

1 STUART H. SINGER (*Pro Hac Vice*)  
 2 CARLOS M. SIRES (*Pro Hac Vice*)  
 3 SIGRID S. MCCAWLEY (*Pro Hac Vice*)  
 4 BOIES, SCHILLER & FLEXNER LLP  
 5 401 East Las Olas Boulevard, Suite 1200  
 6 Fort Lauderdale, Florida 33301  
 Telephone: (954) 356-0011  
 Facsimile: (954) 356-0022  
 E-mail: ssinger@bsfllp.com  
 E-mail: csires@bsfllp.com  
 E-mail: smccawley@bsfllp.com

7 WILLIE E. GARY (*Pro Hac Vice*)  
 8 GARY, WILLIAMS, LEWIS, &  
 9 WATSON, P.L.  
 10 221 East Osceola Street  
 11 Stuart, Florida 34994  
 Telephone: (772) 283-8260  
 Facsimile: (772) 220-3343  
 E-mail: weg@williegary.com

12 Attorneys for Plaintiffs  
 13 JEFF POKORNY, LARRY BLENN  
 14 and KENNETH BUSIERE

CEDRIC C. CHAO (CA SBN 76045)  
 WILLIAM L. STERN (CA SBN 96105)  
 S. RAJ CHATTERJEE (CA SBN 177019)  
 MORRISON & FOERSTER LLP  
 425 Market Street  
 San Francisco, California 94105-2482  
 Telephone: 415.268.7000  
 Facsimile: 415.268.7522  
 E-mail: cchao@mofo.com  
 E-mail: wstern@mofo.com  
 E-mail: schatterjee@mofo.com

JAMES R. SOBIERAJ (*Pro Hac Vice*)  
 BRINKS HOFER GILSON & LIONE  
 455 N. Cityfront Plaza Drive  
 Chicago, Illinois 60611  
 Telephone: 312.321.4200  
 Facsimile: 312.321.4299  
 E-mail: jsobieraj@usebrinks.com

Attorneys for Defendant  
 QUIXTAR INC.

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

18 JEFF POKORNY, LARRY BLENN  
 19 and KENNETH BUSIERE on behalf of  
 themselves and those similarly situated,

20 Plaintiffs,

21 v.

22 QUIXTAR INC.,

23 Defendant.

Case No. C 07-00201 SC

**[PROPOSED] ORDER  
 GRANTING PLAINTIFFS' AND  
 DEFENDANT QUIXTAR'S JOINT  
 MOTION TO MODIFY THE  
 COURT'S DECEMBER 27, 2012  
 ORDER APPOINTING SPECIAL  
 MASTER**

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

*Additional counsel for  
Plaintiffs Jeff Pokorny, Larry Blenn and  
Kenneth Busiere:*

DAVID BOIES (*Pro Hac Vice*)  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, NY 10504  
Telephone: (914) 749-8200  
Facsimile: (914) 749-8300  
E-mail: [dboies@bsfllp.com](mailto:dboies@bsfllp.com)

DAVID W. SHAPIRO (CA SBN 219265)  
BOIES, SCHILLER & FLEXNER LLP  
1999 Harrison Street, Suite 900  
Oakland, California 94612  
Telephone: (510) 874-1000  
Facsimile: (510) 874-1460  
E-mail: [dshapiro@bsfllp.com](mailto:dshapiro@bsfllp.com)

1 The Court, having considered Plaintiffs' and Quixtar's Joint Motion to Modify the Court's  
2 December 27, 2012 Order Appointing Special Master ("Joint Motion"), and

3 Good cause appearing therefor;

4 IT IS HEREBY ORDERED that:

5 The Joint Motion is GRANTED.

6 Paragraph 5 of the December 27, 2012 Order shall be and hereby is modified to read as  
7 follows:

8 5. Fairness Considerations. Pursuant to Rule 53(a)(3), the  
9 Court has considered the fairness of paying the likely fees and  
10 expenses of the Special Master from the Cash Fund. The Court  
11 believes that the appointment and use of the Special Master will  
12 materially advance the litigation, thereby achieving considerable  
13 cost-savings to all parties. Moreover, the Court notes that the  
14 parties' ASA specifically contemplates appointment of a Special  
15 Master, that the parties have consented to the Special Master's  
16 appointment, and that the ASA provides that the Special Master's  
17 costs shall be paid from the Cash Fund, as discussed in paragraph  
18 13 herein. The Court will protect against unreasonable fees,  
19 expenses, and delay through review and approval of the Special  
20 Master's work plan, fee proposal, budget, and invoices, and through  
21 regular communication with the Special Master.

22 Paragraph 8 of the December 27, 2012 Order shall be and hereby is modified to read as  
23 follows:


24 8. Scope of Special Master's Duties. Pursuant to Rule  
25 53(b)(2)(A), the Special Master shall assist the Court with matters  
26 such as: administering special hardship claims, including assessing  
27 whether supporting documentation is sufficient and adjudicating the  
28 appropriate dollar value of each claim, pursuant to section 6.1.2 of  
the ASA; preparing a report with recommendations as to whether  
the current limit on individual special hardship awards or the  
current limit on aggregate special hardship payments should be  
amended and with recommendations on how to effect the final  
distribution of cash and products, consistent with the terms of the  
ASA and the Court's own powers; preparing reports with  
recommendations on any motions that may later be filed;  
determining any issue of law or fact necessary to discharging the  
foregoing duties, subject to review as provided in paragraphs 15  
through 19; and other matters in which the Court wishes to utilize  
his services.

1 Paragraph 13 of the December 27, 2012 Order shall be and hereby is modified to read as  
2 follows:

3 13. Compensation. Pursuant to Rules 53(b)(2)(E) and 53(g), the  
4 parties shall confer with the Special Master to set his rates. The  
5 Special Master may hire or employ, at a reasonable rate, other  
6 personnel to assist in completion of the duties set forth in this  
7 Order, and the Special Master shall be reimbursed for payments  
8 made to such personnel as part of his expenses. The Special  
9 Master, having initially conferred with the parties on these and  
10 other issues on January 18, 2013, shall prepare a work plan, fee  
11 proposal, and budget for the parties' review and the Court's  
12 approval. The Special Master shall prepare a monthly invoice for  
13 his fees and expenses, which shall be paid from the Cash Fund  
14 established pursuant to the ASA. Upon approval by the Court, the  
15 parties shall promptly direct the Escrow Agent to pay such invoices.

16 IT IS SO ORDERED.

17 Dated: January 31, 2013

18   
19 \_\_\_\_\_  
20 HON. SAMUEL CONTI  
21 United States District Court Judge