

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

NXIVM CORPORATION, formerly known as  
EXECUTIVE SUCCESS PROGRAMS, INC. and  
FIRST PRINCIPLES, INC.,

Plaintiffs,

vs.

MORRIS SUTTON; ROCHELLE SUTTON; THE  
ROSS INSTITUTE; RICK ROSS a/k/a "RICKY  
ROSS; STEPHANIE FRANCO, PAUL MARTIN  
and WELLSRING RETREAT, INC.,

Defendants.

STEPHANIE FRANCO,

Counterclaim Plaintiff,

vs.

NANCY SALZMAN,

Counterclaim Defendant.

HON. GARY L. SHARPE, U.S.D.J.

CIVIL ACTION NO. 03-CV-976 (GLS/DRH)

**ANSWER AND AFFIRMATIVE DEFENSES TO  
AMENDED CONSOLIDATED COMPLAINT AND  
COUNTERCLAIMS OF STEPHANIE FRANCO**

Defendant, Stephanie Franco (“Ms. Franco”), a New Jersey resident, by and through her attorneys Riker, Danzig, Scherer, Hyland & Perretti LLP, and Hinman, Howard & Kattell LLP, by way of answer to the Amended Consolidated Complaint (the “Amended Complaint”) of plaintiffs NXIVM Corporation, formerly known as Executive Success Programs, Inc. (“NXIVM”) and First Principles, Inc. (“First Principles”)(collectively, “Plaintiffs”) hereby responds as follows:

### **INTRODUCTION**

1. Ms. Franco denies the allegations that are contained in paragraph 1 of the Amended Complaint to the extent that such allegations relate to her. No response is necessary to the remaining allegations that are contained in paragraph 1 as said allegations relate to parties other than Ms. Franco.

2. Ms. Franco denies the allegations that are contained in paragraph 2 of the Amended Complaint to the extent that said allegations relate to her. No response is necessary to the remaining allegations that are contained in paragraph 2 as said allegations relate to parties other than Ms. Franco.

### **JURISDICTION AND VENUE**

3. Ms. Franco denies that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as there are no federal causes of action remaining in the case against Ms. Franco. Ms. Franco further denies that the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because, among other things, upon information and belief, Plaintiffs’ claims do not satisfy the jurisdictional amount requirement of the statute. Ms. Franco further denies that the exercise of supplemental jurisdiction is appropriate. Further, Ms. Franco

denies that there are any claims under the Lanham Act that remain in this case.

4. Ms. Franco denies the allegations that are contained in paragraph 4 of the Amended Complaint to the extent that such allegations relate to her. No response is necessary to the remaining allegations that are contained in paragraph 4 as said allegations relate to parties other than Ms. Franco.

5. Ms. Franco denies that venue is proper in this district.

### **PARTIES**

6. Ms. Franco lacks knowledge and information sufficient to form a response to the allegations that are contained in paragraph 6.

7. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 7.

8. Admitted.

9. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 9.

10. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 10.

11. Ms. Franco denies the allegations that are contained in paragraph 11 of the Amended Complaint except that Ms. Franco admits that she presently resides at 36 Darlington Road, Deal, New Jersey, that she attended classes offered by Plaintiffs in exchange for significant amounts of money and that she is the daughter of Morris Sutton.

12. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 12.

13. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 13.

14. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 14.

### **BACKGROUND**

15. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 15 of the Amended Complaint.

16. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 16 of the Amended Complaint.

17. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 17 of the Amended Complaint.

18. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 18 of the Amended Complaint.

19. Ms. Franco denies the allegations that are contained in paragraph 19 of the Amended Complaint to the extent said allegations relate to her. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations that are contained in paragraph 19.

20. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 20 of

the Amended Complaint.

21. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 21 of the Amended Complaint, except that Ms. Franco is aware that Lollytogs is a family-owned New York company that manufactures children's clothing and that Michael Sutton was formerly an executive at Lollytogs.

22. Ms. Franco admits the allegations that are contained in the first sentence of paragraph 22 of the Amended Complaint. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in the second sentence of paragraph 22.

23. Ms. Franco lacks knowledge and information sufficient to form a belief as to the allegations that are contained in paragraph 23 of the Amended Complaint, except that Ms. Franco is aware that Michael Sutton had some involvement with acupuncture and kinesiology.

24. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 24, except that, upon information and belief, Ms. Franco is presently aware that Michael Sutton is the father of a child born to a woman who is not Sephardic and that he disclosed such information to Morris Sutton and Rochelle Sutton.

25. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 25.

26. Ms. Franco admits that Michael Sutton, together with Nancy Salzman, encouraged her to take NXIVM classes. Ms. Franco further admits that

Rochelle Sutton, Leslie Kassin and Aaron Kassin, among others, also took NXIVM classes. Upon information and belief, Michael Sutton also encouraged Lollytogs co-workers to take NXIVM classes.

27. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 27.

28. Ms. Franco denies the allegations that are contained in the first sentence of paragraph 28, except that she admits that on or about May 4, 2001, she signed an application to take a five-day NXIVM course called an "Intensive" in Albany, New York. Ms. Franco denies the allegations that are contained in the second sentence of paragraph 28, except that Ms. Franco admits that she has no ownership interest in Lollytogs. With respect to the allegations that are contained in the third sentence of paragraph 28, Ms. Franco admits only that, upon information and belief, the Suttons hired Rick Ross. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in the fourth sentence of paragraph 28.

29. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 29, except that, upon information and belief, Ms. Franco is generally aware that Mr. Ross joined the Suttons and Michael Sutton at a family vacation in Florida and further Ms. Franco admits that she was at the Suttons' home at a time when Michael Sutton, the Suttons, Richard Ross, among others, were present.

30. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 30 of

the Amended Complaint.

31. With respect to the first sentence of paragraph 31, Ms. Franco admits only that she was at the home of her father Morris Sutton in or about November/December 2002 at a time when Richard Ross and Michael Sutton were also present. At that time, she told Michael Sutton that she was concerned about NXIVM and his involvement with NXIVM. With respect to the second sentence of paragraph 31, Ms. Franco neither admits nor denies the allegations but refers to the application form for the terms thereof. With respect to the third sentence of paragraph 31, Ms. Franco admits the allegations that are contained in the third sentence. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations that are contained in paragraph 31.

32. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 32 of the Amended Complaint.

33. Ms. Franco denies the allegations that are contained in the first sentence of paragraph 33 of the Amended Complaint. With respect to the second sentence of paragraph 33, no response is necessary as said allegations call for a legal conclusion.

34. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 34.

35. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 35.

36. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 36.

37. Ms. Franco denies the allegations that are contained in paragraph 37 of the Amended Complaint to the extent that said allegations relate to her. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 37.

38. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 38.

39. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 39.

40. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 40.

41. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 41.

42. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 42.

43. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 43.

44. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 44.

45. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 45.

46. Ms. Franco lacks knowledge and information sufficient to form a



belief as to the truth of the allegations that are contained in paragraph 46.

47. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 47.

48. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 48.

49. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 49.

50. Ms. Franco admits the allegations that are contained in the first sentence of paragraph 50 of the Amended Complaint. Ms. Franco neither admits nor denies the allegations that are contained in the second sentence of paragraph 50 but refers to the application form for the terms thereof, except that Ms. Franco specifically denies that the application provided that she did not compete with Plaintiffs. Ms. Franco denies the allegations that are contained in the third sentence of paragraph 50.

51. Ms. Franco denies the allegations that are contained in paragraph 51 of the Amended Complaint except that Ms. Franco admits that during late 2000 and early 2001 she attended two courses in Process Communication model -- a program that was developed by Taibi Kahler Associates -- that were given by Dr. Judy Pauley and Joe Pauley, but denies that she has ever acted as a trainer for Taibi Kahler Associates. Without Ms. Franco's knowledge, she was identified on a website maintained by Taibi Kahler Associates, Inc. as a trainer. That incorrect reference has been removed from the website at Ms. Franco's request.

52. Ms. Franco denies the allegations that are contained in paragraph 52 of the Amended Complaint except that she admits that she the sole officer and director of Center for Personal Growth, Inc., a New Jersey corporation that has not engaged in any business since 2000.

53. Ms. Franco denies the allegations that are contained in paragraph 53 of the Amended Complaint.

54. Ms. Franco denies that she engaged in any wrongful conduct as alleged in paragraph 54 of the Amended Complaint. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations that are contained in paragraph 54.

55. Ms. Franco denies the allegations that are contained in paragraph 55 of the Amended Complaint to the extent that such paragraph contains any allegations against her. No response is necessary to the remaining allegations that are contained in paragraph 55 as said allegations relate to parties other than Ms. Franco.

56A. Ms. Franco denies the allegations that are contained in paragraph 56A of the Amended Complaint.

56B. Ms. Franco denies the allegations that are contained in paragraph 56B of the Amended Complaint except that Ms. Franco refers to the August 18, 2003 *MSNBC* report and the *Forbes Magazine* cover story for the terms thereof.

56C. Ms. Franco denies the allegations that are contained in paragraph 56C of the Amended Complaint.

56D. Ms. Franco denies the allegations that are contained in paragraph

56D of the Amended Complaint.

56E. Ms. Franco denies the allegations that are contained in paragraph 56E of the Amended Complaint.

56F. Ms. Franco denies the allegations that are contained in paragraph 56F of the Amended Complaint.

56G. Ms. Franco denies the allegations that are contained in paragraph 56G of the Amended Complaint.

**FIRST CAUSE OF ACTION**  
**(Misappropriation of Trade Secrets)**

57. Ms. Franco repeats her responses to paragraphs 1 through 56 of the Amended Complaint and incorporates same as if set forth at length herein.

58. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 58 of the Amended Complaint.

59. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 59 of the Amended Complaint.

60. Ms. Franco denies the allegations that are contained in paragraph 60 of the Amended Complaint.

61. Ms. Franco denies the allegations against her that are contained in paragraph 61 of the Amended Complaint. No response is necessary to the remaining allegations that are contained in paragraph 61 as said allegations relate to parties other than Ms. Franco.

62. Ms. Franco denies the allegations that are contained in paragraph 62 of the Amended Complaint.

63. Ms. Franco denies the allegations against her that are contained in paragraph 63 of the Amended Complaint. No response is necessary to the remaining allegations that are contained in paragraph 63 of the Amended Complaint as said allegations relate to parties other than Ms. Franco

64. Ms. Franco denies the allegations that are contained in paragraph 64 of the Amended Complaint to the extent that said allegations relate to her. No response is necessary to the remaining allegations that are contained in paragraph 64 as said allegations relate to parties other than Ms. Franco.

65. No response is necessary to the allegations that are contained in paragraph 65 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

66. No response is necessary to the allegations that are contained in paragraph 66 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

67. No response is necessary to the allegations that are contained in paragraph 67 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

68. Ms. Franco denies the allegations that are contained in paragraph 68 of the Amended Complaint.

**SECOND CAUSE OF ACTION**  
**(Product Disparagement)**

69. Ms. Franco repeats her responses to paragraphs 1 through 68 of the Amended Complaint and incorporates same as if set forth at length herein.

70. No response is necessary to the allegations that are contained in paragraph 70 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

71. No response is necessary to the allegations that are contained in paragraph 71 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

72. No response is necessary to the allegations that are contained in paragraph 72 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

73. No response is necessary to the allegations that are contained in paragraph 73 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

74. No response is necessary to the allegations that are contained in paragraph 74 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

75. No response is necessary to the allegations that are contained in paragraph 75 of the Amended Complaint as said allegations state a legal conclusion.

76. No response is necessary to the allegations that are contained in paragraph 76 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

77. No response is necessary to the allegations that are contained in paragraph 77 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

**THIRD CAUSE OF ACTION**  
**(Breach of Contract)**

78. Ms. Franco repeats her responses to the allegations contained in paragraphs 1 through 77 of the Amended Complaint and incorporates same as if set forth at length herein.

79. Ms. Franco denies the allegations that are contained in paragraph 79 of the Amended Complaint except that Ms. Franco admits that she signed an application to take Plaintiffs' courses and refers to the application for the terms thereof.

80. Ms. Franco denies the allegations that are contained in paragraph 80 of the Amended Complaint.

81. No response is necessary to the allegations that are contained in paragraph 81 of the Amended Complaint as said allegations state a legal conclusion. To the extent that any response is required to the allegations that are contained in paragraph 81, Ms. Franco denies said allegations.

82. Ms. Franco denies the allegations that are contained in paragraph 82 of the Amended Complaint.

83. Ms. Franco denies the allegations that are contained in paragraph 83 of the Amended Complaint.

**FOURTH CAUSE OF ACTION**  
**(Interference with Contractual Relations)**

84. Ms. Franco repeats her responses to the allegations contained in paragraphs 1 through 83 of the Amended Complaint and incorporates same as if set forth at length herein.

85. Ms. Franco denies the allegations that are contained in paragraph 85 of the Amended Complaint.

86. No response is necessary to the allegations that are contained in paragraph 86 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

87. No response is necessary to the allegations that are contained in paragraph 87 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

88. No response is necessary to the allegations that are contained in paragraph 88 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

89. Ms. Franco denies the allegations that are contained in paragraph 89 of the Amended Complaint.

90. Ms. Franco denies the allegations that are contained in paragraph 90 of the Amended Complaint to the extent that such paragraph contains allegations against Ms. Franco. No response is necessary to the remaining allegations that are contained in paragraph 90 as said allegations relate to parties other than Ms. Franco.

91. No response is necessary to the allegations that are contained in paragraph 91 of the Amended Complaint as said allegations relate to parties

other than Ms. Franco.

92. No response is necessary to the allegations that are contained in paragraph 92 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

**FIFTH CAUSE OF ACTION**  
**(Interference With Contractual Relations)**

93. Ms. Franco repeats her responses to the allegations contained in paragraphs 1 through 92 of the Amended Complaint and incorporates same as if set forth at length herein.

94. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 94 of the Amended Complaint.

95. No response is necessary to the allegations that are contained in paragraph 95 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

96. No response is necessary to the allegations that are contained in paragraph 96 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

97. No response is necessary to the allegations that are contained in paragraph 97 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

98. No response is necessary to the allegations that are contained in paragraph 98 of the Amended Complaint as said allegations relate to parties



other than Ms. Franco.

99. No response is necessary to the allegations that are contained in paragraph 99 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

100. No response is necessary to the allegations that are contained in paragraph 100 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

**SIXTH CAUSE OF ACTION**  
**(Interference With Prospective Contractual Relations)**

101. Ms. Franco repeats her responses to the allegations contained in paragraphs 1 through 100 of the Amended Complaint and incorporates same as if set forth at length herein.

102. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 102 of the Amended Complaint.

103. No response is necessary to the allegations that are contained in paragraph 103 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

104. No response is necessary to the allegations that are contained in paragraph 104 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

105. No response is necessary to the allegations that are contained in paragraph 105 of the Amended Complaint as said allegations relate to parties

other than Ms. Franco.

106. No response is necessary to the allegations that are contained in paragraph 106 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

107. No response is necessary to the allegations that are contained in paragraph 107 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

**SEVENTH CAUSE OF ACTION**  
**(Copyright Infringement)**

108. Ms. Franco repeats her responses to the allegations contained in paragraphs 1 through 107 of the Amended Complaint and incorporates same as if set forth at length herein.

109. Ms. Franco lacks knowledge and information sufficient to form a belief as to the truth of the allegations that are contained in paragraph 109 of the Amended Complaint.

110. No response is necessary to the allegations that are contained in paragraph 110 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

111. No response is necessary to the allegations that are contained in paragraph 111 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

112. No response is necessary to the allegations that are contained in paragraph 112 of the Amended Complaint as said allegations relate to parties

other than Ms. Franco.

113. No response is necessary to the allegations that are contained in paragraph 113 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

114. No response is necessary to the allegations that are contained in paragraph 114 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

115. No response is necessary to the allegations that are contained in paragraph 115 of the Amended Complaint as said allegations relate to parties other than Ms. Franco.

**WHEREFORE**, defendant Stephanie Franco demands judgment against Plaintiffs NXIVM Corporation and First Principles, Inc.: (1) dismissing the Amended Complaint with prejudice; (2) awarding Ms. Franco costs of suit, including reasonable attorney's fees; and (3) for such other relief as the Court deems just and equitable.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Amended Complaint fails to state a claim against Ms. Franco upon which relief may be granted.

2. Plaintiffs' claims against Ms. Franco are barred because the alleged contract is void because it violates public policy.

3. Plaintiffs' claims against Ms. Franco are barred because the alleged contract lacks mutuality of obligation.

4. Plaintiffs' claims against Ms. Franco are barred because the alleged

contract between Ms. Franco and NXIVM is void because NXIVM and its representatives fraudulently induced Ms. Franco to enter into the contract as set forth in further detail in the Counterclaims.

5. Plaintiffs' claims against Ms. Franco are barred because there was no consideration for the alleged agreement.

6. Plaintiffs' claims against Ms. Franco are barred because of a failure of consideration.

7. Plaintiffs' claims against Ms. Franco are barred because none of the information at issue constitutes a trade secret.

8. Plaintiffs' claims against Ms. Franco are barred because Ms. Franco is not the proximate cause of any loss suffered by Plaintiffs.

9. Plaintiffs' claims against Ms. Franco are barred by the doctrine of unclean hands.

10. Plaintiffs' claims against Ms. Franco are barred because Plaintiffs have suffered no damages.

11. Plaintiff First Principles, Inc. lacks standing to assert claims against Ms. Franco.

12. Plaintiffs' claims against Ms. Franco are barred because the Court lacks personal jurisdiction over Ms. Franco.

13. Plaintiffs' claims against Ms. Franco are barred because any damages suffered by the plaintiffs were caused by individuals or entities over whom Ms. Franco has no control.

14. Plaintiffs' claims against Ms. Franco are barred, in whole or in part

by their failure to mitigate damages.

15. Plaintiffs' claims against Ms. Franco are preempted by section 107 of the Federal Copyright Act.

16. Plaintiffs' claims against Ms. Franco are barred because any statements made by third parties for which plaintiffs seek to hold Ms. Franco, represent legitimate criticism of Plaintiffs that is protected by the First Amendment to the United States Constitution and by the New York State Constitution.

17. Plaintiffs' claims against Ms. Franco are barred by defendants' violation of General Business Law, § 349.

18. Plaintiffs' claims against Ms. Franco are barred by the doctrine of waiver.

19. Plaintiffs' claims against Ms. Franco are barred by equitable estoppel.

WHEREFORE, defendant Stephanie Franco demands judgment against Plaintiffs NXIVM Corporation and First Principles, Inc.: (1) dismissing Plaintiffs' Complaint with prejudice, awarding Ms. Franco costs of suit, including reasonable attorney's fees and (3) for such other relief as the Court deems just and equitable.

### **COUNTERCLAIMS**

Stephanie Franco, a New Jersey resident, by and through her attorneys Riker, Danzig, Scherer, Hyland & Perretti LLP and Hinman, Howard & Kattell, LLP, alleges by way of counterclaim against plaintiff NXIVM Corp., formerly known as

Executive Success Programs, and additional defendant on the counterclaim, First Principles, Inc. and Nancy Salzman (“Salzman”) as follows:

### **SUMMARY**

1. This counterclaim involves the fraudulent and unconscionable business practices of the NXIVM defendants. The NXIVM defendants induced individuals to expend thousands of dollars to attend training seminars and “intensives” by making false representations about NXIVM and its programs. Among other things, NXIVM falsely represents that its programs constitute a “science” and “technology.” Further, NXIVM, through Salzman, represented to Ms. Franco that NXIVM’s programs would cure any ailments that a person had and that NXIVM had previously cured its members’ weight problems and vision problems.

2. Contrary to its representations and the representations of Keith Raniere (“Raniere”) and Salzman, NXIVM is neither a science nor a technology. Instead, NXIVM operates as a personality cult built around Raniere, the self-appointed “Vanguard”, and his “teachings.” Further, NXIVM specifically targets financially well-off individuals, their families and their communities in an effort to obtain revenue. Finally, NXIVM offers members financial and other incentives to recruit new members.

3. NXIVM’s actions with respect to Ms. Franco violate, among other things, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et. seq., the New York Deceptive Practices Act, Gen. Business Law, § 349 (McKinney’s 2005) and constitute common law fraud.

## THE RELEVANT ACTORS

4. Ms. Franco resides at 36 Darlington Road, Deal, New Jersey.

5. NXIVM is a Delaware corporation with its principal place of business in Albany, New York.

6. First Principles is a Delaware corporation with its principal place of business in Albany, New York. Upon information and belief, First Principles is the alter ego of NXIVM.

7. Keith Raniere is a New York resident. Mr. Raniere allegedly does not hold a position with NXIVM or First Principles, but merely created the “technology” that NXIVM uses. However, upon information and belief, Mr. Raniere controls the financial operations of NXIVM and First Principles and reaps tremendous financial advantage from NXIVM. Prior to his involvement with NXIVM and First Principles, Mr. Raniere operated an entity known as Consumer Buylines, Inc. (“Consumer Buylines”). Consumer Buylines was forced to cease operations after the attorneys general of at least twenty-five states began investigations into whether it was a “pyramid scheme,” Consumer Buylines and Mr. Raniere reached a financial settlement with the State of New York in the amount of \$40,000 and was prohibited from engaging in multi-level marketing.

8. Counterclaim defendant Nancy Salzman (“Salzman”) is the president of NXIVM and First Principles. Upon information and belief, together with Raniere, she is responsible for the operations of NXIVM and First Principles and the business methods that are described herein.

## FACTUAL BACKGROUND

### **NXIVM Recruits Ms. Franco With False Representation**

9. Ms. Franco holds a Master of Social Work degree. Ms. Franco has taught psychology at Rutgers, The State University of New Jersey and Brookdale Community College in Lincroft, New Jersey. Ms. Franco is the mother of three children and has five grandchildren.

10. Ms. Franco, her father Morris Sutton and her step-mother Rochelle Sutton are members of a closely-knit community of Sephardic Jews that reside, in part, in Monmouth County, New Jersey.

11. Michael Sutton is the half-brother of Stephanie Franco and the son of Morris Sutton and Rochelle Sutton.

12. Upon information and belief, Michael Sutton first became involved with NXIVM in or about 2000 when he attended numerous lectures and seminars, and became a devoted member of NXIVM.

13. During a family dinner in late 2000, Michael Sutton told members of his family including Morris Sutton, Rochelle Sutton and Stephanie Franco about how “wonderful” NXIVM’s program was and how it had changed his life. He convinced the Suttons to invite NXIVM’s president Nancy Salzman to visit their house in New Jersey to describe NXIVM.

14. Mr. Sutton also arranged for his half-sister Stephanie Franco to meet Nancy Salzman.

15. Nancy Salzman subsequently confided to Stephanie Franco in approximately July 2001 that she had specifically targeted Stephanie Franco for involvement in NXIVM based on Michael Sutton’s descriptions of her.



16. Ms. Salzman told Ms. Franco during this July 2001 conversation that she had targeted her because Ms. Franco was respected in the Sephardic Jewish community in Monmouth County, New Jersey based, among other things, on her educational background and, therefore, would be useful in recruiting more members of the community to NXIVM.

17. Ms. Salzman and Mr. Ranieri sought to use Ms. Franco to recruit wealthy individuals in order to fill NXIVM's and First Principles' corporate coffers.

18. Ms. Salzman traveled to New Jersey in or about late November/early December 2000 to attend a dinner at the Suttons' home in Eberon, New Jersey. Among others, Stephanie Franco, Morris Sutton, Rochelle Sutton and Michael Sutton, among others, attended the dinner as well.

19. During this dinner, Ms. Salzman made numerous false representations about NXIVM and Keith Ranieri.

20. For example, Ms. Salzman represented that Keith Ranieri had developed a ground-breaking "technology" and a "science." She also stated that Mr. Ranieri had been identified in *The Guinness Book of World Records* as having the highest I.Q. in the world.

21. Ms. Salzman represented that the "technology" and "science" that Mr. Ranieri had developed and that NXIVM taught could cure various ailments that people had including poor eyesight, stress or lack of success in business. She gave an example of a woman who purportedly no longer required eyeglasses as a result of the program offered by NXIVM.

22. During this dinner, Ms. Franco stated that she would be attending

classes within the next several days in the Washington, D.C. area relating to the Process Communications model, a curriculum offered by Taibi Kahler Associates. Ms. Franco showed her a book that she had received in advance of those classes. Ms. Salzman disparaged Taibi Kahler Associates by stating that she had taken many courses like that and “they did not work.”

23. Ms. Salzman continued her efforts to recruit Ms. Franco and other members of the Sephardic Jewish community following this dinner meeting.

24. On the following Sunday, in early December 2000, Ms. Salzman and several NXIVM coaches traveled from Albany to New Jersey to give a full-day presentation about NXIVM at the home of Leslie Kassin, the daughter of Morris and Rochelle Sutton and the half-sister of Stephanie Franco, and Aaron Kassin, her husband. They resided near Morris and Rochelle Sutton in Eberon, New Jersey.

25. Ms. Salzman charged approximately 20 people \$250 each to attend a full-day presentation on NXIVM and its founder, Keith Raniere. Ms. Salzman told Ms. Franco that she did not have to pay because Ms. Franco had told Ms. Salzman that she could only stay until noon as she had to leave for Washington, D.C. scheduled later that afternoon. Further, Ms. Salzman told Ms. Franco that she did not have to sign the application form that the other participants were required to sign.

26. During this presentation, Ms. Salzman gave Ms. Franco and the other participants' written materials in an effort to induce them to join NXIVM.

27. The written materials that Ms. Salzman provided to Ms. Franco

included a document entitled “We teach everything nobody else teaches . . . And everything they do.” This document stated, among other things “Executive Success Programs (ESP) teaches individuals the “how to” of success. Our curriculum changes the way you think, process information, motivate, act, react and respond to build success. You will reach your full potential with our program. ESP utilizes a radical new technology to create an unprecedented success program. It is a total personal and professional development system. Coming to our school to become successful is like joining a gym to get them (sic) in shape and build muscles.” (emphasis added).

28. Elsewhere in the document, NXIVM, Raniere and Salzman repeated their assertion that NXIVM offered a “technology” and a “science:”

The technology we use is called Rational Inquiry. It is a science based on the belief that the more integrated an individual is the more consistent his or her beliefs and behavior patterns will be.

29. The materials also contained representations about the number of people who had received “Rational Inquiry” training. The materials stated: “Our students are achieving goals they never dreamed possible using this radical new technology and ESP holds exclusive rights to it! The founder of Rational Inquiry, Keith Raniere has designed our unique curriculum. Mr. Raniere has had unprecedented results training over 400,000 individuals.”

30. Upon information and belief, this representation about the number of people “trained” by Mr. Raniere was false.

31. Ms. Salzman and the NXIVM coaches also made numerous oral

representations during the presentation that was given at the Kassins' house. They represented that the NXIVM program was a cure for any problems that people had, from marital troubles to weight problems. Upon information and belief, these representations are false.

32. Ms. Salzman concealed from Ms. Franco and the other attendees critical, material information about NXIVM and Mr. Ranieri. She did not tell Ms. Franco that several states attorneys general had asserted that Mr. Ranieri had operated a pyramid scheme. They did not disclose that members of NXIVM were required to bow down to Mr. Ranieri. She also did not disclose that the "philosophy" behind NXIVM that divided the population of the world into two groups, "ESPIans", people who had received Rational Inquiry training and "parasites" and "suppressives" who sought to hinder the objectives of the ESPIans.

33. Ms. Salzman also failed to disclose that NXIVM encouraged members to recruit new members by offering financial and other incentives. She also did not disclose that advancement in the NXIVM program to a higher level was based, in large part, on the number of members that one recruited.

34. Between December 2000 and May 2004, Michael Sutton repeatedly spoke to Ms. Franco about NXIVM and encouraged her to attend a five-day course, an "Intensive" at NXIVM's headquarters in Albany, New York.

35. Upon information and belief, Ranieri and Salzman directed Michael Sutton to continue to attempt to recruit Ms. Franco to NXIVM.

36. Michael Sutton did not disclose to Ms. Franco during these

communications that he would receive a commission if she enrolled in an Intensive with NXIVM.

**Ms. Franco Attends NXIVM Intensive In Reliance on the Representations**

37. In or about early May 2001, Ms. Franco agreed to attend a five-day NXIVM Intensive that was held in Albany, New York during June 2001. Ms. Franco agreed to attend the Intensive because she was interested in NXIVM's program as it had been described by, among others, Nancy Salzman.

38. Ms. Salzman faxed to Ms. Franco in New Jersey an application form to attend the June 2001 Intensive. Ms. Franco signed the application form and faxed it back to Ms. Salzman.

39. Ms. Franco provided Ms. Salzman with credit information. The amount of \$2,160 was charged to Ms. Franco to attend what was scheduled to be a five-day Intensive.

40. The Intensive that Ms. Franco attended commenced on June 23, 2001. She was scheduled to attend a five day Intensive. The Intensive was held at NXIVM's facilities at 455 New Karner Road, Albany, New York.

41. NXIVM conducted its training sessions in an extremely grueling, regimented manner. Daily sessions lasted from approximately 8:00 a.m. to 9:00 p.m. (or later). NXIVM provided Ms. Franco and the other students a limited amount of time to eat or for bathroom breaks.

42. The training sessions that NXIVM conducted as part of this Intensive were further designed to create a sense of isolation among the other participants. Ms. Salzman and the other coaches told Ms. Franco and the other

participants that they were their “real” family. They also emphasized that the outside world consisted exclusively of parasites and suppressives who had to be overcome in order to achieve their goals. Further, NXIVM and Salzman encouraged participants to disparage their families and recall traumatic childhood events.

43. Ms. Salzman and the other coaches also portrayed Mr. Ranieri as a world historic figure who should be venerated for creating a “technology” that was going to transform humankind. Ms. Franco and the other students were required to address Mr. Ranieri as “Vanguard.” (Ms. Salzman required students to address her as “Prefect.”) Ms. Salzman and the coaches would excitedly announce Mr. Ranieri’s anticipated arrival at NXIVM’s complex. Students were required to bow to Mr. Ranieri (and Ms. Salzman). Further, students were provided information about Mr. Ranieri’s birthday, August 26, which NXIVM celebrated as “Vanguard Day.”

44. During the Intensive, NXIVM, Salzman and others advised Ms. Franco that the way to advancement in NXIVM was to recruit new members. NXIVM designated its members by sashes. All members of NXIVM wore a sash that identified their place in the organization by color and by number of stripes. Members had to earn stripes and sashes by attending more Intensives, expending significant amounts of money and by recruiting new members to the group.

45. Further, NXIVM offered discounts on future tuition costs to members based on the number of new members that they enrolled. Upon information

and belief, NXIVM also paid commissions to members for enrolling new members and continued to pay them based on the number of courses that new member took. For example, someone who recruited a member that went on to become a coach would receive a significant amount of money and then would receive money for each person that member recruited.

46. Salzman lavished particular attention on Ms. Franco during her stay in Albany during June 2001. Ms. Salzman took Ms. Franco out to dinner and invited her to stay at her home.

47. On numerous occasions, Salzman told Ms. Franco that she had the ability to become a coach for NXIVM and even to open her own school for NXIVM in New Jersey. Ms. Salzman also provided Ms. Franco with the so-called “honor” of having Ms. Salzman’s daughter, Lauren Salzman as her personal coach. (NXIVM required each member to have a personal coach to whom they were required to report on a daily basis when they were not attending classes.)

48. Ms. Salzman also told Ms. Franco that she had targeted her to become a member of NXIVM because she could recruit other members of her Sephardic Jewish community in Monmouth County, New Jersey to join NXIVM. She told Ms. Franco that the more members that Ms. Franco recruited, the more money that she would make.

49. Ms. Salzman made these representations to Ms. Franco to induce her to take more NXIVM classes and to recruit more members.

50. As a further inducement to Ms. Franco, Mr. Ranieri spoke to Ms.

Franco in private and told her that he had heard about her. He encouraged her to take more classes.

51. At the insistence of Ms. Salzman, Ms. Franco agreed to stay for a sixteen-day Intensive, rather than the five-day Intensive that had originally been scheduled.

52. NXIVM charged Ms. Franco approximately \$5,000 more to convert her stay from five days to sixteen days.

53. Ms. Franco returned to New Jersey from Albany on or about July 8, 2001. Shortly thereafter, she received a call in New Jersey from Ms. Salzman. Ms. Salzman had been invited by Michael Sutton to speak at a charity event that a neighbor of the Suttons was holding at her home later that month. Ms. Salzman asked during this telephone conversations and several subsequent conversations with Ms. Franco in New Jersey that Ms. Franco introduce her at the event.

54. Ms. Franco agreed to introduce her at this event.

55. Ms. Salzman stayed at Ms. Franco's home in New Jersey when she came to speak at the charity event. During this visit, Ms. Salzman repeated that Ms. Franco could be a NXIVM coach and even open her own school if she continued to take courses, work on her personal issues and recruit new members for NXIVM.



### **Ms. Franco Leaves NXIVM**

56. Ms. Franco agreed to attend a five day Intensive in Albany from August 10, 2001 to August 15, 2001.

57. Ms. Franco paid NXIVM approximately \$2,000 to attend this five-day Intensive.

58. During this five-day Intensive, Ms. Salzman publicly announced to every one in attendance that Ms. Franco had agreed to travel with her to Mexico to help open up a new NXIVM school. In fact, to the contrary, Ms. Salzman had tried to convince Ms. Franco to travel to Mexico, but Ms. Franco had refused.

59. Ms. Salzman's behavior together with other concerns that Ms. Franco had developed caused her to decide to sever her relationship with NXIVM.

60. Further, Ms. Franco was troubled by some of the bizarre teachings of Mr. Raniere and NXIVM. For example, Mr. Raniere described marriage as an "archaic" institution. He also claimed that the government had persecuted him in connection with Consumer Buylines and stated that income taxes were evil. Further, Mr. Raniere encouraged an "us" versus the "world" mentality. Ms. Franco also was troubled that NXIVM members were forbidden to discuss what went on in the class with spouses, family members and friends even though NXIVM touted itself as providing a program for the benefit of humankind.

61. Ms. Franco told Ms. Salzman that she would not travel to Mexico with her, but was returning to New Jersey. Ms. Franco also stated that she did

not think that she would have further involvement with the group.

62. After Ms. Franco returned to New Jersey in August 2001, Ms. Salzman called Ms. Franco and insisted that she return. When Ms. Franco declined, Ms. Salzman berated her and verbally attacked her. Later, a NXIVM representative left a message for Ms. Franco stating that she had won a free training session. Ms. Franco refused to resume her involvement with NXIVM.

### **Ms. Franco Later Tries to Help Michael Sutton**

63. In November 2002, more than fifteen months after she left NXIVM, Ms. Franco received a telephone call from Morris Sutton inviting her to Mr. Sutton's house to help get Michael Sutton out of NXIVM. Mr. Sutton had told Ms. Franco that he was very concerned about Michael's continuing involvement in the group. He had told her that he had hired someone to help convince Michael to leave the group.

64. In or about November/December 2002, Michael Sutton, his brother Jeffrey Sutton, Morris and Rochelle Sutton, Stephanie Franco and Rick Ross were present at Morris Sutton's home. Ms. Franco had never met or spoken to Mr. Ross prior to that time. She did not know that Mr. Ross maintained a website.

65. Following the meeting, Michael Sutton's brother Jeffrey Sutton requested that Ms. Franco send him the material that she had received from NXIVM in order to help get Michael Sutton out of NXIVM.

66. Based solely upon her concern for Michael Sutton and her family, Ms. Franco sent her NXIVM materials to Jeffrey Sutton.

67. Ms. Franco did not know, among other things, that Mr. Ross had

retained Drs. Paul Martin and John Hochman to write articles about NXIVM or that Mr. Ross maintained a website.

68. Upon information and belief, at some point, thereafter, NXIVM, Mr. Raniere and Ms. Salzman, among others, directed and/or encouraged Michael Sutton to tape record several telephone conversations that he had with his half-sister Stephanie Franco.

**FIRST COUNT**  
**(Violation of the New Jersey Consumer Fraud Act)**

69. Ms. Franco repeats the allegations that are contained in paragraphs 1 through 68 of the Counterclaim and incorporates same as if set forth at length herein.

70. NXIVM's courses constitute goods and services within the ambit of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et. seq. ("NJCFA")

71. NXIVM and Ms. Salzman engaged in unconscionable commercial practices that are prohibited by the NJCFA in order to induce Ms. Franco to take their courses.

72. NXIVM and Ms. Salzman, among others, made false statements regarding NXIVM and Mr. Raniere. Among other things, NXIVM and Ms. Salzman's oral and written representations that the "Rational Inquiry" method that Mr. Raniere purportedly developed was a "technology" and a "science" were false. In fact, there is nothing scientific or technological about NXIVM's program. NXIVM's program lacked any of the objectively verifiable elements that define science and technology.

73. NXIVM, and Ms. Salzman also falsely stated the beneficial results that NXIVM's Rational Inquiry method achieved. For instance, Ms. Salzman's statements during her dinner meeting with, among others, Ms. Franco and her family in November/December 2000 and during a lecture at Aaron Kassin's home in December 2000 that the program had cured eyesight problems was false.

74. Further, upon information and belief, NXIVM's representation that Mr. Raniere had trained 400,000 people and had been listed in *The Guinness Book of World Records* as having the highest I.Q. in the world were false.

75. NXIVM and Ms. Salzman further engaged in unconscionable commercial practices in violation of the NJCFA by knowingly concealing material information from Ms. Franco. For example, Mr. Raniere concealed the fact that he had previously operated a business, Consumer Buylines, Inc., that at least 25 state attorneys general had investigated as being a pyramid scheme and that the states' attorney generals of New York and Arkansas had fined.

76. NXIVM and Ms. Salzman knowingly concealed from Ms. Franco prior to her attendance at the June 2001 Intensive that members were required to recruit other members to advance in the organization and that NXIVM members received financial compensation for recruiting other members.

77. NXIVM and Ms. Salzman knowingly concealed from Ms. Franco prior to her attendance at the June 2001 Intensive in Albany, New York the bizarre rituals that the group engaged in; for example, bowing down to Mr. Raniere and Ms. Salzman, the use of sashes and stripes to differentiate NXIVM members, the

insistence that members of NXIVM were a person's "real family" and that the rest of humankind consisted of "parasites" and "suppressives".

78. NXIVM and Ms. Salzman further knowingly concealed from Ms. Franco that NXIVM used mind control techniques on its members.

79. Ms. Franco has suffered an ascertainable loss in the approximate amount of \$10,000 representing the money that she paid to NXIVM for its training sessions as a result of the unconscionable commercial practices of NXIVM and Ms. Salzman.

WHEREFORE, Stephanie Franco demands judgment against NXIVM Corporation, First Principles, Inc. and Nancy Salzman, jointly and severally, for treble damages, pre-judgment interest, attorney's fees, costs of suit and such other relief as the Court deems just and proper.

#### **SECOND COUNT**

##### **(Fraud Against NXIVM, First Principles, Inc. and Ms. Salzman)**

80. Ms. Franco repeats the allegations that are contained in paragraphs 1 through 79 and incorporates same as if set forth at length herein.

81. The statements of NXIVM and Ms. Salzman that the Rational Inquiry method constituted a "technology" and "science" were knowingly false when made.

82. The statements of NXIVM and Ms. Salzman that NXIVM's program had cured people of poor eyesight and weight problems were knowingly false when made.

83. The statements of NXIVM and Ms. Salzman that Mr. Ranieri had

trained approximately 400,000 individuals were knowingly false when made.

84. NXIVM and Ms. Salzman made these statements to induce Ms. Franco to pay \$2,160 to attend a five-day Intensive in Albany, New York and to continue to attend NXIVM classes at great cost to her.

85. Ms. Franco reasonably relied upon the false representations made by NXIVM and Ms. Salzman by paying \$2,160 to attend a five day Intensive in Albany, New York and paying approximately \$7,000 more to attend additional Intensives.

86. Ms. Franco has been injured as a proximate result of the fraudulent statements of NXIVM and Ms. Salzman.

WHEREFORE, Stephanie Franco demands judgment against NXIVM Corporation and Nancy Salzman for compensatory damages, punitive damages, prejudgment interest, costs of suit, including reasonable attorney's fees, and such other relief as the Court deems just and proper.

### **THIRD COUNT**

#### **(Fraudulent Concealment Against NXIVM, First Principles, Inc. and Ms. Salzman )**

87. Ms. Franco repeats the allegations that are contained in paragraphs 1 through 86 of the Counterclaim and incorporates same as if set forth at length herein.

88. NXIVM and Ms. Salzman fraudulently concealed material information from Ms. Franco to induce her to join NXIVM.

89. NXIVM and Ms. Salzman concealed from Ms. Franco that the organization practiced mind control and rather than a training school was, in

actuality, a cult.

90. NXIVM and Ms. Salzman concealed from Ms. Franco that NXIVM's operations required members to recruit other members to advance in the group and provided financial compensation for each member that they recruited to the group.

91. NXIVM and Ms. Salzman fraudulently concealed from Ms. Franco that Mr. Raniere had been investigated for running a pyramid scheme prior to his involvement with NXIVM.

92. NXIVM and Ms. Salzman concealed from Ms. Franco that Michael Sutton had a financial interest in getting her to join NXIVM.

93. Ms. Franco would not have joined NXIVM had NXIVM and/or Ms. Salzman disclosed this information to her.

94. Ms. Franco has been injured as a result of the fraudulent concealment of NXIVM and Ms. Salzman.

WHEREFORE, Stephanie Franco demands judgment against NXIVM Corporation, First Principles, Inc. and Nancy Salzman, jointly and severally, for compensatory damages, punitive damages, prejudgment interest, costs of suit, including reasonable attorney's fees and such other relief as the Court deems just and proper.

#### **FOURTH COUNT**

#### **(New York General Business Law § 349 Against NXIVM and Ms. Salzman)**

95. Ms. Franco repeats the allegations that are contained in paragraphs 1 through 94 and incorporates same as if set forth at length herein.

96. NXIVM and Ms. Salzman's representation to Ms. Franco and the other enrolled students during the Intensives that were held in Albany in June and August 2001 constituted consumer-related activity within the scope of N.Y. General Business Law § 349 (McKinney's 2005).

97. NXIVM's operation whereby students' advancement within the group was conditioned upon their recruiting more members and whereby members received financial benefits based upon the recruitment of additional members constituted a deceptive practice under N.Y. General Business Law § 349 (McKinney's 2005).

98. The false representations that NXIVM and Ms. Salzman made to Ms. Franco during the June 2001 and August 2001 Intensives that NXIVM employed a "science" and a "technology" and their outlandish claims concerning Mr. Ranieri constituted deceptive practices under N.Y. General Business Law § 349 (McKinney's 2005)

99. Ms. Franco has suffered an actual loss as a result of the deceptive practices of NXIVM and Ms. Salzman.

100. The deceptive practices of NXIVM and Ms. Salzman were committed intentionally, thereby entitling Ms. Franco to treble damages pursuant to N.Y. General Business Law § 349 (McKinney's 2005).

#### **JURY DEMAND**

101. Ms. Franco hereby demands a trial by jury on all counterclaim counts.



WHEREFORE, Stephanie Franco demands judgment against NXIVM Corporation, First Principles, Inc. and Nancy Salzman, jointly and severally, for compensatory damages, treble damages, prejudgment interest, costs of suit, including reasonable attorney's fees, and such other relief as the Court deems just and proper.

DATED: September 15, 2005

HINMAN, HOWARD & KATTELL, LLP

**/s/ Linda Blom Johnson**

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