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

FILED

JAN 24 2013

1-24-13

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

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

Plaintiffs,

v.

FORTUNE HI-TECH MARKETING, INC.,)
a Kentucky corporation, *et al.*,)
Defendants.)

13cv578

Judge John W. Darrah

Magistrate Arlander Keys

**DECLARATIONS AND EXHIBITS IN SUPPORT OF PLAINTIFFS' *EX PARTE*
MOTION FOR A TEMPORARY RESTRAINING ORDER WITH
ASSET FREEZE, APPOINTMENT OF A RECEIVER, OTHER EQUITABLE
RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

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DECLARATION OF ROBERTO C. MENJIVAR
PURSUANT TO 28 U.S.C. § 1746

I, Roberto C. Menjivar, hereby declare as follows:

1. I am a United States citizen and over eighteen years of age. I am employed as an investigator with the Federal Trade Commission ("FTC" or "Commission"), a position that I have held for over nine years. My office address is 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603. I have personal knowledge of the facts stated herein, and if called as a witness, would testify to the same.
2. As an FTC investigator, my duties include monitoring and investigating parties who are suspected of engaging in deceptive or unfair acts or practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), and other laws or rules enforced by the FTC. I gather information and review documents, financial records, and other evidence in connection with FTC investigations and litigation in federal court. I also am a custodian of documents and records obtained by the FTC during the course of investigations to which I am assigned. When investigating such parties, I routinely pose as a consumer who is not affiliated with the FTC. I am authorized to record telephonic and in-person conversations with persons affiliated with entities suspected of violating the FTC Act. I have been assigned to participate in the FTC's investigation of Fortune Hi-Tech Marketing, Inc. ("FHTM"), and related entities and individuals.
3. Throughout this declaration and in its attachments, in many instances, information that would reveal undercover identities and accounts used and controlled by the FTC has been redacted. Additionally, information that would reveal personally identifiable information has been redacted from the copies.

DOCUMENTS PRODUCED BY FHTM TO KENTUCKY

4. During the course of the FTC's investigation of FHTM, the Office of the Kentucky Attorney General ("Kentucky AG"), a co-plaintiff in this litigation, shared with the FTC documents and correspondence that it received from counsel for FHTM. The documents were produced to the Kentucky AG in response to two Subpoena and Civil Investigative Demands, which the Kentucky AG sent to FHTM on August 24, 2010 ("2010 Kentucky CID") and August 8, 2011 ("2011 Kentucky CID"). Throughout the month of October 2010, counsel for FHTM responded to the 2010 Kentucky CID both by providing narrative responses in six separate letters and by producing documents from FHTM's files. The documents produced by FHTM are bates-labeled "FHTM KY 0000001" through "FHTM KY 0000898."

5. On or about March 22, 2011, the Kentucky AG sent a follow-up request to counsel for FHTM, and during the months of April and May 2011, through correspondence from counsel for FHTM and attachments to that correspondence, counsel for FHTM responded to the follow-up request.

6. On September 26, 2011, October 3, 2011, and October 7, 2011, counsel for FHTM responded to the 2011 Kentucky CID by providing narrative responses, providing various attachments, and producing documents from FHTM's files. The documents produced by FHTM are bates-labeled "FHTM KY 000899" through "FHTM KY 000978."

7. True and correct copies of some of the correspondence and FHTM documents sent by counsel for FHTM to the Kentucky AG are attached hereto:

- A. Several letters and attachments from FHTM's counsel to the Kentucky AG
(Menjivar Att. A);

- B. FHTM KY 0000219-240, "Master Sales Agent Agreement" between Disney Mobile and Alan Clark Holdings (**Menjivar Att. B**);
- C. FHTM KY 0000268-276, "Marketing Agreement" between Fitness Aerobic Broadband Services, Inc., and Alan Clark Holdings (**Menjivar Att. C**);
- D. FHTM KY 0000283-293, "Agreement" between InPhonic, Inc. and Alan Clark Holdings (**Menjivar Att. D**);
- E. FHTM 0000299-304, "Agreement" between Fortune Hi-Tech Marketing, Inc. and N2U World Music, LLC (**Menjivar Att. E**);
- F. FHTM KY 0000311-321, "Marketing Agreement" between Total Call International, Inc. and Alan Clark Holdings (**Menjivar Att. F**);
- G. FHTM KY 0000322-335, "VoiceConnect VOIP, Video Phone, and Calling Card Referral Agreement" between VoiceConnect Inc and Alan Clark Holdings (**Menjivar Att. G**);
- H. FHTM KY 0000634-636, "Fortune Hi-Tech Marketing, Inc. Summary of Gross Revenue from Sales For the Period 1 January 2006 to 30 June 2010" (**Menjivar Att. H**);
- I. FHTM KY 0000637-639, "Fortune Hi-Tech Marketing, Inc. Summary of Gross Sales Values and Number of Units Sold For the Year Ended 31 December 2009" (**Menjivar Att. I**);
- J. FHTM KY 0000640-700, "Fortune Hi-Tech Marketing, Inc. Detailed RS2 Commission Analysis by Year; Manual Commission Payments; and Commission Code Index" (**Menjivar Att. J**);

- K. FHTM KY 0000865-868, "Fortune Hi-Tech Marketing, Inc. Summary of Gross Revenue from Sales For the Period 1 January 2006 to 30 June 2010" (**Menjivar Att. K**);
- L. FHTM KY 0000869-871, "Fortune Hi-Tech Marketing, Inc. Summary of Gross Sales Values and Number of Units Sold For the Year Ended 31 December 2009" (**Menjivar Att. L**);
- M. FHTM KY 0000872-874, "Fortune Hi-Tech Marketing, Inc. Summary of Amounts Paid to Third Parties: Request 8 (a) For the Period 1 January 2006 to 30 September 2010; and Summary of Commission Amounts Paid by Third Parties: Request 8 (b) For the Period 1 January 2006 to 30 September 2010" (**Menjivar Att. M**);
- N. FHTM KY 000899, "Fortune Hi-Tech Marketing, Inc. Summary of Sales and Commission Received before Refunds For the Period 1 July 2010 to 30 June 2011" (**Menjivar Att. N**);
- O. FHTM KY 000921, "Fortune Hi-Tech Marketing, Inc. Summary of Commissions Paid to US Representatives by Product Type For the Period 1 July 2010 to 30 June 2011" (**Menjivar Att. O**);
- P. FHTM KY 000922, 0000575 and 0000633, "Fortune Hi-Tech Marketing, Inc. Summary of Active Independent Representatives" (**Menjivar Att. P**);
- Q. FHTM KY 000935 - 936, "Fortune Hi-Tech Marketing, Inc. Gross Income and Units Sold" (**Menjivar Att. Q**);
- R. FHTM KY 000937, "Fortune Hi-Tech Marketing, Inc. Bundle Sales Summary by Bundle" (**Menjivar Att. R**); and

- S. FHTM KY 000938, "Fortune Hi-Tech Marketing, Inc. Bundle Sales Summary by Product" (**Menjivar Att. S**).

DOCUMENTS PRODUCED BY FHTM TO OKLAHOMA

8. During the course of the FTC's investigation of FHTM, the Oklahoma Department of Securities shared with the FTC documents that it received from counsel for FHTM. The documents were produced to the Oklahoma Department of Securities in response to a subpoena duces tecum issued to FHTM by the Department of Securities on October 29, 2010.

9. True and correct copies of some of the documents produced by FHTM to the Oklahoma Department of Securities are attached hereto:

- A. FHTM OK 0000877 - 909, "FHTM Training Workbook," dated March 2010 (**Menjivar Att. T**);
- B. FHTM OK 00026011 - 26025, "Fortune Hi-Tech Marketing, Inc. Commissions Index - Oklahoma" (**Menjivar Att. U**);
- C. FHTM OK 0000247 - 249, "Customer Point Sheet" (**Menjivar Att. V**); and
- D. FHTM 0000214 - 218, "CGU At-a-Glance" (**Menjivar Att. W**).

FHTM INTERNAL DOCUMENTS

10. During the course of this investigation, FHTM has maintained two password-protected websites that it makes available to its Representatives. These websites are: FHTM Central (www.fhtmcentral.com); and FHTM University (www.fhtmuniversity.net). Currently, the FHTM University website redirects users to the FHTM Central website. Counsel for FHTM provided passwords to access these sites to the Kentucky AG, which then shared those passwords with FTC staff. Using those passwords, FTC staff accessed the sites periodically until the passwords expired in September 2012. FTC staff has downloaded several of FHTM's

internal documents and notices to Representatives that are available from the websites. FTC staff has also captured pages from those websites using Adobe PDF or the web browser's print option. Throughout the investigation, FTC staff has gathered the following documents and web pages, true and correct copies of which are attached hereto:

- A. New Representative Bundle Order Form Sample (**Menjivar Att. X**), dated September 2011 and captured on or about October 27, 2011;
- B. New Representative Bundles Updated (**Menjivar Att. Y**), dated September 12, 2011 and captured on or about October 27, 2011;
- C. New Representative Bundles Updated (**Menjivar Att. Z**), dated May 4, 2012 and captured on or about May 18, 2012;
- D. New Representative Bundle Order Form (**Menjivar Att. AA**), dated September 2011 and captured on or about October 27, 2011;
- E. New Representative Bundles Terms and Conditions (**Menjivar Att. BB**), dated May 26, 2010 and captured on or about October 27, 2011;
- F. New Representative Bundles FAQs (**Menjivar Att. CC**), captured on or about October 27, 2011;
- G. Compensation Plan Summary (**Menjivar Att. DD**), captured on or about October 27, 2011;
- H. Promotions and Incentives
 - i. November 2011 (**Menjivar Att. EE**), captured on or about November 30, 2011;
 - ii. December 2011 (**Menjivar Att. FF**), captured on or about December 6, 2011;

- iii. January 2012 (**Menjivar Att. GG**), captured on or about January 4, 2012;
 - iv. April 2012 (**Menjivar Att. HH**), captured on or about April 13, 2012;
 - v. May 2012 (**Menjivar Att. II**), captured on or about May 4, 2012;
- I. Customer verification screen (**Menjivar Att. JJ**), captured on or about October 27, 2011;
- J. Independent Representative Application & Agreement (**Menjivar Att. KK**), dated September 8, 2011 and captured on or about October 27, 2011;
- K. Approved Product & Service Descriptions (**Menjivar Att. LL**), captured on or about October 27, 2011;
- L. Customer Verification Instructions (**Menjivar Att. MM**), captured on or about October 27, 2011;
- M. Business Presentation Scripts
- i. Dated February 6, 2012 (**Menjivar Att. NN**), captured on or about March 21, 2012;
 - ii. Dated May 31, 2012 (**Menjivar Att. OO**), captured on or about June 8, 2012;
 - iii. Screen shots of slides of the FHTM Business Presentation (**Menjivar Att. PP**), dated June 28, 2012 and captured on or about July 4, 2012;
- N. Income Disclosure Statements
- i. Dated January 23, 2009 - January 20, 2010 (**Menjivar Att. QQ**), captured on or about December 14, 2010;
 - ii. Dated January 22, 2010 - January 20, 2011 (**Menjivar Att. RR**), captured on or about April 8, 2012;

- iii. Dated January 21, 2011 - January 20, 2012 (**Menjivar Att. SS**), captured on or about August 17, 2012;

O. Policies & Procedures

- i. According to the document metadata, this version of the Policy & Procedures was created on or about November 3, 2011. FTC staff captured this document on or about February 14, 2012. (**Menjivar Att. TT**);
- ii. According to the document metadata, this version of the Policy & Procedures was created on or about June 26, 2012. FTC staff captured this document on or about June 27, 2012. (**Menjivar Att. UU**);
- iii. According to the document metadata, this version of the Policy & Procedures was created on or about August 3, 2012. FTC staff captured this document on or about August 3, 2012. (**Menjivar Att. VV**).

P. Compensation Plans

- i. Dated October 26, 2010 (**Menjivar Att. WW**), captured on or about October 27, 2011;
- ii. Dated April 5, 2012 (**Menjivar Att. XX**), captured on or about April 13, 2012;
- iii. On or about September 13, 2012, using an FTC computer, I visited the website www.geniuspayplan.com, a website associated with FHTM Platinum Sales Manager Darla DiGrandi.¹ I then clicked on a link titled

¹ It appears that Darla DiGrandi and Scott Aguilar recently left FHTM. *See infra* ¶¶ 84 & 89.

“Business Presentation” and was redirected to a new website at www.lifewithapayplan.com. From this website, I downloaded the FHTM Compensation Plan dated September 1, 2012. (**Menjivar Att. YY**); and

Q. On or about September 13, 2012, using an FTC computer, I visited the website www.teamsolosupport.com, a website associated with FHTM National Sales Manager Scott Aguilar. From this website, I downloaded a document titled “Value Pack Order Form,” dated September 1, 2012. (**Menjivar Att. ZZ**).

UNDERCOVER RECORDINGS

11. During the course of the FTC’s investigation of FHTM, the FTC obtained evidence of several undercover telephone calls placed to FHTM and FHTM Representatives, in which investigators, including myself, posed as fictitious consumers interested in FHTM. I personally placed several undercover telephone calls during the course of the investigation. In June 2011, posing as a consumer with the initials “J.M.,” FTC Legal Assistant Diane Jablonsky placed several undercover telephone calls to FHTM and an FHTM Representative. Ms. Jablonsky’s telephone calls are described in her declaration. *See* Declaration of Diane Jablonsky, PX 3.

12. These undercover telephone calls were recorded and saved. Some of these recordings were copied to a blank recordable compact disc (“disc”). I finalized the discs to prevent further recordings. The discs were then sent to a private court reporting company, For The Record, Inc. (“FTR”). FTR transcribed the recordings and sent the transcripts to me. I reviewed the transcripts against the original recordings to verify the accuracy of the transcripts. If I found any errors in the transcripts, I noted the corrections directly on the transcripts, and resubmitted the transcripts to FTR for revision. FTR then sent me the revised transcripts, and I concluded that the transcripts were true and correct reports of the audio recordings.

13. The telephone calls were placed in an effort to establish a connection with local Representatives. FTC staff understood from its investigation that Representatives share information about FHTM, its compensation structure, and the general business opportunity with potential recruits through live presentations or events, such as in-person meetings, webinars and telephone conference calls. A webinar is an event, presentation or conference that is conducted over the Internet. It was important to make one-to-one contact with local FHTM Representatives in order to be invited to those events and to obtain evidence of what Representatives tell consumers about the business.

14. During the course of its investigation, through the use of digital audio recording equipment and Camtasia Studio, the FTC obtained evidence of these in-person meetings, webinars and conference calls hosted by FHTM Representatives. Camtasia Studio is a video screen recording and video editing software program.

15. Some of the recordings of these presentations or events were copied to blank recordable discs. I finalized the discs to prevent further recordings. The discs were then sent to FTR for transcription. FTR sent the transcripts to me. I compared them to the original recordings to verify the accuracy of the transcripts. If I found any errors in the transcripts, I noted the corrections directly on the transcripts, and resubmitted the transcripts to FTR for revision. FTR then sent me the revised transcripts, and I concluded that the transcripts were true and correct reports of the original recordings.

16. The FTC also obtained evidence of the FHTM 2011 National Convention (“Convention”), which was held at the Orlando World Center Marriott Resort (“Marriott”) in Orlando, Florida, from July 13, 2011 through July 16, 2011. I attended the FHTM Convention at the Marriott from July 14, 2011 through July 16, 2011. On July 14, 2011, I attended two

business presentations hosted by FHTM Representatives at the FHTM Convention. The first business presentation was in English and hosted by FHTM Representative Woodson Gardner. The second business presentation was in Spanish and hosted by FHTM Representative Alexis Adame. I did not attend the Leadership Dinner on the evening of July 13, 2011. I also did not attend the Academy of Excellence Training on July 14, 2011 from 9 a.m. to 4 p.m., nor did I attend the FHTM N2U World Music Party on the evening of July 16, 2011.

17. From July 14, 2011 to July 16, 2011, using digital audio recording equipment, I recorded several presentations at the FHTM Convention. These recordings were saved onto blank recordable discs. I finalized the discs to prevent further recordings.

18. Using a copy of the FHTM Convention recordings and Camtasia Studio, I “cropped” sections or selected portions of the Convention recordings and made nine new audio files. The new audio files included selected portions of the Convention recordings. These recordings were copied to blank recordable discs. I finalized the discs to prevent further recordings. The discs were then sent to FTR for transcription. FTR sent the transcripts to me. I compared them to the original recordings to verify the accuracy of the transcripts. If I found any errors in the transcripts, I noted the corrections directly on the transcripts, and resubmitted the transcripts to FTR for revision. FTR then sent me the revised transcripts, and I concluded that the transcripts were true and correct reports of the audio recordings.

19. Some of the original audio recordings are in Spanish. For these recordings, a company called The Language Doctors, Inc. (“TLD”) was used for transcription and translation of the recordings. I copied the Spanish recordings to blank recordable discs and sent them to TLD. An employee of TLD, who is a certified translator, transcribed the audio recordings and translated the recordings from Spanish to English. TLD sent the transcripts with the translation to me. I

am a native Spanish speaker and reviewed both the Spanish and English versions against the original audio recordings to verify the accuracy of the transcripts. If I found any errors in the transcripts, I noted the corrections directly on the transcripts, and resubmitted the transcripts to TLD for revision. TLD then sent me the revised transcripts, and I concluded that the transcripts were true and correct reports of the audio recordings.

Lyons, Illinois Recordings

20. In March 2011, FTC staff visited the FHTM website at www.fhtm.net and located several Chicago-area, in-person meetings that a consumer could attend to learn more about FHTM. The initial investigation indicated that these types of meetings typically involved a business presentation to introduce the consumer to the concept of the business and ultimately, an invitation to join FHTM. One of the Chicago-area meeting locations listed on the website was Cicero, Illinois. The listing indicated that the meeting would be presented in Spanish. Since I am a native Spanish speaker, I was able to attend and participate in a meeting presented in Spanish.

21. On or about March 21, 2011, I posed as a consumer with the initials "C.G." and called the telephone number listed as the contact number for this particular meeting. I spoke with an FHTM Representative named Nancy Villacorta. During this telephone call, Villacorta invited me to attend an FHTM presentation on March 23, 2011 in Lyons, Illinois.

22. On the evening of March 23, 2011, posing as a consumer with the initials C.G., I attended the FHTM presentation in Lyons, Illinois. The presentation, held in a banquet room, was attended by approximately 75 to 100 people. The presentation was conducted in Spanish and I believe that most of the people in attendance spoke primarily Spanish. The individuals who spoke to the audience identified themselves as FHTM Representatives Vicente Guerrero, Ramiro Armenta, Cecilia San Roman, Blanca Pinzano, Gloria (last name unknown), Lala

Guzman, and Nancy Villacorta. After the presentation ended, I introduced myself to Villacorta and had an additional conversation with her about FHTM. She provided me with an application to become an FHTM Independent Representative and a copy of a magazine called "Exito Latino," which is a Spanish-language publication about Latinos within the FHTM organization.

23. Using digital audio recording equipment, I recorded the presentations made during the March 23, 2011 meeting as well as my conversation with Villacorta. A true and correct copy of the transcript of the March 23, 2011 FHTM meeting in Lyons, Illinois, including my conversation with Villacorta, is attached hereto as **Menjivar Att. AAA**.

24. During his presentation at this meeting, FHTM Representative Ramiro Armenta told the audience about a couple named Teresa and Alexis, two other FHTM Representatives. Armenta said:

A. "When I met Alexis, I told him: They are not really paying. He said: yes, yes, they pay. I said: oh, that can't be. Are they really paying? Show me your check. Do you know what? He showed me a check for twenty four thousand dollars. He said: look, champion. This is my check for the month." (Menjivar Att. AAA, at pp. 14-15.)

B. "This is your goal. To become regional manager. Twelve people, okay? Twelve people. There they are Miguel, Ana, and Juan. Okay? Here come the residuals and here comes one hundred, one hundred, one hundred. Why are they paying one hundred, one hundred, one hundred? Because you did the advertisement. It wasn't Don Francisco. It was you. Now, what are we going to do? We have to help Miguel, so Miguel can make his list. Ana needs to make her list. Look. Here comes for you one hundred, one hundred, one hundred, one hundred, one

hundred. Unlimited levels. One hundred, one hundred, one hundred, one hundred, one hundred, one hundred, one hundred, one hundred. Unlimited. This doesn't stop. If someone else comes in, one hundred for you. If five come in, one hundred, one hundred, one hundred, one hundred, one hundred." (*Id.* at pp. 16-17.)

25. When I spoke one-on-one with Villacorta, she told me that:

- A. "We are not selling products. It's not about selling products." (*Id.* at p. 29.)
- B. She got a check for ten-thousand dollars in four months. (*Id.* at p. 38.)
- C. "This business, this part time replaced my salary and my husband's full time salary. My husband makes almost twenty-eight dollars an hour. The amount that we closed with the month of January, were three months of his salary." (*Id.* at p. 38.)

26. When I asked Villacorta what I would earn in FHTM, she told me:

- A. "When they put their three individuals, you earn another bonus of five hundred, so now you have earned one thousand. And apart from that, if we are going to collect the services, you will get a refund for your membership. 99 dollars. So now you have earned eleven hundred. And also you get the position of a regional manager. There, nobody will take that position away from you. You can't be demoted, there is not a minimum amount to sell, and there is not a minimum amount of volume. You never come down from that position. In my position as regional Manager, [C], is where they majority are, you can make an unlimited amount." (*Id.* at p. 32.)
- B. "Whoever wants to take the opportunity, whoever wants to work, let's go. Honestly. You can't be serious. Ramiro, the way you saw him today. Very

simple guy. Three-hundred registered in a month and he just made sixty-thousand dollars. Yeah. My friend, the Zacatecas. Who doesn't even know how to read and write in Spanish. Listen to me. He is about a hundred and fifty-thousand a month right now." (*Id.* at p. 42.)

Maryland and National Convention Recordings

27. On or about May 10, 2011, posing as a consumer with the initials "R.R.," I contacted the FHTM Representative support at 859-422-7008. This telephone number appears on the FHTM website at www.fhtm.net. An FHTM employee named Luke answered the telephone and I asked him if there were any FHTM Representatives in the Washington, D.C., Maryland or Virginia ("DMV") area that I might be able to speak with to get an overview of the FHTM business. Luke provided me with the names and email addresses of four FHTM Representatives in the DMV area. On that same day, posing as a consumer with the initials "R.R.," I sent emails to two of those Representatives inquiring about the FHTM business opportunity. One of the Representatives that I emailed was Steven Lincoln, an Executive Sales Manager.

28. On May 13, 2011, I received a voicemail message from Lincoln in response to my email. I returned his call and, ultimately, Lincoln invited me to participate in several FHTM conference calls and webinars. With the access provided by Lincoln, I participated in and recorded several conference calls and webinars hosted by various FHTM Representatives.

29. On June 15, 2011, I participated in an FHTM conference or "summit" call hosted by FHTM Presidential Ambassador Ruel Morton. I recorded the telephone call, the recording was sent to FTR for transcription, and a true and correct copy of the transcript of the call is attached hereto as **Menjivar Att. BBB**. Although the call was hosted by Morton, FHTM National Sales

Managers Scott and Molly Aguilar also participated. The following things were said to the participants in the call:

A. Molly told the participants, “[b]ut once I got there, I could see a little bit further. I could only see \$1,000 a month and then I could see a little bit further. And then all of a sudden, it was to, okay, well, you know, let's be able to quit our jobs. That was the vision. And then it stretched a little bit further once we were able to do that. And then it was let's go ahead and get our own place and move down into the big city and build a business and then we accomplished that. And then it was, you know, be able to basically get a nice car, get our dream car. And then it was to have a dream wedding. And then it was to make five figures a month.”

(Id. at p. 21.)

B. Regarding the compensation plan, Scott said, “[t]he comp plan is just ridiculous, you know. If somebody really starts to understand this thing and the realness of it is that you don't want to try and figure out the compensation plan before you get there. . . . And it's not to remain ignorant, that's not the idea, but if you try and dissect the compensation plan, you know, you're holding up. You know, you need to be out there, like Ruel, what you say, you know, build your business with momentum, build this whole thing. . . . You got to build it quick. You got to build it with momentum and urgency and it -- as your business begins to build, your customer base is building This is a customer acquisition company.” *(Id. at p. 38.)*

C. Scott also told the participants, “[y]our income’s going to go skyrocketing because you got it built. And that’s why you need to be focusing on right now is building a team of distribution points.” (*Id.* at p. 40.)

30. The 2011 FHTM Convention was held from July 13, 2011 through July 16, 2011 at the Marriott. I attended the Convention at Lincoln’s invitation and posed as a consumer with the initials “R.R.” Using digital audio recording equipment, I recorded the presentations that I attended during July 14, 2011 through July 16, 2011, as well as any informal conversations that I had with FHTM Representatives over the course of these three days. As mentioned above, I did not attend several convention events.

31. The 2011 FHTM Convention occupied several meetings room, banquet halls or ballrooms at the Marriott. The FHTM Convention’s main event and presentations were located in the Cypress Ballroom. According to the Marriott website, the Cypress Ballroom is the largest meeting room. The breakout sessions were held in several smaller meeting rooms located on the same floor as the Cypress Ballroom. I believe there were anywhere from 2,000 to 5,000 people in attendance at the Convention. I believe most of the people in attendance spoke primarily in English. There were hundreds of people in attendance that were Latinos, Hispanic or spoke primarily in Spanish. There was also a group of people that appeared to be Canadians or associated with Canada.

32. On July 14, 2011, I attended a Spanish language business presentation that was given by FHTM Presidential Ambassador Alexis Adame. Using digital audio recording equipment, I recorded the presentation. A true and correct copy of that transcript is attached hereto as **Menjivar Att. CCC**. Alexis Adame told the audience:

[W]hen sixteen (16) people or more join, that changes the checks completely. Now the bonus is for yourself, because you were helping your people. Because of your support, because you were leading them, because you trained them the right way...Look, when sixteen (16) people or more join, during the month, the checks go up to...to two hundred (200) dollars, family, for each person who joins your team, and that's at unlimited levels...Family, the point here is for you to grasp the vision. Grasp the vision. Therefore, as soon as you become Regional Managers, as we could see, the life style starts to change, whe... when the Regional Manager starts working and starts making it big.

(*Id.* at p. 19.)

33. On July 14, 2011, after the presentation by Alexis Adame, I was introduced to an FHTM Representative named Arturo Adame. Using digital audio recording equipment, I recorded the conversation with Arturo Adame. A true and correct copy of that transcript is attached hereto as **Menjivar Att. DDD**. During this conversation, Arturo Adame said:

Quickly, become Regional and write your check for the amount you want the company to pay you. As Regional each person for you is paid two hundred (200) dollars. Get four (4) people, Okay? and help them go for twelve (12) each one. Here you have twelve (12), twelve (12), twelve (12), twelve (12). You have... you have four (4) Regionals. Like you went for twelve (12), these four will go for twelve (12) in their Regional, and it's two hundred (200) dollars for you for each person. Two hundred (200) times twelve (12) ... two hundred (200) ... imagine, two hundred (200) times four (4), forty... (40) uh, excuse me, four (4) times twelve (12), forty eight (48) people, plus four (4), fifty two (52), times two hundred (200) dollars each one... ten thousand (10,000) dollars... in one (1) month.

(*Id.* at p. 3.)

34. On July 14, 2011, I attended a presentation that was given by FHTM National Sales Manager Woodson Gardner. Using digital audio recording equipment, I recorded the presentation. A true and correct copy of that transcript is attached hereto as **Menjivar Att. EEE**.

Gardner told the audience:

[O]nce you become a regional sales manager and your business grows by 16 or more business owners, it triggers what we call a double bonus. And, so, for those people that had their business qualify – remember that, you had to have

customers. You and them. Remember those \$100 bills, well, now they just went to 200. 200, 200, 200, 200, 200, 200. And it pays retroactively backwards through the 16 people that got you here. Let me tell you something right now, that might be done by your own merits, but it could be done by the merits of your team. This is a team-building business. I loved that when I saw it. So, if you don't get anything out of this business presentation tonight, you need to understand this one sentence, it would serve us no purpose for you to embrace this opportunity and remain an island. There is a vested interest in your success.

(*Id.* at p. 14.)

35. On July 15, 2011, I attended a presentation by FHTM Chief Executive Office ("CEO") Thomas ("Tom" or "Tommy") Mills. Using digital audio recording equipment, I recorded the presentation by Tom Mills. A true and correct copy of the transcript of Mills's July 15, 2011 presentation is attached hereto as **Menjivar Att. FFF**. In his presentation, Mills discusses the importance of attending the Academy of Excellence training classes. Mills told the convention audience that he and Paul "plan on being out this fall. In fact, making it our priorities. As far as our public appearances, we're going to be giving this our top priority. So, get your downline there, get your people there. We think it's going to just help grow our business just even more."

(*Id.* at p. 4.)

36. On July 15, 2011 and July 16, 2011, I attended two presentations by FHTM President Paul Orberson. Using digital audio recording equipment, I recorded the presentations. A true and correct copy of the transcript of Orberson's July 15, 2011 presentation is attached hereto as **Menjivar Att. GGG**. A true and correct copy of the transcript of Orberson's July 16, 2011 presentation is attached hereto as **Menjivar Att. HHH**. Orberson told the convention audience, "[a]nd I want to start by talking about some of our great Hispanic Spanish-speaking leaders in this company....A lot of folks in that community don't have a lot of opportunity. You can single out Theresa and Alexis. I can take all the (inaudible) you saw (inaudible) on a film here. But

Alexis was washing dishes at a Marriott hotel five, six years ago, and he's a millionaire in this business five, six, seven years later." (*Id.* at p.7.)

37. On July 16, 2011, I attended a presentation that FHTM Presidential Ambassadors Bob Decant and Joanne McMahon made to the convention audience. Using digital audio recording equipment, I recorded the presentation. A true and correct copy of that transcript is attached hereto as **Menjivar Att. III**. Decant told the audience:

A. "But we were asked when we -- last year, we were ambassadors and they said, what's your next goal? And I didn't have to think long about it. I said, we're going to create 100 millionaires. And I definitely -- I know -- I don't even think, I knew it as well as I knew I was going to be an ambassador we were -- that we're going to be able to create 100 millionaires." (*Id.* at p. 6.)

B. "Jerry Brown, when I first met Jerry Brown, he was wearing an Army uniform. And I asked him, I said, why would you do network marketing, Jerry? And he said, Bob, my mission - I retire from the Army in three years. He said, I would like to go out and preach the ministry. I said, wow. I said, what would keep you from that? He said, mucho dinero. I said, money? See, I didn't realize it would take money to go out and preach the ministry, you know. But he said it would take money, Bob. And he said, I would love for this to be able to let me do that. So, that was his goal. Jerry Brown has achieved that goal, okay?" (*Id.* at p. 11.)

38. On July 16, 2011, I attended a presentation made by FHTM Representative Joel McNinch to the convention audience. Using digital audio recording equipment, I recorded the presentation. A true and correct copy of that transcript is attached hereto as **Menjivar Att. JJJ**. McNinch told the audience:

- A. “Guys, what I’m talking about here is this needs to be a defining moment in your life, in your business life, in your future, in your family. Guys, if you want to win, if you want to change your life, define yourself today. Make a -- let this be your defining moment, that I am sick and tired of house payments, I’m sick and tired of car payments, I’m sick and tired of waiting until Friday to do any blasted thing in my life. I am sick and tired of being sick and tired and I’m going to define myself and let this be my defining moment where I’m going to take control of my future and I’m going to work to change my life.” (*Id.* at p. 7.)
- B. “Guys, you must believe that you can leave this auditorium today and be a beacon of hope for other people. Go make some money, right? You want to make some money, go make some money. I hear that all the time. So, to change yourself, guys, and we talked about all these reason you can get rich and what to do and everything.” (*Id.* at p. 8.)
- C. “You can’t be lazy if you want to win in business. Hello? This is network marketing, not net welfare marketing. Right? Okay? Although, I think the announcement that Paul Orberon just made, there’s going to be a lot of people that get rich by accident now.” (*Id.* at p. 9.)
- D. “[T]here is so much money in that eight-level compensation plan right now that it will blow your mind.” (*Id.* at pp. 9-10.)
- E. “Guys, you got to work this business. You say you’re part-time. Who’s all part-time in here, you’re not full-time yet? Okay. You can get rich on your lunch hours. Guys, if you want to get wealthy, there’s an old saying, never eat alone.

All right? Never eat alone....Guys, you got to take the business to the street.” (*Id.* at p. 10.)

- F. “Guys, here’s an idea. If you want to get rich in real estate, sell a house. There’s an idea. If you want to get rich in fortune, sign a rep. Okay? There’s an idea, right?” (*Id.* at p. 13.)

INTERNET AUDIO AND VIDEO CAPTURES

39. During the course of this investigation, other FTC staff and I have conducted general Internet searches for video and audio recordings, related to FHTM and its Representatives. Through these searches, we have located dozens of such recordings and other materials, all posted on publicly available websites, including: www.thereelfhtm.net, www.wepayitforward.biz, www.teamfortunemakers.com, www.ruelmorton.com, www.teamsolosupport.com, www.millionairebootcamp.net, www.fhtmdvd.com, www.youngwealthmarketing.com, www.brockkeen.com, www.geniuspayplan.com, www.lifewithapayplan.com, www.fhtmleaderboard.com. (The website www.fhtmdvd.com appears to be linked or associated with www.youngwealthmarketing.com/brockkeen and www.brockkeen.com.)

40. On or about November 28, 2012, December 4, 2012, and December 27, 2012, using the Whois database located at www.whois.domaintools.com, which contains publicly available domain name registration information, I performed Whois searches on the domain names listed in the preceding paragraph. Attached here to as **Menjivar Att. KKK** is a true and correct copy of the results from my Whois searches. Among other things, the search results show the following information:

DOMAIN NAME	WHOIS HISTORY DATE	REGISTRANT CONTACT
www.thereelfhtm.net	10/25/2012	FHTM
www.wepayitforward.biz	10/8/2012	George Harris
www.teamfortunemakers.com	10/7/2012	William Harloff
www.ruelmorton.com	11/7/2012	Ruel Morton
www.teamsolosupport.com	6/8/2012	Scott Aguilar
www.millionairebootcamp.net	10/31/2012	Quang Nguyen
www.fhtmvd.com	11/27/2012	Fortune Investments
www.youngwealthmarketing.com	11/9/2012	Fortune Investments
www.brockkeen.com	11/4/2012	Fortune Investments
www.geniuspayplan.com	9/29/2012	Operation Web; Darla DiGrandi
www.lifewithapayplan.com	9/29/2012	Domains by Proxy, LLC
www.fhtmleaderboard.com	11/6/2012	FHTM

41. Whois search results for the domain name www.lifewithapayplan.com lists Domains by Proxy, Inc. (“Domains by Proxy”). Domains by Proxy is an Internet company owned by GoDaddy.com, LLC. Domains by Proxy offers domain privacy services, which allows subscribers or users to list Domains by Proxy as their registrant contact. As mentioned above, www.lifewithapayplan.com appears to be linked to or associated with the website www.geniuspayplan.com.

42. Using Camtasia Studio, Video DownloadHelper, and Flash and Media Capture, I captured some of the audio and video recordings from the aforementioned FHTM-related websites, in addition to capturing such recordings from YouTube, Vimeo, Socialcam and Blog Talk Radio. I copied some of these digital audio and video files to blank recordable discs. I finalized the discs to prevent further recordings. The discs were then sent to FTR. FTR transcribed the recordings and sent the transcripts to me. I, along with other FTC staff, reviewed the transcripts against the original recordings to verify the accuracy of the transcripts. If we found any errors in the transcripts, we noted the corrections directly on the transcripts, and

resubmitted the transcripts to FTR for revision. FTR then sent me the revised transcripts, and I concluded that the transcripts were true and correct reports of the audio recordings.

The FHTM LeaderBoard

43. On or about April 10, 2012, August 8, 2012 and October 1, 2012, I visited www.fhtmleaderboard.com – an FHTM website that lists the top FHTM Representatives in particular categories (Regional Sales Manager, Executive Sales Manager, etc.). The website purports to be updated daily. Attached hereto as **Menjivar Att. LLL** are true and correct copies of the printouts of the Leader Board from each of the times I visited www.fhtmleaderboard.com. The names on the lists scroll, a feature that I could disable on the August and October website captures, but could not on the April capture. For the April capture and certain categories (Platinum Car Program and Leadership Travel Program) in the August and October captures, I selected and copied the text and pasted it into a computer application called “Notepad.” Notepad is a basic text editor that is used to create simple documents.

The Reel FHTM

44. On or about February 15, 2011, using an FTC computer, I visited the publicly available website www.thereelfhtm.net. On that website, there were several videos available for viewing, including: “I was Caged Up,” “So Much More Possibility,” and “Life By Design.” True and correct copies of the transcripts from these videos are attached hereto as **Menjivar Atts. MMM** (“I was Caged Up”), **NNN** (“So Much More Possibility”), and **OOO** (“Life By Design”).

45. In the “I Was Caged Up” video, which is a presentation by FHTM Presidential Ambassador Joel McNinch, he says:

A. “Right away, we started to earn significant income. In our first year, I made two and a half times what I used to make at a job our first year in the Fortune

business. So, I was able to pursue this full-time and really put some energy into it. And over the past four and a half years, we've earned millions of dollars in this company. So, it's completely changed our lives financially forever."

(Menjivar Att. MMM at p. 5.)

- B. "I know one thing about Fortune, Fortune works and it has changed our lives and we've made more money doing this than I could have made in decades at my job in just the past four and a half years....We don't sweat money anymore." (*Id.* at p. 7.)

46. In the "So Much More Possibility" video, which is a presentation by a married couple named Todd and Ashley Rowland, FHTM Presidential Ambassador Todd Rowland says:

- A. "By the time we got in to months five, six and seven, those couple hundred dollar paychecks had become several thousand every month. Then, all of a sudden, we look up a year into it, after getting pretty serious about it, working it a lot of evenings and Saturdays, and our income is doubling, and in some months, tripling what I'm making as a high school football coach." (Menjivar Att. NNN at p. 7.)
- B. "And what we set up this situation is that when I would go do a meeting and come home, we lived on the lake, the dock is right in our back yard, so we'd just walk right down and get on the jet skis at 3:00 on a Tuesday afternoon or at 9:00 on a Monday morning, we'd got out and ski with the kids. And it just creates a lifestyle that I used to watch on TV and I was like, how do those people live that way?" (*Id.* at p. 10.)

47. In the "Life by Design" video, which features married couple and FHTM National Sales Managers Scott and Molly Aguilar, Scott Aguilar says:

A. “We found Fortune December of 2004 and we were actually at a point where we were looking for an opportunity that could, you know, replace quickly a five-figure monthly income....And within a short period of time, we had that happen.” (Menjivar Att. OOO at p. 4.)

B. “As well as that, the pay me now, pay me later compensation plan, which we feel is extremely important. It’s exciting because it gets people paid today and a lot of people, especially today, need money today. And also build a significant long-term income, but pay me now as well, and that’s part of the program, too. And that’s why we chose Fortune.” (*Id.* at p. 5.)

48. On or about September 13, 2012, using an FTC computer, I visited the publicly available website www.thereelfhtm.net. On that website, I clicked on a link titled “Representative Spotlight.” On that page, there were several additional videos available for viewing. I captured an FHTM lifestyle presentation by FHTM Platinum Sales Manager Bob Budd and another presentation by FHTM Presidential Ambassador Jerry Brown. I also clicked on a link titled “Extras,” and I captured an additional video regarding FHTM’s corporate policies and procedures. True and correct copies of the transcripts from these videos are attached hereto as **Menjivar Atts. PPP** (“Budd”), **QQQ** (“Brown”), and **RRR** (“Policies and Procedures”).

49. In Budd’s presentation, he says:

A. “This business has given us our life back. I’m at my children’s basketball games. I have a chance to get up when I want to get up. You know, I have the choice. I can roll over or roll out. I never had that choice when I had a job. Now, I have choices as a result of this business. If I want to go visit my son and my

granddaughter, I can do so. The next day, I can hop on a plane and go visit my grandson on the other coast.” (Menjivar Att. PPP at p. 5.)

B. “And this business has provided me not just the finances which, trust me, they’re wonderful, but the time freedom to take advantage of those finances. I mean, I have a lot of friends who have a lot of money and a lot of finances, but they have no time to ever take any advantage of that money and have a lifestyle to go with it. FHTM has given me the advantage of both money and the time freedom to go enjoy it.” (*Id.* at pp. 5-6.)

50. In Brown’s presentation, he says:

A. “And I can safely say now, through FHTM, I was able to retire my wife from nursing, retire myself, retire my cat, my dog, my bird, my frog. It’s amazing. This thing just works, right? It gave me the freedom to do my heart’s desire, help people. So, it works.” (Menjivar Att. QQQ at p. 4.)

B. “And in most cases, opportunities don’t really show up to give you that chance to really change your life. But to be able now to just change the lives of my kids’ kids’ kids’ kids, that’s phenomenal. I mean, this opportunity, again, it just gave me an opportunity to not just position myself, position my wife, but to position my daughters and also to position my grandkids so they have a great start on life.” (*Id.* at p. 4.)

51. The corporate policies and procedures video features several high-ranking FHTM representatives and officers, including National Sales Manager and Ring of Honor Member Darla DiGrandi. In the video, DiGrandi says:

I wanted to go over some specifics with you. It's very important to understand some of the specifics as an FHTM representative of things that we can and cannot do. Some of those things are such as when you're showing the FHTM business presentation to someone, we must show them the FHTM income disclosure statement. The FHTM income disclosures statement can be found on FHTM Central and FHTM.net. Income claims. You may not make any income claims, alleged or applied, and you may not show your paychecks.

(Menjivar Att. RRR at pp. 10-11.)

We Pay It Forward

52. On or about May 31, 2011, using an FTC computer, I visited www.wepayitforward.biz, a publicly available website. From that website, I captured a video of an FHTM presentation by FHTM Executive Sales Manager Kent Brown. The video appears to have been created from a webinar that Brown presented on or about February 13, 2011. A true and correct copy of a transcript of the Brown presentation is attached hereto as **Menjivar Att. SSS**. In his presentation, Brown offers guidance for characterizing purchases as either outside the household for a customer or for personal use. He says:

And the reason I clicked customer on that is because I do let other people use my Internet service if I'm at a coffee shop or something like that. . . . My True Essentials, I usually sample these out, the Mineral pH pills. I take those myself, but I also sample those out to people and those are available for sale if somebody wants to buy them. So, I'm going to establish that as a customer . . . The Anti-Fungal, which is the detox, I set that up as a customer because I also sample that out . . . The Bowel Cleaner, I set that up as a customer because I can sample that out as well. I can obtain some new customers that way. I sample this one out as a customer.

(*Id.* at p. 6.)

Team Fortune Makers

53. On or about November 14, 2011, using an FTC computer, I visited www.teamfortunemakers.com, a publicly available website. From that website, I captured two videos: (1) "Getting a New Rep Started" by FHTM National Sales Manager Darla DiGrandi,

which appears to have been created from a webinar that DiGrandi presented on or about October 10, 2010; and (2) "FHTM Basic Get Started Training" by FHTM National Sales Manager and National Trainer Woodson Gardner. A true and correct copy of a transcription of the videos is attached hereto as **Menjivar Atts. TTT** (DiGrandi) and **UUU** (Gardner). DiGrandi tells participants:

- A. "This is how – you know, how they say the other half lives. This is how the top 5 percent of people in the world make money. I don't know if you know this or not, but more millionaires come out of network marketing than any other industry. You just got to understand it, and the more you understand something, the clearer it will be." (Menjivar Att. TTT at pp. 9-10.)
- B. "Now, what types of sacrifices are you willing to give? This is a big one for a lot of people. Would you be willing to turn off your TV and your radio for \$4,800 on November 20th, because that's what I'm painting for you here. This whole topic of training right now is how to make a \$4,800 paycheck on November 20th, which is the next big commission payout check. And that's happy holidays, that's Christmas time, that's holiday money." (*Id.* at p. 18.)
- C. "And the reason why so many people get so nervous about doing that is because they think they're selling. When people say to me, I'm not a salesperson, I'm like, oh, thank God, because people that are salespeople can't do very well at this because they're trying to sell it and there's nothing to sell." (*Id.* at p. 26.)
- D. "And that's exactly what it's about, you guys. Go help somebody retire. Because if you go help somebody retire, they're going to turn around and help somebody

retire who's going to turn around and help somebody retire. It's a whole pay it forward principle here." (*Id.* at p. 30.)

E. "Okay, so when you show the plan, people are going to ask you questions. Don't answer questions because when someone asks you one question, they're going to ask you another one and another one . . ." (*Id.* at p. 31.)

F. "Now, if you put three people in your front line and help those three people simultaneously get to regional, because it's -- very easily can do, you're not working with just you now, you've got you and your upline team to support you, that are helping work with these people. You do the math, okay? Twelve, 24, 36 times 200, now we're getting into bigger numbers. Would that be -- would that change some things in your life? Absolutely, I bet it would." (*Id.* at p. 42.)

G. "I hope you had some good learning off of all this and really realized that all you need to be doing is showing the plan. You've got to get to regional within ten days. Get two people in your regional business. Get them to regional by the end of the month. Can you do that so you can have a nice Christmas for your family? Can you do it? Of course you can." (*Id.* at p. 70.)

54. During the Gardner presentation, she tells participants:

A. "Now, working on this business, obviously we're dealing with prospects, your list. So, who are you going to call? More importantly, how are you going to speak to them? There isn't one person that ever filled out the information sheet or the independent representative form that didn't already have people in mind when it came to thinking about who they wanted to team up with in this business."

(Menjivar Att. UUU at p. 5.)

- B. “Now, customer points. You’re going to have to have ten customer points to maximize the pay plan, all the way through regional code. Once you become an executive, qualify for the platinum car, national sales manager, Ring of Honor, even presidential ambassador, the most customer points you’ll ever need is 15.” (*Id.* at p. 49.)
- C. “See, here you are. You need to teach Bob how to teach Ray how to sponsor Jill and do that again and again and again. You qualify your business immediately because nothing happens if your business isn’t qualified and now you, through the power of leverage, are getting credit for those sales, but you’re also leading by example and showing Bob that he can do it, too, and Ray that he can do that, too, and Jill that she can do that, too.” (*Id.* at p. 54.)

Ruel Morton

55. On or about September 24, 2012, using an FTC computer, I visited www.ruelmorton.com. According to Whois records, FHTM Presidential Ambassador Ruel Morton is associated with this website. On the website, there are links to several of Ruel Morton’s FHTM “Summit Calls.” I captured the recording of the December 7, 2011 Summit Call. The recording was transcribed by FTR and a true and correct copy of that transcript is attached hereto as **Menjivar Att. VVV**. In this presentation, Morton says:

- A. “Guys, our product truly, in my independent rep opinion, is financial opportunity. We’re going out there and we’re telling people that they can have what they want.” (*Id.* at p. 8.)

- B. “What Fortune’s about – and back to my original point about why we have the most lucrative compensation plan in the industry is our product is be your own boss. Own your own business. Make more money. Our product is what we have on our shelves and it comes in pretty red and white and blue packaging and it’s all nice and it’s there and it’s got – in other words, our product is own your own business, be your own boss, make more money.” (*Id.* at p. 15.)
- C. “We’re not out there selling things, guys. We’re out there offering people a chance to be part of something bigger than anything they’ve ever been a part of. And everybody wants a bigger life.” (*Id.* at p. 19.)
- D. “We’re offering people something they want and need, which is more money, a bigger life. People want what we got. This is the greatest opportunity in the world right now in a down economy, in a depressed economy.” (*Id.* at p. 24.)

Team Solo Support

56. On or about September 13, 2012, using an FTC computer, I visited the website www.teamsolosupport.com. According to Whois records, Scott Aguilar is associated with this website. The website includes several sections, including links to various audio and video recordings related to the FHTM business.

57. On or about September 13, 2012, I captured an audio recording of a Team Training Call from August 27, 2012. The call features FHTM Presidential Ambassador Steve Jordan and Platinum Sales Manager and Ring of Honor Member Scott Aguilar. A true and correct copy of the transcript from that recording is attached hereto as **Menjivar Att. WWW**. In this presentation, Aguilar, speaking of Jordan, says, “and in six months, he earned over \$50,000

in one month” and has gone on to earn “millions and millions beyond that.” (*Id.* at p. 4.) Jordan speaks for most of the rest of the recording and says:

- A. Referring to his sponsor, Ruel Morton, who Jordan says is the top earner in FHTM (*Id.* at p. 7), “Okay, he said, well, how much do you need to make. And I said, well, I need to make about \$8,000 a month to pay the bills. He said, okay, now you’re an executive at this point. He said, you’re an executive. He said, at the regional pay and the executive pay, you need to figure out, I mean, that’s 320 bucks a pop as you’re building your team. He said, you need to figure a way how to get a check from somebody every single day for \$299. It was \$299 back then and a few customer points.” (*Id.* at pp. 14-15.)
- B. Again referring to Ruel Morton, “He had just made that month \$60,000 for the month. Sixty grand.” (*Id.* at p. 15.)
- C. “And we put 344 people on his team in that first full 30 days. And he made, I think, about \$21- or \$22,000 as a regional... So our check, I think, for that month, it was somewhere around 56,000 for the month.” (*Id.* at pp. 21-22.)
- D. “We learned a very, very valuable lesson . . . what can happen in 30 days. Guys your life can change in 30 days. As a regional, as an executive, you are 30 days away from absolutely changing your life in a big, big way.” (*Id.* at p. 22.)

58. On or about September 21, 2012, I captured an audio recording of a training call including Keith Kuder, FHTM’s General Counsel, and FHTM Platinum Sales Manager Darla DiGrandi. The call appears to have taken place on or about September 7, 2012. During the call, Kuder is one of the primary speakers and he addresses several aspects of FHTM’s business,

including whether FHTM is an illegal pyramid scheme. A true and correct copy of the transcript from that recording is attached hereto as **Menjivar Att. XXX**.

- A. In response to DiGrandi's question about whether FHTM is a pyramid, Kuder responds, in part, by saying, "I could go on for this – you know, on this topic for a long – for a long time, obviously. But the bottom line is, are people compensated by FHTM solely for recruiting new people to join the business? And the answer to that question is no. Therefore, it's not a pyramid." (*Id.* at p. 10.)
- B. Kuder goes on to explain, "A multi-level marketing business like Fortune Hi-Tech Marketing thrives and exists by virtue of the fact that our representatives purchase and consume and sell onward products and services. So, it's the money that is generated through the sales of those products and services that allows FHTM to compensate its representatives and allows it to exist as a business and prevents it or insulates it from any claims that it's actually a pyramid scheme. It's that simple really." (*Id.* at p. 11.)
- C. DiGrandi explains that FHTM can afford to pay commissions and bonuses because people leave FHTM: "I think, there's the perfect example of how my paycheck is how it is because my brother got in the business years ago for a minute, signed up my mother's Dish Network and then quit because he got a J-O-B and went off to go trade his time for money for a lifetime, and my mother still pays that Dish Network bill. So, the profits from that Dish Network bill don't go to anybody. They go back into compensation plan and it's that times hundreds of thousands of Dish Networks and cell phones and Internets and cables and sort of

stuff that are funding all this extra money in the compensation plan.” (*Id.* at p. 12.)

- D. In discussing FHTM Representatives status as independent representatives, Kuder says: “And so, when you are out there, you are representing yourself as the owner of your own business and you are a representative under contract with Fortune Hi-Tech Marketing. That means you’re not an employee, but at the same time, the actions and the steps that you take out there in the field, a regulator or, you know, a person who’s charged with managing the statutes of, you know, the state, whatever – in Montana, it’s actually the State Auditor’s Office; most places, it’s the State Attorney’s General Office. Those people look at what representatives are saying, doing, filming, putting on websites, putting on social media, et cetera, in the field because that is where they look to see how is the company selling itself.” (*Id.* at p. 16.)
- E. Kuder continues to discuss FHTM’s legal issues in Montana: “But [Montana] saw these materials and – and so, that caused them to take some initial action with respect to the company itself, Fortune Hi-Tech Marketing. And on some level, we – you know, we have to answer for the statements in the field that are made by representatives.” (*Id.* at p. 17.)
- F. Again, with respect to Montana, Kuder says: “[Montana] sent a letter to Dish Network, are you a partner with FHTM, and Dish Network, not really understanding what the question meant said, no, we’re not a partner with FHTM. What that meant was we hadn’t signed something that’s technically called a partnership agreement that establishes a legal partnership. The truth of the matter

was that many years before that, Dish Network had come to FHTM and FHTM had been one of the early direct sellers who, you know, had a relationship directly with Dish Network, and perhaps the only direct seller that has a direct relationship as an authorized retailer for Dish Network. So, if someone in the field says, we partnered with Dish Network, well, that meant that, you know, we got together and we decided to do business together, which is exactly what happened. But Montana made much of the fact that, you know, Dish Network had “denied” that they were actual partners with FHTM. It was that level of nonsense on some level, if you ask me, that was driving the action in Montana.” (*Id.* at pp. 21-22.)

59. On or about September 24, 2012, using an FTC computer, I visited the website www.teamsolosupport.com and I captured an audio recording of a Summit Call with FHTM Presidential Ambassadors Ruel Morton and Mike Misenheimer. The call appears to have taken place on or about February 23, 2011. A true and correct copy of the transcript from that recording is attached hereto as **Menjivar Att. YYY**. During the call, Misenheimer says:

- A. “I graduated high school in Gravette, Arkansas, went through a university in Fayetteville there for several years, and graduated there and found out that wasn’t going to do me any good. So, I continue to do, Ruel, what I was really good at, what I knew how to do. And that was being a horse shoe’er and a farrier. And, Ruel, I worked very, very hard at what I did and the fact is, even though I was good at it, I still didn’t – it still didn’t look good in my bank account, Ruel. I was living paycheck to paycheck. And I know that everybody hears these stories over and over and over again about how I was struggling or how someone’s always struggling when they got involved in this company and they went from rags to

riches. And I want to tell you right up front that that really is the true story of my life.” (*Id.* at pp. 7-8.)

- B. “I sponsored a lady that did not want to do this business. I made her do it. She lives in Springfield, Missouri, and she’s older, no credibility. But she was a connector for me, Ruel. So, I made her do it. She helped me get a guy in the business that was another connector who put me in front of another lady that I put in the business.” (*Id.* at p. 14.)
- C. “So, what I did was I put together a plan with [my team] and we started showing these DVDs and doing closing calls and signing people up. Then, Ruel, we did a blitz. We did three meetings in one day, on a Saturday. We put 100 people in the business. . . . So, we took those 100 people, Ruel, and we got them on a conference call and I cast a big vision and I said, we’re going to put 1,000 people in the business next month. And what we did, Ruel, we actually put 1,002 people in the business that next month. And I saw my check, my third month go from almost nothing, Ruel, to a month later to more money than Mike Misenheimer’s ever made, until now, but ever made in my lifetime in an entire year.” (*Id.* at p. 15.)
- D. “And the cool part about it was, Ruel, if I look back, is the people that weren’t really that good or that motivated, didn’t really do much, were the ones with my biggest legs of 10-, 15-, 20-, 30-, 40-, 50,000 people were in because they linked me to somebody who’s got somebody and I continued to work with every – catch this guys – instead of working with the person that already had four or five in and kept trying to help them get more and more people, I just kept working – I learned

this from you, Ruel. I just kept working with the brand new people, because I know that a brand new rep, Ruel, can go get a rep easier than you and I can because their buddy will do it, because they're doing it. So, I just go chase depth now for six years and I just continue to chase depth, helping a new rep get a new rep get a new rep. And what it's doing is it's built a very strong team because not only is a brand new rep getting started right now, but it's also feeding and securing a whole upline because it's building everybody's business." (*Id.* at pp. 16-17.)

E. "Ruel, I made more money in my first year in Fortune than I would have made in my lifetime without Fortune." (*Id.* at p. 19.)

60. On that same Summit Call captured on or about September 24, 2012, FHTM Presidential Ambassador Ruel Morton says:

Guys, what do you need to do? You need to reach deep inside and find that thing that you can hang on to to get out there and face your fears, to get out there and show this business. This business has to be built every day. You wanted some practical advice. Recruit, recruit. You got to build a team. That means you need to become a recruiter. Quit asking people what they need to – want to do and what they think and start telling them what they need to do, what they need to be thinking. People need to quit worrying about researching our company, studying on our company, talking to their broke friends. People need to research their bank accounts, look deep inside and see are they who they want to be. Are they becoming who they want to be? Are they making the difference they're supposed to make? Are they living the life that was created – that they were created to live? And if they're not, let's suck it up guys. Let's stop whining.

(*Id.* at pp. 39-40.)

61. On or about October 9, 2012, using an FTC computer, I visited the website www.teamsolosupport.com and I captured an audio recording of a Team Training Call. The call appears to have taken place on or about October 8, 2012. The call features FHTM Platinum

Sales Manager Melanie Greenough. A true and correct copy of the transcript of that call is attached hereto as **Menjivar Att. ZZZ**. In this presentation, Greenough describes FHTM this way, “if you’re not aware of what you have your hands on, this is a multi-million-dollar business. Darla – Darla has made millions of dollars. Scott has made millions of dollars, millions and millions of dollars. So, understand, this is a multi-million-dollar organization.” (*Id.* at pp. 5-6.) She continues to say, “And Paul built it for that. . . . He built it so you can become a millionaire. Do you guys know that his goal is not to create millions of dollars? His entire goal, his entire purpose, his entire vision for creating this company, was to create millionaires.” (*Id.* at p. 14.)

Millionaire Bootcamp

62. On or about September 13, 2012, using an FTC computer, I visited www.millionairebootcamp.net. According to Whois records, FHTM Presidential Ambassador Quang Nguyen is associated with this website. The website provides substantial information about FHTM and has several links, including links to recorded video and audio presentations. I captured a new representative training call, which features FHTM Executive Sales Manager Rory Wendell. The call appears to have taken place on or about June 28, 2012. A true and correct copy of the transcript of the training call is attached hereto as **Menjivar Att. AAAA**. In this training call, Wendell discusses FHTM Presidential Ambassador Quang Nguyen. He says, “You can come in this and you can make \$500 a month, you can make \$1,000 a month. But you can also do what Quang is doing, six figures a month, over \$100,000, you guys, a month that man has achieved in three years.” (*Id.* at pp. 11-12.)

FHTM DVD

63. On or about September 11, 2012, using an FTC computer, I visited the website

www.fhtmdvd.com. As mentioned above, the website www.fhtmdvd.com appears to be linked to or associated with www.youngwealthmarketing.com/brockkeen and www.brockkeen.com. According to Whois records, FHTM National Trainer Brock Keen is associated with these three websites. The website www.fhtmdvd.com hosts several video presentations related to FHTM. I captured two presentations and screen shots of slides used during the presentations. True and correct copies of the transcripts and screen shots of slides from those presentations are attached hereto as follows:

- A. FHTM Business Presentation by Brock Keen, including screen shots of the slide presentation used during the presentation (**Menjivar Att. BBBB**); and
- B. George Harris BP, including the screen shots of the slide presentation used during the presentation (**Menjivar Att. CCCC**).

YouTube

64. On or about June 15, 2011, using an FTC computer, I visited www.youtube.com, a publicly available video-hosting website, and captured a video of an FHTM presentation by FHTM National Sales Manager Kevin Mullens. As of June 15, 2011, this YouTube video had approximately 69 views. A true and correct copy of the transcript of the video is attached hereto as **Menjivar Att. DDDD**. In this presentation, Mullens tells the audience that Paul Orberon, founder of FHTM, “made over a million dollars a month . . .” (*Id.* at p. 10.) Mullens also says:

- A. “You know the types of people that are doing our business? Some of the wealthiest people in America are on board with Fortune Hi-Tech Marketing. Why? Because from a risk standpoint, one, there’s none. From a profit standpoint versus cost, there isn’t an investment you could be a part of that could

put the types of money in your bank account that this business can as long as you're willing to work." (*Id.* at p. 36.)

B. "So, you start with five customer points, three of those, you've earned \$300.

Now, if this is not the sweetest investment you'll ever make, I don't know. Two people in your business, it's paid for. Paid for completely. Two. Now, go sign your third person up and all of a sudden, man, you've covered your overhead for an entire month." (*Id.* at p. 41.)

C. "So, think about this. Steve, Lisa and Scott are getting in this business to simply go out and do the exact same thing you did. You got to have ten customers at some particular point. Ten are not that difficult to get. I've got about 19 services and products running through my personal website. Fourteen of them are just me and my wife and my family. Guys, you don't have to go to the entire world and convince them to do this, they're doing this." (*Id.* at p. 42.)

D. "Okay. I will tell you, that's kind of where I wanted to get up and walk out, man. I'm like, okay, I'd like to make that a year. I don't know, man, but \$82,000 a month doesn't seem very believable, does it? But if you understand the principles of this business, you understand it's very easy to actually understand there's lots of people in this business making northward of that amount of money." (*Id.* at p. 45.)

E. "So, what if 20 people join your business? That's \$4,000. What if I help Susan and Ruel both get regional? That's 12 apiece, 24, I've earned \$5,000. I don't know how easy it is for you to get your hands on five grand a month." (*Id.* at pp. 55-56.)

F. “Let me tell you something, if you like helping people and you want to change your family’s finances forever and you’d like to set up some revenue for them that works when they’re not working, let me tell you, no is the wrong answer for this.” (*Id.* at pp. 62-63.)

65. On or about November 14, 2011, using an FTC computer, I visited www.youtube.com and I captured two videos: (1) FHTM presentation by FHTM National Trainer Brock Keen, dated September 30, 2011; and (2) FHTM presentation by FHTM Presidential Ambassador Todd Rowland about maximizing the FHTM compensation plan, which appears to have been uploaded to YouTube on or about June 17, 2011. As of November 14, 2011, these YouTube videos had about 361 and 1321 views, respectively. True and correct copies of the transcripts of the videos are attached hereto as **Menjivar Atts. EEEE** (Keen) and **FFFF** (Rowland). In Keen’s presentation, he tells the audience that Paul Orberon, founder of FHTM, earned \$1 Million a month in network marketing. (Menjivar Att. EEEE at p. 4.) Keen also says:

A. “Now, here’s why a regional sales manager is so important. You now receive a customer acquisition bonus for every single person who joins your organization when they have their first five customer points. So, when you go out and you introduce this to somebody and they join your team, you now get paid \$100. You introduce this to another person, they join your team and get those customers, another \$100. You introduce this to another person, they join your team, get customer points, you get paid another \$100. And you can collect those \$100 bills all day long.” (*Id.* at p. 10.)

B. “If your business is growing enough to where you’re hitting those double bonuses, those 100s turn to 200s, the 60s turn to 120s, and the 30s turn to 60s and

your residual doubles also for that month. So, there's a very substantial amount of money you can earn by going out and building these customer bases." (*Id.* at p. 12.)

66. In Rowland's June 14, 2011, presentation, he says:

- A. "I was a football coach at the high school level for a decade. My wife and I became involved in this company for extra income. I think that's how most of us end up here. But because of the pay plan I'm about to thoroughly explain to you, in less than a year, we were able to walk away from that profession and have been full-time in the company now for a number of years. Have got our freedom back. We control our own life now. The income, obviously, is way more than I ever made as a coach. It's just really a neat, neat pay plan." (Menjivar Att. FFFF at p. 3.)
- B. "We have some ten-point bundles that also meet this outside customer requirement because inside of the ten-point starter packs or bundles I'll be explaining to you, you can resample or sell some of those products out, and that will meet that qualification." (*Id.* at p. 7.)
- C. "I think I actually have like eight or nine different Dish customers. They're very easy to get because Dish is free, it doesn't cost anything, and the price points are always going to be cheaper than they currently have." (*Id.* at pp. 7-8.)
- D. "I know most of you listening to this already have your ten-point starter pack because most everybody starts exactly the way they need to maximize the pay plan. There's no other good way to start if you're not going to maximize everything." (*Id.* at p. 9.)

E. “Okay, everybody joins as a manager. You quickly, in this company, want to become a regional sales manager. Because at that position, you can really get into significant money. I’m talking about quickly. There’s a couple of ways to get there. One, you can personally go out and gather 70 active customer points. We have found it’s much easier to build a team, whichever one you choose, if you’ll just get your ten customer points, the same ten we’ve been talking about since we’ve started. Sign up three people in the business and get a total of 12 team members, 10 personal customer points, the same 10, your 10-point bundle has met that qualification, you’ve maximized the pay plan, remember. You sign up three people and get a total of 12 team members. They also must gather some customers. Of course, they’re going to do that anyway. Everybody’s -- there’s no reason to join our company if you’re not going to be gathering products and services.” (*Id.* at p. 19.)

67. On or about August 8, 2012, using an FTC computer, I visited youtube.com and I captured a video presentation by FHTM Platinum Sales Manager Darla DiGrandi. This presentation is an overview of FHTM. As of August 8, 2012, this YouTube video had approximately 1704 views. I also captured screen shots of the slides DiGrandi used in her presentation. A true and correct copy of the transcript of this video and screen shots of the slides used during the presentation are attached hereto as **Menjivar Att. GGGG**. In the presentation, DiGrandi explains the fundamentals of the FHTM business model, including how to gather customer points. In the presentation, she highlights the points in her business. Regarding these, she says:

I want you to notice some of these are yellow and some of them are white. The majority of them are white. Those are all the ones that came from underneath my roof. Do you get it? You only need 10. I have 30 and I'm only showing you some of them. The other yellow ones are how far I had to go outside my own home to gather the rest of my customer points. My mother-in-law, my mom, my dad and my brother-in-law, and a friend up north. That's it. And I did all of that over four years ago. Genius.

(*Id.* at pp. 15-16.)

68. DiGrandi additionally shows a diagram of how an FHTM representative can potentially earn \$82,012 per month, by recruiting others into the business. (*Id.* at pp. 22 - 24.) DiGrandi notes that "At 10 percent success, that's still over \$8,000 a month, and that's a lot of money."

(*Id.* at p. 24.)

Vimeo

69. On or about November 14, 2011, using an FTC computer, I visited www.vimeo.com, a publicly available video-hosting website. From that website, I captured a video of a presentation entitled "Regional in 10 Days," presented by FHTM National Sales Manager and Ring of Honor member Scott Aguilar. The video appears to have been uploaded to Vimeo on or about October 30, 2011. A true and correct copy of a transcript of the video is attached hereto as **Menjivar**

Att. HHHH. In this presentation, Aguilar says:

- A. "I mean, if you're doing the basic fundamentals that we teach as part of the recipe of what we know is that you should be able to get probably at least three people to join your team out of that 15 people shown that first five days." (*Id.* at p. 5.)
- B. "But what's going to happen, this person went and did the same thing that you did before, they're going to at least get three people out of the deal, right, if they're doing it right. This person right here, the exact same situation. This person right here, same situation. So, all of a sudden, if you count this up, in your first ten

days in the business, in your first ten days in the business, you're promoted to RSM, regional sales manager. Why? Because you got your 12 people. You got 12 people in 10 days. How did that work? You just showed three people a day for the first five days." (*Id.* at p. 9.)

70. On or about November 15, 2011, using an FTC computer, I visited www.vimeo.com and I captured two videos: (1) a presentation by FHTM National Sales Manager and Ring of Honor member Scott Aguilar, which appears to have been uploaded to Vimeo on or about July 3, 2010, and as of November 15, 2010, had approximately 106 plays; and (2) a presentation by FHTM Presidential Ambassador Todd Rowland, which appears to have been uploaded to Vimeo on or about August 23, 2011, and as of November 15, 2010, had approximately 45 plays. True and correct copies of transcripts of these videos are attached hereto as **Menjivar Atts. IIII** (Aguilar) and **JJJJ** (Rowland). In Aguilar's presentation, he says:

- A. "Here at my house, we have 14 customers at our own house. Every product and service counts as a separate customer...So, I have 16 customers on a report, 14 of them are just us." (Menjivar Att. IIII at pp. 13-14.)
- B. "Now, let me share this with you, if you had a team of 25 people and those 25 people next month went and put in two people, that means 25 people would have made \$200 because they brought in two people. Well, that's 50 people, though, that join your team for the month. If 50 people join your team in a month, times \$200, that's a \$10,000 check that month. That \$10,000 check that Fortune would send you has nothing to do at all with the usage of products and services and people using cell phones or shopping at Target or Walmart. That's just a bonus check, right?" (*Id.* at p. 24.)

C. "If 65,000 bills get paid times \$25 per bill times 5 percent they'll pay you on the eighth level, every single month, they'd send you a check for 82,000 per month."
(*Id.* at p. 28.)

D. "At 10 percent success, \$8,000 a month; 1 percent success, \$820 a month. So, a 99 percent failure rate, it's still \$820 a month by just getting it started, okay?"
(*Id.* at p. 30.)

71. In Rowland's August 23, 2011 presentation, he says:

A. "I will tell you without getting specific on numbers that by my third year in the company and my sister's third year in the company, her residual income in Fortune was more than she was making as a nurse and retired her from nursing. Her husband eventually was able to walk away actually full-time at FLW Bass Store." (Menjivar Att. JJJJ at p. 6.)

B. "But, yes, I will tell you, on the new pay raise, when -- if they're within your first eight levels, there's going to be a lot of money there. So, would I personally give somebody away below my second or third level? No way, no how. There's too much money. You could be giving away hundreds of thousands of dollars." (*Id.* at p. 12.)

72. On or about September 11, 2012, using an FTC computer, I visited www.vimeo.com and I captured a video of a presentation by FHTM Presidential Ambassador Todd Rowland. As of September 11, 2012, this video had approximately 304 plays. The video is a model business presentation to teach FHTM representatives to give an overview of the FHTM business opportunity and how to recruit others into the business. A true and correct copy of the transcript of the video is attached hereto as **Menjivar Att. KKKK**.

73. On or about September 21, 2012, using an FTC computer, I visited www.vimeo.com and I captured two videos: (1) a presentation by FHTM Platinum Sales Manager Darla DiGrandi, which, as of September 21, 2012, had approximately 107 plays; and (2) a presentation by FHTM Presidential Ambassador Susan Frank. True and correct copies of the transcripts of those videos are attached hereto as **Menjivar Atts. LLLL** (DiGrandi) and **MMMM** (Frank). In DiGrandi's presentation, she says:

- A. "Where does all this money come from that Paul keeps putting into the system? Well, guys, most people quit everything. And with our company, that's actually a good thing because those people that quit the business, they don't quit on their bills. So there is a lot of bills being paid out there in the world that a representative is just not collecting on. It's going back into the compensation plan and being pushed right back out into the field because Paul didn't create this business for him to make a profit, he created it for us to make a profit."
(Menjivar Att. LLLL at p. 8.)
- B. "This one's really big, Match 5. Never heard of that before, have you? Nope. And it's a big deal. Sponsor five people within your first 60 days and you will receive an additional 5 percent of their entire business. Okay, so year one or two, that may not be a big deal. But what happens when those people turn into executives and nationals and they're making 30-, 40-, 50-, 60-, \$70,000 a month?" (*Id.* at pp. 8-9.)
- C. "We have over 25,000 total representatives on our network. You guys, it is so humbling and still surreal. 2,208 of them have promoted to regional sales manager; 81 of them are executive sales managers; 3 of them are nationals; 3 of

them are platinum nationals; and we have 16 free car earners on our network.”

(*Id.* at p. 11.)

74. In Frank’s presentation, she says:

- A. “Four months in of putting effort in [to FHTM], I had actually quadrupled what I have ever made as a registered nurse, and a year in, I had replaced my husband’s company income.” (Menjivar Att. MMMM at p. 4.)
- B. Referring to the title of Regional Sales Manager, or “RSM,” Frank says, “I say this stands for real serious money. You do the same thing, but you get about 100 percent pay increase.” (*Id.* at p. 16.)
- C. “They also, at your second promotion, they have a platinum BMW car program where you can earn payments toward a car. We actually earned a car eight months into the company. We’re actually on our second car through this company. That’s not to say, look at us. We’re nobody special. We were just sick and tired of being sick and tired and absolutely wanted better.” (*Id.* at pp. 23-24.)
- D. “So, I’m not sure if you want better for your family, if you want better for you, if you want retirement, if you’re looking to make just a little extra side money, here’s what I found in the real world. I had a job. It didn’t work out too good, so I got a second job. Well, if my first job didn’t work, why would I get a second job? How about a home-based business and a full-time life? That’s what this company has allowed us to have. It’s allowed us to live out our dreams. And you know what? I know it can for you, too, if you’ll just put your effort in the right vehicle, in the right place.” (*Id.* at pp. 27-28.)

E. “So, all I can tell you is get started. Get started with the person who’s investing time in you right now, showing you a business that is improving their life and can improve yours, too. Because if you do A and B, C, you’ll get paid. Get your seatbelt on, ready to make some money.” (*Id.* at p. 28.)

75. On or about November 13, 2012, I captured a video of a presentation by FHTM Platinum Sales Manager Scott Aguilar. The video appears to have been uploaded to Vimeo on or about October 23, 2012, and, as of November 13, 2012, had approximately 679 plays. I also captured screen shots of the slides Aguilar used in his presentation. A true and correct copy of a transcript of the video and the screen shots are attached hereto as **Menjivar Att. NNNN**.

76. On or about November 13, 2012, I captured a video of a presentation by FHTM National Trainer Brock Keen. The video appears to have been uploaded to Vimeo on or about October 23, 2012, and, as of November 13, 2012, had approximately 205 plays. I also captured screen shots of the slides Keen used in his presentation. A true and correct copy of a transcript of the video and screen shots are attached hereto as **Menjivar Att. OOOO**. In addition to the transcript, I copied the video presentation by FHTM National Trainer Brock Keen to a blank recordable disc. I finalized the discs to prevent further recordings. Attached hereto as **Menjivar Att. PPPP** is a true and correct copy of the disc containing Brock Keen’s presentation.

Blog Talk Radio

77. On or about August 27, 2012, using an FTC computer, I visited the website www.blogtalkradio.com, which is a website that allows users to upload audio files for others to access and listen to. An FHTM Representative named Kimberly James maintains a Blog Talk Radio web page related to FHTM. James regularly uploads audio files of FHTM training calls, including calls in which FHTM President Paul Orberon participates.

78. On or about August 27, 2012, I captured an FHTM National Leadership Call with Paul Orberson and Woodson Gardner from James's Blog Talk Radio web page. The call appears to have taken place on or about August 23, 2012. A true and correct copy of a transcript of that call is attached hereto as **Menjivar Att. QQQQ**. During this call, FHTM President Paul Orberson discusses the upcoming FHTM national convention. He says:

[W]e're going to have several people who've made quite a bit of money on our stage at convention and we're going to present a big check total of all of the income all of those people have earned, Woodson – and it is astronomical of, I think, maybe 20, 21, 22 people have earned – and present them that big check just to have people be able to take pictures. You're saying, well, what good does that do? Well, it seems to be in our industry that's what people kind of gravitate toward is those big checks, seeing how much these people have earned and here's what so-and-so has earned, here's what so-and-so has earned in his time or her time in the company, and that's great.

(*Id.* at p. 22.)

79. On or about September 24, 2012, I captured a recording with Paul Orberson and FHTM Representatives from James's Blog Talk Radio web page. The call appears to have taken place on or about September 20, 2012. A true and correct copy of a transcript of that call is attached hereto as **Menjivar Att. RRRR**. In this recording, Orberson discusses a new "match pay" program: "But no longer are you going to need to have five to receive match pay. You will start receiving match pay on the very first person you bring into the business." (*Id.* at p. 5.) Orberson references a "gummed up" system and the lack of new representatives joining as the reason for the new match pay policy. (*Id.* at pp. 5-7.)

Socialcam

80. On or about October 12, 2012, I visited socialcam.com and I captured a video of a presentation by FHTM CEO Tom Mills. Socialcam is a smartphone application that allows mobile device users to upload and share videos on socialcam.com. The video appears to have

taken place at an FHTM event in California, on or about June 7, 2012. A true and correct copy of a transcript of the video is attached hereto as **Menjivar Att. SSSS**.

81. In the presentation, Mills says:

- A. “Last night, we were in Ontario and I kind of started . . . I started out the same way, just meeting so many fantastic people, and I appreciate you being here. I want you to know just right up-front that the honor and privilege is really all mine and Paul’s for being here.” (Menjivar Att. SSSS at p. 3.)
- B. “I can do a lot more good with money than I can without. And it’s the same way - multiplying people works the same way as this business. I can - my business will grow a lot faster and a lot quicker if I have a team of people rather than me doing all the work myself. So, that’s what this is all about, a whole lot of people doing a little bit, working together.” (*Id.* at pp. 4-5.)
- C. “When Paul and I make decisions, everybody’s not going to like them, but you’re going to respect them and know that they’re there in place for longevity of this company.” (*Id.* at p. 6.)
- D. “I’m often asked several key questions when I’m traveling around . . . is what makes this company different than the others, why - what’s so special about this company? I’ve already told you, one is that we’re former representatives. Paul and I own the company ourselves” (*Id.* at p. 7.)
- E. “We come to these meetings and we see all the dollars in the pay plan and all that and we think, you know, maybe we ought to . . . do the business rather than (inaudible) just sitting here in the office.” (*Id.* at p. 14.)

- F. “I know what you do on a daily basis. I know the effort that it takes to be successful in this industry. And there are some people in here that are writing their own special story. And we’re very, very proud of you and we look forward to talking with you as much as we can tonight. We’re going to leave and go on to Vancouver tonight for meetings there the next two days.” (*Id.* at p. 17.)

TWITTER AND FACEBOOK POSTINGS

Twitter

82. Several FHTM Representatives maintain Twitter accounts, through which they promote the FHTM business.

83. FHTM Platinum Sales Manager Darla DiGrandi maintains a Twitter account, using the Twitter handle “DarlaFHTM.” As of November 20, 2012, DarlaFHTM had about 3180 followers. She frequently posts tweets about FHTM. Using an FTC computer, I have visited her Twitter page and I captured several of her tweets, including the following:

- A. “RSM Gilian Beckelman gets it! She just said to prospect ‘ts not about selling Dish, Cell, Gas &Electric. Its about selling the ‘opportunity’” dated November 17, 2012 and captured on or about November 20, 2012. (**Menjivar Att. TTTT** at pp. 2 & 9.)
- B. “American incomes have fallen \$3,040 PER household in the last 38 months- WE have the answer to replace the loss & more! GO SHARE FHTM NOW!!” dated September 28, 2012 and captured on or about October 9, 2012. (**Menjivar Att. UUUU** at p. 5.)

C. "Spread the word! Guests eat FREE today 4-6pm [Address Redacted]. Please RSVP! Bring ur friends & learn how 2 make \$100k Ayr" dated October 7, 2012 and captured on or about October 9, 2012. (**Menjivar Att. UUUU** at p. 2.)

84. On or about December 31, 2012, I visited the TwitLonger website at www.twitlonger.com, which allows Twitter users to post long messages to Twitter. I captured a message by Darla DiGrandi posted on TwitLonger and dated December 26, 2012. The message states that Darla DiGrandi "left Fortune," and includes an explanation for her departure. A true and correct copy of this message by Darla DiGrandi, dated December 26, 2012 is attached hereto as **Menjivar Att. VVVV**.

85. FHTM Presidential Ambassador Todd Rowland maintains a Twitter page, using the Twitter handle "fhtmtoddrowland." As of December 31, 2012, fhtmtoddrowland had about 4141 followers. He frequently posts tweets about FHTM. On or about December 31, 2012, using an FTC computer, I visited his Twitter page and I captured several of its tweets, including the following tweet dated December 27, 2012: "FHTM is Greatest company on Planet Earth. I have made over 5 million Anyone tells you different they have lost Mind or been paid maybe both." (**Menjivar Att. WWWW** at pp. 4 & 30.)

86. FHTM Platinum Sales Manager Quang Nguyen maintains a Twitter page, using the Twitter handle "FHTMQuang." As of October 12, 2012, FHTMQuang had about 213 followers. He frequently posts tweets about FHTM. On or about October 12, 2012, using an FTC computer, I visited his Twitter page and I captured several of its tweets, including the following tweet dated October 9, 2012: "Know spanish speaking person that needs \$2400 THIS MONTH- get them to [Address Redacted] San Jose 7pm 2nite & we'll show them how!" (**Menjivar Att. XXXX** at p. 1.)

87. Paul Orberson, the President of FHTM maintains a Twitter page, using the Twitter handle "FHTMPaul." As of November 13, 2012, FHTMPaul had about 3341 followers. He frequently posts tweets about FHTM. On or about November 13, 2012, using an FTC computer, I visited his Twitter page and I captured several of his tweets, including his tweets dated September 26, 2012 and September 25, 2012 (**Menjivar Att. YYYY** at pp. 2, 7 & 8.) In these tweets, Orberson describes recent changes to FHTM's compensation plan.

88. FHTM also maintains an official Twitter page, using the Twitter handle "FHTMOfficial." As of September 4, 2012, FHTMOfficial had about 6750 followers. On or about September 4, 2012, using an FTC computer, I visited this Twitter page and I captured several of its tweets, including the following tweet dated September 1, 2012:

- A. "#FHTM top 30 accounting for \$64,000,000. #FHTMIMPACT <http://instagr.am/p/PDUAuUINse/>." This tweet was accompanied by a photograph showing several FHTM reps holding a large check made out to "FHTM Top 30 Earners," in the amount of Sixty Four Million Dollars. A capture of the tweet and the photo are attached hereto. (**Menjivar Att. ZZZZ** at pp. 4 & 34.)

Facebook

89. On or about December 31, 2012, I visited Darla DiGrandi's Facebook web page at www.facebook.com/darlaandjim. DiGrandi's Facebook web page includes, among other things, various postings related to FTHM. On or about December 26, 2012, DiGrandi posted a message to her Facebook web page announcing that she had "left fortune." This is the same message by Darla DiGrandi posted on TwitLonger and dated December 26, 2012. (*See ¶ 84.*) On or about December 27, 2012, in response to a comment about a company called Vemma posted on

DiGrandi's Facebook web page, Darla makes the following statement: "There is no fee to join, it's a volume only company. Instead of buying multiple taxbots, amusement pack and raodside [sic], we buy something we can actually use. LOL." A true and correct copy of the Darla DiGrandi Facebook web page, which I captured on or about December 31, 2012, is attached hereto as **Menjivar Att. AAAAA**.

MEDIA COVERAGE

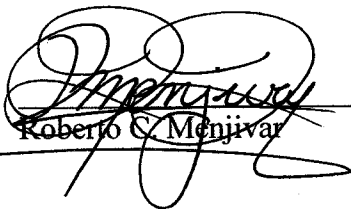
90. Attached hereto as **Menjivar Atts. BBBBB** and **CCCCC** are true and correct copies of articles from USA Today, dated October 15, 2010 and February 10, 2011, respectively.

CLASS ACTION DOCUMENT

91. Attached hereto as **Menjivar Att. DDDDD** is a true and correct copy of an exhibit filed in *Day v. Fortune Hi-Tech Marketing, et al.*, 5:10-cv-00305-JBC (E.D. KY), a class action lawsuit filed against FHTM. The attachment was filed by the Plaintiffs in that case, and is an undated copy of FHTM's Policies and Procedures. FTC staff obtained a copy of this document by accessing the Public Access to Court Electronic Records ("PACER") system. According to the website, PACER is an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2013.


Roberto C. Menjivar