

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,  
STATE OF ILLINOIS,  
COMMONWEALTH OF KENTUCKY, and  
STATE OF NORTH CAROLINA,

Plaintiffs,

v.

FORTUNE HI-TECH MARKETING, INC.,  
a Kentucky corporation,  
FHTM, INC., a Kentucky corporation,  
ALAN CLARK HOLDINGS, LLC, a  
Kentucky corporation,  
FHTM CANADA, INC., a Canadian corporation,  
FORTUNE NETWORK MARKETING (UK)  
LIMITED, an United Kingdom Private  
Limited Company,  
PAUL C. ORBERSON, and  
THOMAS A. MILLS,  
Defendants.

13cv578

Judge John W. Darrah  
Magistrate Arlander Keys

**RECEIVED**

JAN 24 2013

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

**COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Plaintiffs, the Federal Trade Commission ("FTC"), the State of Illinois, the  
Commonwealth of Kentucky, and the State of North Carolina, for their Complaint, allege:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade

Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2. The State of Illinois brings this action under Section 7(a) of the Illinois Consumer Fraud Act, 815 ILCS 505/7(a), to obtain a preliminary or permanent injunction, restitution, and civil penalties against Defendants for engaging in deceptive acts or practices in violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq.*

3. The Commonwealth of Kentucky, by and through Jack Conway, Attorney General of Kentucky, brings this action pursuant to the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, and under the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, to obtain a permanent injunction, preliminary relief, consumer restitution, damages, civil penalties, and reimbursement of its costs, expenses and attorney's fees against Defendants for their violations of the Kentucky Consumer Protection Act and provisions of the Kentucky Pyramid Sales Act.

4. The State of North Carolina, by and through its Attorney General, Roy Cooper, brings this action for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, to obtain temporary and permanent injunctive relief, restitution for consumers, civil penalties, and attorneys' fees pursuant to N.C. Gen. Stat. §§ 14-291.2, 75-1.1, 75-14, 75-15.1, 75-15.2, and 75-16.1.

## **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over the FTC's claims pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

6. This Court has supplemental jurisdiction over the claims of Plaintiffs State of Illinois, Commonwealth of Kentucky, and State of North Carolina, pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this district under and 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

## **PLAINTIFFS**

8. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

9. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

10. Plaintiff State of Illinois is one of the fifty sovereign states of the United States. Lisa Madigan is the duly elected and qualified Attorney General acting for Plaintiff State of Illinois, and brings this action for and on behalf of the People of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

11. Plaintiff Commonwealth of Kentucky is one of the fifty sovereign states of the United States. Jack Conway is the duly elected and qualified Attorney General acting for

Plaintiff Commonwealth of Kentucky, and brings this action under the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.* and the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*

12. Plaintiff State of North Carolina is one of the fifty sovereign states of the United States. Roy Cooper is the duly elected and qualified Attorney General acting for Plaintiff State of North Carolina and brings this action pursuant to authority granted under Chapters 75 and 114 of the North Carolina General Statutes for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*

#### **DEFENDANTS**

13. Defendant Fortune Hi-Tech Marketing, Inc., is a Kentucky corporation with its principal place of business at 880 Corporate Dr., Suite 300, Lexington, Kentucky 40503. Fortune Hi-Tech Marketing, Inc., transacts or has transacted business in this district and throughout the United States.

14. Defendant FHTM, Inc., is a Kentucky corporation with its principal place of business at 880 Corporate Dr., Suite 300, Lexington, Kentucky 40503. FHTM, Inc., transacts or has transacted business in this district and throughout the United States.

15. Defendant Alan Clark Holdings, LLC, is a Kentucky limited liability company with its principal place of business at 20 Gose Pike, Danville, Kentucky 40422. Alan Clark Holdings, LLC, transacts or has transacted business in this district and throughout the United States.

16. Defendant FHTM Canada, Inc., is a Canadian corporation that has its registered office in Ottawa, Ontario, but its principal place of business at 880 Corporate Dr., Suites 200 and

300, Lexington, Kentucky 40503. FHTM Canada, Inc., transacts or has transacted business in this district and throughout the United States.

17. Defendant Fortune Network Marketing (UK) Limited, is a United Kingdom Private Limited Company that has its registered office in Berkshire, United Kingdom, but its principal place of business at 880 Corporate Dr., Suites 200 and 300, Lexington, Kentucky 40503. Fortune Network Marketing (UK) Limited transacts or has transacted business in this district and throughout the United States.

18. Defendant Paul Orberson is the President and Director of Fortune Hi-Tech Marketing, Inc. and FHTM, Inc., a Member of Alan Clark Holdings, Inc., and a Director of FHTM Canada, Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Orberson, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

19. Defendant Thomas A. Mills is the Chief Executive Officer of Fortune Hi-Tech Marketing, Inc., the Vice President and Director of FHTM, Inc, a Member of Alan Clark Holdings, Inc., a Director of FHTM Canada, Inc., and Director and Chief Executive Officer of Fortune Network Marketing (UK) Limited. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Mills, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

20. Defendants Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings,

Inc., FHTM Canada, Inc., Fortune Network Marketing (UK) Limited (collectively, “FHTM Defendants” or “FHTM”) have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. FHTM Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, that commingle funds and operate a common scheme. Because FHTM Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Orberson and Mills have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of FHTM Defendants that constitute the common enterprise.

### **COMMERCE**

21. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS’ BUSINESS ACTIVITIES**

22. Since approximately 2001, FHTM has purported to operate a multilevel marketing company, selling various products and services using a network of “Independent Representatives” (“Reps”). In order to become a Rep, consumers must pay FHTM an initial fee, previously as high as \$299, but now \$250. In return, FHTM claims to pay its Reps lucrative bonuses and commissions once they satisfy certain sales and recruiting requirements.

23. In reality, since at least 2001, FHTM has been operating an illegal pyramid scheme. FHTM’s complicated and convoluted compensation plan ensures that the vast majority of FHTM’s Reps make little or no money. To the extent that Reps can make any income, this

income results primarily from recruiting new consumers to become FHTM Reps and not from the sale of products or services.

24. FHTM promotes its business through a variety of channels, including websites, live presentations, videos, and print materials. In addition to holding annual conventions during which Reps speak about the company, FHTM provides its Reps with access to videos and print materials that instruct Reps on how to explain FHTM's business and encourage others to join. FHTM's website also serves as a platform for its Reps, providing links to Reps' individual FHTM websites, training telephone calls, and other social media outlets.

25. Through these various channels, FHTM instructs, encourages, and authorizes its high level Reps to misrepresent both the nature of FHTM's business and the income available to new FHTM recruits.

26. Defendants Orberson and Mills each have, among other things, delivered live presentations for FHTM, including during FHTM's annual conferences.

### **Building the Pyramid**

27. There are several levels of FHTM Reps. New entrants now pay \$250 to join as Managers, and must pay \$250 annually to remain with FHTM. Previously, the initial fee was as high as \$299. Unlike a legitimate multi-level marketing business, FHTM's business model emphasizes recruiting new Reps over the sale of products and services.

28. Managers are strongly encouraged to immediately purchase either "starter packs" or "bundles," which contain various FHTM health and beauty products, as well as other products and services offered by FHTM.

29. FHTM assigns a "point" value to most of the products and services it offers. In most cases, FHTM Reps must buy or sell products and services comprising a minimum required

number of points to be eligible to obtain commissions and bonuses. Depending on the Reps' level in the pyramid and the type of commission or bonus, a Rep must earn five, ten, or fifteen points to be eligible for most commissions or bonuses. "Bundles" typically count as five or ten points.

30. The purchase of a "starter pack" or "bundle" will qualify a new Manager to receive commissions. These bundles typically have cost between \$130 and \$400 and require the Rep to agree to a "negative option continuity plan," whereby the Rep is billed monthly for products and services unless the Rep affirmatively cancels the plan. According to FHTM, "most" FHTM Reps have purchased a 10-point bundle to "maximize the pay plan."

31. After making this qualifying purchase, FHTM Reps are eligible to obtain commissions for the sale of products and services and to obtain bonuses from the recruitment of new FHTM Reps.

32. As Managers recruit additional Reps and maintain a minimum of purchases or sales of FHTM products and services, they can earn promotions to higher levels within FHTM.

33. For example, if Managers purchase or sell at least ten products or services through FHTM each month, and recruit at least twelve new Managers, they are promoted to the position of Regional Sales Manager ("RSM"), allowing them to earn greater commissions and recruitment bonuses.

34. By recruiting additional new Managers into FHTM, RSMs may be promoted to "Executive Sales Manager" ("ESM"), "National Sales Manager" ("NSM"), "Platinum Sales Manager" ("PSM"), and ultimately to "Presidential Ambassador."

35. Nearly all FHTM Reps are either Managers or RSMs, and never reach the level of ESM or above.



36. FHTM induces new recruits to join FHTM by representing that such recruits will be able to resell FHTM products and services to people not affiliated with FHTM for a profit and simultaneously earn large commissions. FHTM claims that its representatives will be able to easily sell its products and services to consumers not affiliated with FHTM. In fact, few of FHTM's products and services are ever sold to anyone other than the Reps themselves. Furthermore, Reps receive minimal financial rewards from FHTM for selling the products and services to outside consumers.

37. FHTM instructs its Reps to purchase sufficient products and services through FHTM to be eligible for bonuses, and to spend their time recruiting others to become Reps. Including the required fees, FHTM Reps may spend more than \$1500 annually to remain eligible for such recruiting bonuses.

### **Compensation Plan**

38. The FHTM compensation program has two parts: (1) recruitment bonuses, and (2) commissions earned from product sales.

39. Each Rep has a position in the pyramid immediately below another FHTM Rep. As a result, each Rep in this structure has the potential to develop "downline" recruits. The "level" of the downline is defined by how many steps a recruit is removed from the original Rep. For example, if Rep A recruits Rep B, and Rep B recruits Rep C, Rep C would be defined as being on the second level of Rep A's downline.

40. FHTM's recruitment bonus rewards a Rep for his or her recruitment efforts, as well as the recruitment efforts of his or her downline recruits.

41. FHTM provides much larger rewards for recruiting new Reps than for sales of products or services, thereby encouraging Reps to recruit new members rather than to sell

products or services to ultimate users.

42. Particularly after a Rep has been promoted to ESM and above, FHTM's recruitment bonuses dwarf the potential commissions available for product and service sales.

43. More than 85% of the compensation paid to FHTM Reps is tied directly to recruiting new members.

44. FHTM pays many types of recruitment bonuses. These bonuses are earned from enlisting new recruits. FHTM calls the most common of these bonuses the "Customer Acquisition Bonus."

45. Customer Acquisition Bonuses are not available until a Rep becomes at least an RSM. Thus, an FHTM Rep must personally recruit at least three new Managers into FHTM, and together with those three new Managers, be responsible for the recruitment of at least nine additional new Managers into FHTM, for a total of twelve new Managers, in order to become eligible for a Customer Acquisition Bonus.

46. Once they become eligible, FHTM RSMs earn a Customer Acquisition Bonus of at least \$100 for each new individual they personally recruit to join FHTM, as well as for each individual recruited by Reps in their downline.

47. FHTM calls commissions earned by FHTM Reps on product sales "Customer Generated Usage" ("CGU"). In comparison to recruitment bonuses, CGUs available to FHTM Reps are much smaller.

48. For example, the monthly CGU available to an FHTM Rep for the sale of a Dish Network package is \$0.80. The monthly CGU available to an FHTM Rep for the sale of a cellular telephone contract is typically \$0.50. For other products and services, the CGU for sales by FHTM Reps is 2% or less.

49. FHTM Reps also earn monthly CGUs based on the sale of products and services by their downline recruits. For some products and services, FHTM Reps earn 1% CGU on the sales of products and services by their downline recruits, although the monthly CGU for Dish Network and cellular telephone service sales by downline recruits earns FHTM Reps only \$0.08 and \$0.05, respectively.

50. In contrast to the claims of profitability, the compensation plan used by FHTM is designed so that, at any particular time, the majority of Reps will spend more money to participate in FHTM than they earn through their involvement with the company, and the majority of Reps will not make the substantial incomes represented.

### **Income Misrepresentations**

51. FHTM promotes its business by misrepresenting in various ways that FHTM is a good way for average people to make substantial income and achieve financial independence.

52. One way that FHTM encourages recruits to join FHTM is by claiming that Reps can earn significant income from commissions obtained by selling various products and services for FHTM's various "partner" companies.

53. FHTM Reps often tell recruits that they earned significantly more money in their first few months or first year as an FHTM Rep than they had made in their previous jobs.

54. Some FHTM Reps assert that they have made double or triple the money in their first year at FHTM than they had made in their previous jobs, including one Rep who claimed in a recorded video presentation, posted on her Vimeo (video-hosting) website dedicated to her FHTM business, that "four months in [with FHTM]... I had actually quadrupled what I have ever made as a Registered Nurse." Some have claimed that they earned more than ten times as much as their previous earnings in their second and subsequent years as FHTM Reps.

55. FHTM Reps also make claims about specific amounts of earnings. One of FHTM's Platinum Sales Managers claims in a September 2012 video posted to her Vimeo site that FHTM Reps who reach the National or Executive Sales Manager levels "are making thirty-, forty-, fifty-, sixty-, seventy-thousand a month." An FHTM Presidential Ambassador claimed in a recorded conference call, which was posted to his FHTM team's website, that another current FHTM Presidential Ambassador, "in his sixth month [with FHTM] earned over \$50,000 in one month," and has "earned millions and millions beyond that" in the years since. An FHTM Executive Sales Manager reports in another recorded conference call, posted to his FHTM team's website, that yet another Platinum Sales Manager has reached earnings of "over \$100,000 a month ... that man has achieved in three years" with FHTM.

56. One Platinum Sales Manager maintains an active Twitter account through which she frequently promotes FHTM. She recently posted about an FHTM recruiting meeting, encouraging people to "Bring ur friends & learn how 2 make \$100k aYR."

57. At its 2012 national convention in Dallas, Texas, FHTM called its top 30 earners to the stage to present them with a mock up of a \$64 million check, which was intended to represent the amount these individuals have earned from FHTM. Several FHTM Reps shared a photo of the check presentation ceremony on social networking websites.

58. Similarly, FHTM Reps frequently describe or exhibit in video presentations the lavish lifestyles they are able to lead as a result of their FHTM income, including paying for extended family vacations to exotic locations, driving luxury automobiles, and purchasing mansions with extravagant amenities.

59. FHTM represents that potential recruits will achieve these results while becoming "business owners" or "entrepreneurs."

60. To support its earnings claims, FHTM represents to recruits that it has “special relationships” with various “partner” companies such as Dish Network, Frontpoint Home Security, Xoom Energy, Taxbot, DuPont, and various cellular telephone providers.

61. In reality, FHTM is not a partner with any of these companies. Rather, FHTM is a third-party independent contractor or “affiliate” authorized to sell products or services on behalf of these companies. Moreover, FHTM is not able to offer its customers prices for these products or services that are any lower than the prices otherwise available in the marketplace.

62. In addition to selling on behalf of other companies, FHTM has its own line of health and beauty products. These FHTM products comprise the vast majority of sales generated by FHTM Reps and are purchased almost exclusively by FHTM Reps themselves.

### **VIOLATIONS OF THE FTC ACT**

63. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

64. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### **COUNT I**

#### **Illegal Pyramid**

65. As alleged above, Defendants promote participation in FHTM, which has a compensation program based primarily on providing payments to participants for the recruitment of new participants, not on the retail sale of products or services, thereby resulting in a substantial percentage of participants losing money.

66. Defendants’ promotion of this type of scheme, often referred to as a pyramid scheme, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15

U.S.C. § 45(a).

## **COUNT II**

### **False Earnings Claims**

67. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of the right to participate in the FHTM program, Defendants represent, directly or indirectly, expressly or by implication, that consumers who become FHTM Reps are likely to earn substantial income.

68. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 67 of this Complaint, consumers who become FHTM Reps have not earned substantial income.

69. Therefore, Defendants' representation as set forth in Paragraph 67 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## **COUNT III**

### **Means and Instrumentalities**

70. By furnishing FHTM Reps with promotional materials to be used in recruiting new participants that contain false and misleading representations, Defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

71. Therefore, Defendants' practices, as described in paragraph 70 of this Complaint, constitute deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF ILLINOIS LAW**  
**(By Plaintiff State of Illinois)**

**COUNT IV**

**Illinois Consumer Fraud and Deceptive Business Practices Act Violation**

72. Plaintiff State of Illinois re-alleges and incorporates by reference, each and every allegation in the foregoing paragraphs of this Complaint.

73. The Illinois Attorney General believes this action to be in the public interest and brings this lawsuit pursuant to Section 7 of the Illinois Consumer Fraud and Deceptive Business Practices Act.

74. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, prohibits unfair or deceptive acts or practices.

75. Misrepresentations or the deceptive omissions of a material fact constitute unlawful acts or practices within the meaning of Section 2 of the Illinois Consumer Fraud Act.

76. Section 2A of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2A, makes it an unlawful practice for any person to sell, offer to sell, or attempt to sell the right to participate in a pyramid sales scheme as defined by Section 505/1(g) of the Illinois Consumer Fraud Act.

77. At all times relevant hereto, but at least since 2001, Defendants have engaged in the trade or commerce of marketing pyramid sales programs to consumers in the State of Illinois and elsewhere.

78. In the course of their trade or commerce, and in furtherance of Defendants' own business gains, Defendants have engaged in the following unlawful acts or practices in violation of Sections 2 and 2A(2) of the Consumer Fraud Act:

a) promoting a pyramid scheme which constitutes an unlawful practice in violation of Section 2A(2) of the Illinois Consumer Fraud Act;

b) failing to disclose all fees and costs associated with participating in the programs being offered;

c) representing, directly or indirectly that consumers will earn substantial income after joining the program, when such is not the case; and

d) furnishing consumers with promotional material to be used in recruiting new participants that contain false and misleading representations.

**VIOLATIONS OF KENTUCKY LAW**  
**(By Plaintiff Commonwealth of Kentucky)**

**THE KENTUCKY CONSUMER PROTECTION ACT**

79. The Kentucky Consumer Protection Act, KRS 367.010 *et seq.*, prohibits “unfair, false, misleading, or deceptive practices in the conduct of trade or commerce.” KRS 367.170.

80. The Commonwealth alleges that Defendants made solicitations to Kentucky residents and to residents of other states from their domicile in the Commonwealth of Kentucky, which solicitations are subject to the restrictions of both KRS 367.170 and the Kentucky Pyramid Sales Act, KRS 367.832 *et seq.*

81. Defendants’ acts and practices, as set forth herein, were conducted in trade or commerce within and from the Commonwealth of Kentucky and Defendants’ practices constitute unfair, false, misleading and deceptive acts or practices in violation of KRS 367.170 of Kentucky’s Consumer Protection Act.

82. KRS 367.834(1) provides that “All of the remedies and powers granted to the



Attorney General by KRS 367.990 for enforcement of KRS 367.170 shall be granted to the Attorney General with equal force and effect for enforcement of KRS 367.832.”

83. KRS 367.990(2) provides: “In any action brought under KRS 367.190, if the Court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the Court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant’s conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation....”

### **COUNT V**

#### **Kentucky Consumer Protection Act Violation**

84. The Commonwealth of Kentucky alleges that Defendants’ acts and practices as alleged in the foregoing paragraphs and herein were “unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce” in violation of the Kentucky Consumer Protection Act.

85. Defendants have violated the Kentucky Consumer Protection Act, KRS 367.170 by, *inter alia*, engaging in unfair, false, misleading and deceptive acts or practices described herein in connection with trade or commerce. These acts or practices include, but are not limited to:

a) Defendants’ promotion of and inducement into the FHTM compensation plan which bases compensation payments to participants primarily on their recruitment of new participants, not the retail sale of products or services, thereby inducing each new participant to participate in an illegal scheme to defraud each new participant, many of whom have lost money;

b) Defendants' advertising, marketing, promoting and selling of the right to participate in the FHTM program representing that participants will likely earn substantial income when in truth the new participants are not likely to earn substantial incomes but lose money invested; and

c) Defendants' providing participants with promotional materials to recruit new participants that contain false, misleading and deceptive information and representations.

86. The Commonwealth of Kentucky alleges that each of the acts and omissions of Defendants alleged herein were committed willfully.

## **COUNT VI**

### **Kentucky Pyramid Sales Act Violation**

87. The Kentucky Pyramid Sales Act, KRS 367.832 *et seq.*, declares it unlawful for any person to establish, promote, operate, or participate in any pyramid distribution plan.

88. Pyramid distribution plans are characterized by the payment of money to the promoters of the plan in return for which participants receive the right to recruit new participants and the right to receive commission payments from the promoters based upon the number of new participants they recruit into the program and/or commission payments based upon the recruitment efforts of those individuals the promoters recruited into the program (i.e. commonly referred to as a "downline"). Commission payments in a pyramid sales plan are derived primarily from recruiting new participants into the program, not from the sale of products or services.

89. Pyramid distribution sales plans are inherently deceptive and injure consumers because they must eventually collapse. Pyramid sales distribution plans may make money for those who originate the program and those at the top of the pyramid, but the vast majority of

participants at the bottom (those who buy into the program at later stages) can find few if any new recruits, particularly where market saturation has occurred. For these reasons, pyramid distribution plans are unlawful in the Commonwealth of Kentucky.

90. Upon information and belief, Defendants' FHTM compensation plan rewards participants for the act of recruiting new participants by way of recruitment bonuses substantially more than is paid to participants for the sale of products or services offered by FHTM.

91. Notwithstanding Defendants' assertion that they purport to operate a multi-level marketing company, which would focus on and weight commissions paid to participants based upon the sales of goods or services, the focus of the FHTM compensation plan is to pay for the act of recruitment, with only minimal payments for the act of selling product or services. This results in a substantial number of participants losing money.

92. Defendants' promotion of this type of compensation plan is a pyramid scheme and Defendants' acts and practices constitutes multiple violations of the Commonwealth of Kentucky's Pyramid Sales Act, KRS 367.832 *et seq.*

93. Defendants' violations of the Kentucky Pyramid Sales Act were willful.

**VIOLATIONS OF NORTH CAROLINA LAW**  
**(By Plaintiff State of North Carolina)**

**COUNT VII**

**The North Carolina Pyramid and Chain Schemes Statute**

94. Plaintiff State of North Carolina re-alleges the foregoing paragraphs of this Complaint and incorporates them herein.

95. The North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat § 14-291.2, declares unlawful all pyramid schemes whereby a participant gives valuable consideration

for the opportunity to receive compensation in return for inducing other persons to become participants in the program.

96. Defendants' acts and practices, as alleged in the foregoing paragraphs, constitute the operation of a pyramid scheme and therefore violate the North Carolina Pyramid and Chain Schemes Statute.

### **COUNT VIII**

#### **The North Carolina Unfair and Deceptive Practices Act**

97. Plaintiff State of North Carolina re-alleges the foregoing paragraphs of this Complaint and incorporates them herein.

98. North Carolina General Statute § 75-1.1(a) declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

99. Defendants' acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to citizens in North Carolina, in violation of N.C. Gen. Stat. § 75-1.1.

100. Pursuant to N.C. Gen. Stat. 14-291.2(c), Defendants' operation and continuation of a pyramid scheme may be enjoined as unfair and deceptive trade practice and subject to the assessment of civil penalties and attorneys' fees pursuant to N.C. Gen. Stat. §§ 75-15.2 and 75-16.1, respectively.

### **CONSUMER INJURY**

101. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the laws of the State of Illinois, the Commonwealth of Kentucky, and the State of North Carolina. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court,

Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

102. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

103. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of Illinois to enforce its state law claims against Defendants in this Court for violations of the Illinois Consumer Fraud Act, and to grant such relief as provided under state law, including injunctive relief, restitution, costs and attorneys fees, and such other relief to which the State of Illinois may be entitled. Section 7 of the Illinois Consumer Fraud Act authorizes this Court to grant civil penalties, injunctions, and other relief the Court deems appropriate.

104. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff Commonwealth of Kentucky to enforce its state law claims against Defendants in this Court for violations of the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.* and the Kentucky Pyramid Sales Act, K.R.S. 367.832, and to obtain a permanent injunction, preliminary relief, consumer restitution, damages, civil penalties, and reimbursement of its costs, expenses and attorney's fees and such other equitable relief to which the Commonwealth of Kentucky may be entitled against Defendants for their violations of the Kentucky Consumer Protection Act and the provisions of the Kentucky Pyramid Sales Act.

105. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of North Carolina to enforce its state law claims against Defendants in this Court for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, and to grant such relief as provided under state law, including injunctive relief, restitution, costs and attorneys fees, and such other relief to which the State of North Carolina may be entitled..

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Plaintiff State of Illinois, pursuant to 815 ILCS 505/7; Plaintiff Commonwealth of Kentucky, pursuant to the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*; and Plaintiff State of North Carolina, pursuant to North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*; and pursuant to the Court's supplemental jurisdiction, 28 U.S.C. § 1367, and the Court's own equitable powers, request that the Court:

1. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, allowing for immediate access, and the appointment of a receiver;

2. Enter a permanent injunction to prevent future violations by Defendants of the FTC Act; Illinois Consumer Fraud Act, 815 ILCS 505/1; Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, and Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*; and North

Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, Illinois Consumer Fraud Act, 815 ILCS 505/7, Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, the disgorgement of ill-gotten monies;

4. Require Defendants to pay a civil penalty in the amount of \$50,000 for each violation of the Illinois Consumer Fraud Act and an additional penalty if the Court finds that Defendants committed violations of the Illinois Consumer Fraud Act with the intent to defraud;

5. Require Defendants to pay a civil penalty as set forth by KRS 367.200 and pursuant to KRS 367.990(2), on behalf of the Commonwealth, of not more than two thousand dollars (\$2,000) per violation or where Defendants' conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation;

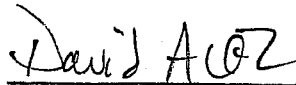
6. Require Defendants to pay a civil penalty in the amount of \$5,000 as set forth by N.C. Gen. Stat. § 75-15.2 for each violation found; and

7. Award Plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated 1/24/13

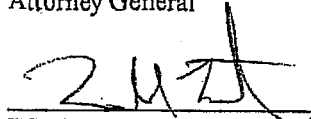
Respectfully submitted,

DAVID C. SHONKA  
Acting General Counsel



DAVID A. O'TOOLE  
ELIZABETH C. SCOTT.  
ROZINA C. BHIMANI  
Attorneys for Plaintiff  
Federal Trade Commission

JACK CONWAY  
Attorney General



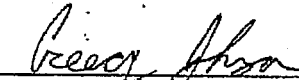
TODD LEATHERMAN  
HAROLD TURNER  
Attorneys for Plaintiff  
Commonwealth of Kentucky

LISA MADIGAN  
Attorney General



ADAM SOKOL  
COLLEEN BISHER  
Attorneys for Plaintiff  
State of Illinois

ROY A. COOPER  
Attorney General



CREECY C. JOHNSON  
Attorney for Plaintiff  
State of North Carolina