - (xvii) whether post-hearing submissions will be filed;
 - (xviii) the form of the arbitration award; and
 - (xix) any other matter the arbitrator considers appropriate or a party wishes to raise.
- (b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in Section R-5.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-43, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

- (a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.
- (c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-18. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission

Where no party's claim exceeds \$25,000, exclusive of interest, attorneys' fees and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

- (a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.
- (b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.
- (c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.
- (d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (e) Unless the parties have agreed to a form of award other than that set forth in rule R-46, when the parties have agreed to resolve their dispute by this rule, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (f) If the parties agree to a form of award other than that described in rule R-46, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (g) The award is subject to all other provisions of the Regular Track of these rules which pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

- (a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-28.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 calendar days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) to obtain conflicts statements from the parties; and
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

- (a) Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. With the exception in paragraph (b) below, if the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.
- (b) In cases involving the financial hardship of a party or other circumstance, the AAA at its discretion may require that only one arbitrator hear and determine the case, irrespective of the size of the claim involved in the dispute.
- (c) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Management of Proceedings

- (a) The arbitrator shall take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy and cost-effective resolution of a Large, Complex Commercial Dispute.
- (b) As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be scheduled in accordance with sections P-1 and P-2 of these rules.
- (c) The parties shall exchange copies of all exhibits they intend to submit at the hearing at least 10 calendar days prior to the hearing unless the arbitrator(s) determines otherwise.
- (d) The parties and the arbitrator(s) shall address issues pertaining to the pre-hearing exchange and production of information in accordance with rule R-22 of the AAA Commercial Rules, and the arbitrator's determinations on such issues shall be included within the Scheduling and Procedure Order.
- (e) The arbitrator, or any single member of the arbitration tribunal, shall be authorized to resolve any disputes concerning the pre-hearing exchange and production of documents and information by any reasonable means within his discretion, including, without limitation, the issuance of orders set forth in rules R-22 and R-23 of the AAA Commercial Rules.
- (f) In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who may possess information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition.
- (g) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Administrative Fee Schedules (Standard and Flexible Fees)

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/feeschedule.*

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/feeschedule.*

© 2016 American Arbitration Association, Inc. All rights reserved. These rules are the copyrighted property of the American Arbitration Association (AAA) and are intended to be used in conjunction with the AAA's administrative services. Any unauthorized use or modification of these rules may violate copyright laws and other applicable laws. Please contact 800.778.7879 or websitemail@adr.org for additional information.

Regional Vice Presidents

States: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia
P. Jean Baker, Esq.
Vice President
Phone: 202.223.7093
Email: BakerJ@adr.org

States: Oklahoma, Texas
Andrew Barton
Vice President
Phone: 210.998.5750
Email: BartonA@adr.org

States: Alabama, Georgia
John M. Bishop
Vice President
Phone: 404.320.5150
Email: BishopJ@adr.org

States: City of Houston, Louisiana, Mississippi
Ingeuneal C. Gray, Esq.
Vice President
Phone: 832.308.7893
Email: GrayI@adr.org

States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Karen Jalkut
Vice President
Phone: 617.695.6062
Email: JalkutK@adr.org

States: Alaska, California, Hawaii, Oregon, Washington
Serena K. Lee, Esq.
Vice President
Phone: 415.671.4053
Email: LeeS@adr.org

States: Indiana, Kentucky, North Carolina, Ohio, South Carolina, Tennessee, West Virginia
Michelle M. Skipper
Vice President
Phone: 704.643.8605
Email: SkipperM@adr.org

States: Florida
Rebecca Storrow, Ph.D.
Vice President
Phone: 954.372.4341
Email: StorrowR@adr.org

States: Arizona, Colorado, Kansas, Idaho, Montana, Nebraska, Nevada, New Mexico, Utah, Wyoming
Lance K. Tanaka
Vice President
Phone: 303.831.0824
Email: TanakaL@adr.org

States: Arkansas, Illinois, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, Wisconsin
A. Kelly Turner, Esq.
Vice President
Phone: 312.361.1116
Email: TurnerK@adr.org

States: New York
Jeffrey T. Zaino, Esq.
Vice President
Phone: 212.484.3224
Email: ZainoJ@adr.org

Case Management Vice Presidents and Assistant Vice Presidents

Jeffrey Garcia
Vice President
Phone: 559.490.1860
Email: GarciaJ@adr.org
Administers cases in: AK, AZ, AR, CA, CO, HI, ID, IL, IA, KS, LA, MN, MS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY

John M. Bishop
Vice President
Phone: 404.320.5150
Email: BishopJ@adr.org
Administers cases in: AL, DC, FL, GA, IN, KY, MD, NC, OH, SC, TN, VA

Yvonne Baglini
Assistant Vice President
Phone: 866.293.4053
Email: BagliniY@adr.org
Administers cases in: CT, DE, MA, ME, MI, NH, NJ, NY, PA, RI, VT, WV



AMERICAN ARBITRATION ASSOCIATION®

800.778.7879 | websitemail@adr.org | adr.org

Exhibit A

Lawrence B. Steinberg (State Bar No. 101966)
LSteinberg@buchalter.com
 BUCHALTER, A Professional Corporation
 1000 Wilshire Boulevard, Suite 1500
 Los Angeles, CA 90017-2457
 Telephone: (213) 891-0700
 Facsimile: (213) 896-0400

Pressly M. Millen (admitted *pro hac vice*)
pmillen@wcsr.com
 Jonathon D. Townsend (CA State Bar No. 293918)
jtownsend@wcsr.com
 WOMBLE CARLYLE SANDRIDGE & RICE, LLP
 555 Fayetteville Street, Suite 1100
 Raleigh, NC 27601
 Telephone: (919) 755-2100
 Facsimile: (919) 755-2150

Attorneys for defendants MARKET
 AMERICA, INC., MARKET AMERICA
 WORLDWIDE, INC., JAMES HOWARD
 RIDINGER, LOREN RIDINGER and
 MARC ASHLEY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

CHUANJIE YANG, an individual;
 OLLIE LAN aka RUONING LAN,,
 an individual; LIU LIU, an individual,
 and all those similarly situated ,

Plaintiffs,

vs.

MARKET AMERICA, INC., a North
 Carolina Corporation; MARKET
 AMERICA WORLDWIDE, INC., a
 North Carolina Corporation; JAMES
 HOWARD RIDINGER, an
 individual; LOREN RIDINGER, an
 individual; MARC ASHLEY, an
 individual; and DOES 1- 100,

Defendants.

Case No. CV 2:17-04012-GW (JEMx)

[PROPOSED] ORDER GRANTING
 DEFENDANTS' MOTION TO
 COMPEL ARBITRATION OR, IN THE
 ALTERNATIVE, TO STAY, DISMISS
 OR TRANSFER VENUE

Date: November 16, 2017
 Time: 8:30 a.m.
 Courtroom: 9D

1 On November 16, 2017, the motion of defendants MARKET AMERICA,
 2 INC., MARKET AMERICA WORLDWIDE, INC., JAMES HOWARD
 3 RIDINGER, LOREN RIDINGER, and MARC ASHLEY (collectively,
 4 “Defendants”) for an order compelling arbitration or, in the alternative, for an order
 5 dismissing this action or staying these proceedings, or transferring this action to the
 6 Middle District of North Carolina, came on for hearing, the Hon. George H. Wu,
 7 United States District Court Judge, presiding. Daren M. Schlecter and Blake J.
 8 Lindemann appeared on behalf of plaintiffs. Pressly M. Millen and Lawrence B.
 9 Steinberg appeared on behalf of Defendants.

10 Having considered the papers and arguments submitted in support of and in
 11 opposition to the motion, and

12 GOOD CAUSE HAVING BEEN SHOWN,
 13 IT IS HEREBY ORDERED, as follows:

14
 15 **Alternative 1:**

16 Defendants’ Motion to Compel arbitration is GRANTED. Plaintiffs
 17 CHUANJIE YAN, OLLIE LAN, and LIU LIU knowingly and willingly entered
 18 into a contractual agreement with Market America, Inc. that requires them to
 19 arbitrate their disputes with Defendants in Greensboro, North Carolina. The
 20 allegations of the First Amended Complaint fall within the scope of that arbitration
 21 agreement. Pursuant to that arbitration agreement, the parties are ordered to submit
 22 their dispute to arbitration in Greensboro, North Carolina, to be administered by the
 23 American Arbitration Association in accordance with its Commercial Arbitration
 24 Rules.

25 / / /

26 / / /

27 / / /

28 / / /

[PROPOSED] ORDER GRANTING DEFENDANTS’ MOTION TO COMPEL ARBITRATION
 OR, IN THE ALTERNATIVE, TO STAY, DISMISS OR TRANSFER VENUE

Alternative 2:

Plaintiffs CHUANJIE YAN, OLLIE LAN, and LIU LIU knowingly and willingly entered into a contractual agreement with Market America, Inc. that requires them to arbitrate their disputes with Defendants in Greensboro, North Carolina. The allegations of the First Amended Complaint fall within the scope of that arbitration agreement. Pursuant to Rules 12(b)(1) and 12(b)(3) of the Federal Rules of Civil Procedure, Defendants' motion to dismiss the First Amended Complaint with prejudice is GRANTED.

Alternative 3:

Plaintiffs CHUANJIE YAN, OLLIE LAN, and LIU LIU knowingly and willingly entered into a contractual agreement with Market America, Inc. that requires them to arbitrate their disputes with Defendants in Greensboro, North Carolina. The allegations of the First Amended Complaint fall within the scope of that arbitration agreement. Pursuant to the Section 3 of the Federal Arbitration Act, 9 U.S.C. § 3, this action is stayed until the Middle District of North Carolina (the "Middle District") decides Defendants' Petition To Compel Arbitration, *Market America, Inc. et al. v. Chuanjie Yang et al.*, Case No. 1:17-cv-897 (M.D. N.C.); in the event the Middle District grants Defendants' petition, this action is stayed until the arbitration proceedings have been completed.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

