

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

REBECCA WALLACE, BARBARA WRIGHT, MADALYN SUOZZO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Sonoma, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Geoffrey J. Spreter, CA Bar No. 257707, Law Offices of Alexander M. Schack, 16870 W. Bernardo Dr., #400, San Diego, CA 92127

DEFENDANTS

FORTUNE HI-TECH MARKETING, INC.; SCOTT AGUILAR; MOLLY AGUILAR; PAUL C. ORBERSON; JEFF ORBERSON; THOMAS A. MILLS; DAVID MILLS
County of Residence of First Listed Defendant Fayette, Kentucky
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 2641 DMS NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OR PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|----------------------------|--|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | Incorporated or Principal Place of Business In Another State | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 |

FILED
DEC 22 2010
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	LABOR	PROPERTY RIGHTS	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Dmg Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1595f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 18 USC §1962

Brief description of cause:
 Illegal pyramid scheme which violates RICO and Cal. Business & Professions Code §17200

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS: _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Geoffrey J. Spreter DOCKET NUMBER _____

DATE: 10/08/2010 SIGNATURE OF ATTORNEY OF RECORD: Geoffrey J. Spreter

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RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

1 ALEXANDER M. SCHACK, Esq., Bar No. 99126
(alexschack@amslawoffice.com)
2 GEOFFREY J. SPRETER, Esq., Bar No. 257707
(geoffspreter@amslawoffice.com)
3 LAW OFFICES OF ALEXANDER M. SCHACK
4 16870 West Bernardo Drive, Suite 400
5 San Diego, CA 92127
6 Tel: (858) 485-6535 Fax: (858) 485-0608

7 Attorneys for REBECCA WALLACE,
8 BARBARA WRIGHT, MADALYN SUOZZO,
9 individually and on behalf of all others similarly situated

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SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

10 UNITED STATES DISTRICT COURT

11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12 REBECCA WALLACE, BARBARA)
13 WRIGHT, MADALYN SUOZZO, individually)
14 and on behalf of all others similarly situated,)

15 Plaintiffs,)

16 v.)

17 FORTUNE HI-TECH MARKETING, INC.;)
18 SCOTT AGUILAR; MOLLY AGUILAR;)
19 PAUL C. ORBERSON; JEFF ORBERSON;)
20 THOMAS A. MILLS; DAVID MILLS)

21 Defendants.)
22)
23)
24)
25)
26)
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28)

Case No. **10 CV 2641 DMS NLS**

COMPLAINT AND DEMAND FOR JURY TRIAL

CLASS ACTION

COMPLAINT FOR DAMAGES

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I.

INTRODUCTION

1. This is an action on behalf of Plaintiffs Rebecca Wallace, Barbara Wright, Madalyn Suozzo, (hereinafter "Plaintiffs"), for themselves and those similarly situated, to recover damages caused by the Defendants' operation of an inherently fraudulent pyramid scheme. The pyramid scheme is fraudulent because it requires the payment by participants of money to defendant Fortune Hi-Tech Marketing, Inc. ("Fortune") and its co-conspirators, Scott Aguilar, Molly Aguilar, Paul C. Orberon, Jeff Orberon, Thomas A. Mills, and David Mills, (hereinafter Defendants), in return for which participants receive (1) the right to sell products, and (2) the right to receive, in return for recruiting other participants into the program, rewards which are unrelated to the sale of the product to ultimate users. **See Exhibit 1, Fortune Marketing Materials, Compensation Model.**

2. This action is brought on behalf of a class of persons who serve or have served as independent representatives for Fortune, pursuant to the Racketeer Influence and Corrupt Organizations Act, 18 U.S.C 1961 et seq (RICO), and the California Business and Professions Code §§17200, et seq and §§17500, et seq.

II.

PARTIES

A. The Plaintiffs:

3. Plaintiff Rebecca Wallace is and was at all times relevant to the allegations in this complaint a resident of the County of Sonoma, California and a resident of the United States.

1 4. Plaintiff Barbara Wright is and was at all times relevant to the allegations in
2 this complaint a resident of the County of Humbolt, California and a resident of the United
3 States.

4
5 5. Plaintiff Madalyn Suozzo is and was at all times relevant to the allegations in
6 this complaint a resident of the County of Sonoma, California and a resident of the United
7 States.

8 **B. The Defendants:**

9
10 6. Defendant Scott Aguilar is and was at all times relevant to the allegations in this
11 complaint a resident of San Diego County, California and a citizen of the United States. Scott
12 Aguilar is a National Sales Manager for Fortune, and recruited the Plaintiffs herein.

13 7. Defendant Molly Aguilar is and was at all times relevant to the allegations in this
14 complaint a resident of San Diego County, California and a citizen of the United States. Molly
15 Aguilar is a National Sales Manager for Fortune, and recruited the Plaintiffs herein.

16
17 8. Defendant Fortune is, and at all relevant times was, a under the laws of the state
18 of Kentucky, with its principal place of business in the state of Kentucky, and doing business
19 regularly throughout the United States, including in the State of California. Fortune transacts its
20 business in the Southern District of California in accordance with 18 U.S.C. § 1965(a) and (b)
21 and California Code of Civil Procedures § 410.10.

22
23 9. Defendant Paul C. Orberson, the president, founder and director of Fortune, is and
24 was at all times relevant to the allegations in this complaint a resident of Fayette County,
25 Kentucky and a citizen of the United States.

26 10. Defendant Jeff Orberson, the Chief Business Officer of Fortune, is and was at all
27 times relevant to the allegations in this complaint a resident of Fayette County, Kentucky and a
28

1 citizen of the United States.

2 11. Defendant Thomas A. Mills, the Chief Executive Officer of Fortune, is and was at
3 all times relevant to the allegations in this complaint a resident of Fayette County, Kentucky and
4 a citizen of the United States.
5

6 12. Defendant David Mills, the Chief Operating Officer of Fortune, is and was at all
7 times relevant to the allegations in this complaint a resident of Fayette County, Kentucky and a
8 citizen of the United States.

9 13. The above named Defendants had and have sufficient and continuous contact with
10 the Southern District of California in that, among other things, Defendants have been actively
11 promoting the pyramid scheme through the use of mails and wires in the district, selling products
12 and services in the district, and promoting their businesses in the district.
13

14 **III.**

15 **CONSPIRACY, AGENCY, JOINT VENTURE, ALTER EGO**

16 14. Each of the Defendants named herein acted as the co-conspirator, agent, joint
17 venturer, or alter ego of or for the other Defendants with respect to the acts, violations, and
18 common course of conduct alleged herein, and ratified said conduct, aided and abetted, or is
19 otherwise liable. Defendants have had meetings with other Defendants and reached agreements
20 to market the Fortune Pyramid as alleged herein. Defendants also used interstate communication
21 methods, including mail, telephone lines, and internet transmissions to perpetuate their unlawful
22 activities as alleged herein.
23

24 15. The acts charged in this Complaint, as having been done by Defendants, were
25 authorized, ordered, ratified or done by their officers, agents, employees, or representatives,
26 while actively engaged in the management of the Defendants' businesses or affairs.
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IV.

JURISDICTION AND VENUE

16. Defendants are subject to the jurisdiction of this Court. The Aguilar defendants reside in San Diego County and conducted their nationwide business therefrom. The corporate Defendant Fortune at all relevant times has been engaged in continuous and systematic business in this State, and/or has designated agents for service of process in this State, and/or has committed tortuous acts in this State. The individual Defendants have at all relevant times been engaged in continuous and systematic business in this State and/or have committed tortuous acts in this State. The actions giving rise to this lawsuit were taken by Defendants at least in part in California. Plaintiffs are citizens of California. In accordance with 18 U.S.C. § 1965(a) and (b), the Defendants are subject to this Court's jurisdiction in that they "transact affairs" in the Southern District of California and "the ends of justice require that other parties residing in any other district be brought before the Court, the Court may cause such parties to be summoned, and process for the purpose may be served in any judicial district of the United States by the marshal thereof." U.S.C. § 1965(a) and (b). In accordance with California's long-arm statute, California Code of Civil Procedure § 410.10, this Court has personal jurisdiction over the Defendants.

17. Because Plaintiffs assert claims pursuant to the Racketeer Influenced Corrupt Organizations Act (RICO), 18 U.S.C §§1961-1968, this Court has jurisdiction over this action pursuant to 28 U.S.C §1331. Because Plaintiffs assert state-law claims under the California Business and Professions Code, this Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. §1367.

18. Venue is proper in this District pursuant to 28 § 1391(b) and (c) and 18 § 1965(a) and (b) because a substantial number of the acts and transactions that gave rise to the claims of

1 the Plaintiffs and the Plaintiff class occurred within this District; Defendants did, or solicited,
2 business, and transmitted communications by mail or wire relating to their illegal pyramid in this
3 district; transacted their affairs, and/or resided within California and this judicial-district; and
4 Defendants' wrongful acts occurred in this District and have directly impacted the general public
5 of this district; and the ends of justice require that parties residing in other districts be brought
6 before this Court.

8 **A. The Nature of Pyramid Schemes**

9 19. While pyramid schemes can take different forms, they are at core inherently
10 illegal schemes by which their perpetrators induce others to join the scheme with the promise of
11 high profits and rewards from a putative business. The reality of the schemes, however, is that
12 rewards to those that join come almost exclusively from the recruitment of new participant
13 victims of the scheme.

14 20. "Like chain letters, pyramid schemes may make money for those at the top of the
15 chain or pyramid, but "must end up disappointing those at the bottom who can find no recruits."
16 *Webster v. Omnitrition, Inc.*, 79 F.3d 776, 781 (9th Cir. 1996) (quoting *In re Koscot*
17 *Interplanetary, Inc.*, .86 F.T.C. 1106, 1181 (1975), *aff'd mem. sub nom., Turner v. FTC.*, 580
18 F.2d 701 (D.C. Cir. 1978)). As such, "[p]yramid schemes are-said to be inherently
19 fraudulent..." *Omnitrition* at 781.

20 21. Pyramid schemes are characterized as: "such contrivances are characterized by
21 the payment by participants of money to the company in return for which they receive (1) the
22 right to sell a product and (2) the right to receive in return for recruiting other participants into
23 the program rewards which are unrelated to sale of the product to ultimate users." *Omnitrition* at
24 781.

1 22. According to the Ninth Circuit, the "satisfaction of the second element of the
2 *Koscot* test is the *sine qua non* of a pyramid scheme: "As is apparent, the presence of this second
3 element, recruitment with rewards unrelated to product sales, is nothing more than an elaborate
4 chain letter device in which individuals who pay a valuable consideration with the expectation of
5 recouping it to some degree via recruitment are bound to be disappointed." *Omnitrition* at 782.
6

7 23. The Ninth Circuit has adopted the *Koscot* standard and has held that "the
8 operation of a pyramid scheme constitutes fraud for purposes of several federal antifraud
9 statutes." *Omnitrition* at 782.
10

11 24. California law also renders pyramid schemes illegal. California Penal Code § 327
12 defines an endless chain (or pyramid scheme) as follows:

13 "any scheme for the disposal or distribution of property whereby a
14 participant pays a valuable consideration for the chance to receive
15 compensation for introducing ... additional persons into participation in
16 the scheme or for the chance to receive compensation when a person
17 introduced by the participant introduces a new participant.
18 Compensation... does not ... include payment based upon sales made to
19 persons who are not participants in the scheme and who are not purchasing
20 in order to participate in the scheme."

21 **B. The Fortune Pyramid's Basic Structure.**

22 25. Since at least August 1, 2002, Fortune has been operating and conducting
23 business in the State of California.
24

25 26. Defendant Fortune purports to be a lawful and legitimate company engaged in
26 "relationship marketing," which Fortune's website defines as "a method of distribution that
27 involves an estimated 59 million people worldwide and is defined as the sale of a consumer
28

1 product or service, person-to person, away from a fixed retail location, marketed through
2 independent sales representatives.”¹

3 27. In reality, Fortune is the founder of an enterprise that is and always has been an
4 illegal pyramid scheme. This enterprise will hereinafter be referred to as the Fortune Pyramid.
5

6 28. The Fortune Pyramid operates by offering prospective participants the
7 opportunity to become "Independent Representatives" ("IRs") who allegedly will "have the
8 opportunity to earn a residual income over time by acquiring loyal customers and introducing the
9 Fortune opportunity to others.”²
10

11 29. Defendant Fortune labels all individuals who participate in the Fortune Pyramid
12 as IRs.

13 30. Defendant Fortune compensates all of its IRs in accordance with what it terms a
14 "multilevel marketing compensation plan." Id.

15 31. The basic terms of this compensation plan are set forth in a Policies & Procedures
16 document produced by Defendant Fortune.
17

18 32. From 2001 until at least July 1, 2010, Defendant Fortune utilized a Policies &
19 Procedures document that sets forth a compensation structure that amounts to a fraudulent and
20 illegal pyramid scheme, both by its very terms and by its implementation by Fortune in practice.
21 This Policies & Procedures document is attached as **Exhibit 2** and us incorporated herein by
22 reference.
23
24
25

26 ¹ Why Fortune," <http://www.fhtm.net/whyfhtm.aspx>

27 ² Why Fortune," <http://www.fhtm.net/whyfhtm.aspx>
28

1 33. Prospective participants who meet certain basic criteria and desire to join Fortune
2 enter the company as either a representative or a manager. Although the Policies & Procedures
3 provide that one may join the Fortune Pyramid as a representative for \$75, Fortune recruits
4 participants to join as managers, which requires the participant to pay \$299, and allows them to
5 earn money by recruiting or coaching others. Although the Policies & Procedures document
6 provides that this \$299 is for the purchase of an "Optional Special Services Program," the
7 Defendants and others high in the pyramid frequently refer to the \$299 fee in other terms such as
8 the signup fee. Additionally, to remain a manager, one must pay Fortune an additional \$199 each
9 year.
10

11
12 34. After paying at least \$299 to join, a new Fortune manager then ostensibly has the
13 opportunity to advance to the following higher positions within the company:

- 14 A. Qualified Representative
- 15 B. Regional Manager
- 16 C. Executive Sales Manager
- 17 D. National Sales Manager
- 18 E. Presidential Ambassador

19
20 35. The basis for promoting managers to subsequent higher positions in the company
21 is not success in selling products or services, but rather in the recruitment and sponsorship of
22 new Fortune IRs by the manager and those in his or her "downline" (i.e., IRs below them on the
23 pyramid up to 8 levels). The Defendants recruit people to become IRs, entice them to purchase
24 Fortune products, services, and related marketing materials through material false statements and
25 omissions, and then distribute the proceeds of the product and services sales to new recruits
26 based almost exclusively on participants' recruitment of new victims, rather than on the sale of
27
28

1 products to retail users. As a result of investing in the scheme, Plaintiffs and the Class have
2 suffered millions of dollars in losses.

3 **C. Defendants' Enterprise Constitutes a Pyramid Scheme**

4
5 36. Defendants have operated and promoted the fraudulent scheme through the use of
6 the United States mail and interstate wire communications. Through their creation and operation
7 of the pyramid scheme, Defendants specifically intended to, and did in fact defraud the IRs,
8 including Plaintiffs and the members of the Class.

9
10 37. The first part of the illegal pyramid scheme consists of a multi-level marketing
11 business run by Fortune. At the bottom rung of the operation is a network of the IRs. Fortune
12 purports to sell its consumer products through the IRs, but in fact few of Fortune's products are
13 ever sold to anyone other than the IRs. The prices IRs pay for Fortune's products (and associated
14 costs) are so high that any profit on retail sales is virtually impossible. Because the IRs are
15 Fortune's actual customers and consumers of its products, Fortune requires an ever expanding
16 network of IRs in order to keep Fortune afloat.

17
18 38. Under the Compensation Plan utilized by Fortune until at least July 1, 2010, IRs
19 are able to earn compensation from two sources: (1) bonuses for recruiting and sponsoring new
20 representatives; and (2) commissions from sales of products and services by themselves and by
21 recruits in their "downline".

22
23 39. Fortune operates as an illegal pyramid scheme because this compensation plan
24 affords IRs the right to receive compensation in return for recruiting other participants into
25 Fortune; rewards which are unrelated to the sale of products or services to ultimate users outside
26 of Fortune. *See United States v. Gold*, 177 F.3d 472, 480 (6th Cir 1999) (quoting *In re Koscot*
27 *Interplanetary, Inc.*, 86 F.T.C. 1106, 1187 (1975)). Such a scheme is deemed inherently
28

1 fraudulent under federal law. *Id.*

2 **1. Recruiting presentations by the Defendants and others at the top**
3 **of the Fortune Pyramid emphasize recruitment of new representatives**
4 **over the sale of products and services to customers outside of Fortune.**

5 40. In recruiting presentations, the Defendants and other individuals at the top of the
6 Fortune Pyramid, presenting official Fortune marketing materials, consistently emphasize
7 recruitment of new members over sales or products and services to customers outside of Fortune.

8 **See Exhibit 1, Fortune Marketing Materials, Compensation Model.**

9 41. Recruiting new IRs into the Fortune Pyramid includes the use of interstate
10 telephone lines, mail services, and internet transmissions to accomplish said recruitments, and
11 often targets impressionable high school age individuals. For example, in a marketing
12 presentation broadcast on the internet, Defendant Molly Aguilar, a National Sales Manager who
13 resides in San Diego, demonstrates the “line of sponsorship” at a Fortune marketing seminar by
14 unfolding a computer paper that exceeds approximately 30 feet and spans half a speaking hall,
15 and allegedly contains the names of over 3,000 IRs recruited by one conversation. As she
16 unfolded the paper, Defendant Molly Aguilar stated:
17
18

19
20 “That’s the whole idea—so we met that guy, he got started and he did pretty
21 good, you know throughout the business, but what happened with him, is—now
22 to this day, he was our fifth executive for us to go national, because of another
23 conversation, fifteen seconds of boldness is what I call it, right? ***Because of***
24 ***fifteen seconds of saying, hey, you wanna make some money? He has over two***
25 ***hundred regional managers in his business.*** He just graduated college at
26 [inaudible]. Can you imagine he just graduated college, he’s living life. He’s not
27 about ready to go get a job. Hey, why? See that was great – for us wonderful, but
28 you know what it did for him? And for his family at such a young age? And the,
and the so many people that are on his team.

What happened— I’m going to show you just what happened, as a result of a
conversation he didn’t want to have, and I’m telling ya any time you guys walk
out there today and you see someone, you need to be opening your mouth because

1 this is about changing peoples' lives. This is what we do. And the second you can
2 internalize that, and you really believe that, and, like Joel said, when it, when
3 fortune goes from here to here [gestures from head to heart] that's when you
4 know that you're going to make this happen. So this is an example of just a
5 conversation, but it's kinda fun to see. So what this is, that guy, that guy that we
6 met on that campus that has over 200 regionals, this is just his report. And I
7 printed it out, and it says.... Here, um, what's this name say? [Assistant's reply
8 inaudible] Kyle McCarthy, level 1, so we met him... Now here, hold this like this.
9 This is fun to see. Just like this. Hold it like that. And when it starts getting long
10 in the middle just. No you stay here. When it gets in the middle just take it. So
11 this is somebody.

12
13 Kyle got started; he sponsored a couple of his *fraternity brothers*, boy that was
14 fun, right? Ok, and in groups of people like I said—hey, go after a couple leaders,
15 who's got the spark there? Who's you know, who's—who's most influential?
16 Let's talk to them. So starting with some, some of those guys, and he talked to a
17 few and on each one of those pages, for those of you who can't see, this is a list of
18 names. There is like fifty or sixty names on every single page.

19
20 So he talked to a few, he started on our level 1, he talked to a few that talked to a
21 few, and he built a business from talking to people and talking to people. Yeah
22 but listen to this. This is exciting. What happened here is that, a couple of these
23 *college students* started talking to their parents. They said man this is great but we
24 got to, you know we gotta to we gotta.... Let's get some business owners. Some
25 of our parents own businesses. One of them talked to his dad. The reason his dad
26 got started, is because he noticed that his son spent the tuition money out of his
27 bank account, there was this debit, and he called and said: "what are you doing?"
28 "What is this? Blah blah blah." And bottom line is, is uh, he showed his dad, he
29 actually got Scott on the phone with his dad, Scott drove two hours to meet his
30 dad. His dad has put in almost *three thousand people*. That's about it. And that's,
31 that's over, I think that's over a hundred levels deep. Why? *Because of one
32 conversation....*³

33
34 42. In addition, Defendants Molly and Scott Aguilar used telephone lines, involved in
35 interstate commerce, to recruit new IRs into the Fortune Pyramid. On one such occasion,
36 Defendant Scott Aguilar solicited Plaintiff Wright by making false representations about the
37 profitability of the Fortune business model in a telephone call to her. In another instance,
38

³ <http://www.youtube.com/watch?v=vVx5gZppexg&feature=related>

1 Defendant Scott Aguilar, also in a telephone conversation, requested that Plaintiff Wallace make
2 false statements about the positioning of new reps. Plaintiffs Wallace refused. Moreover, Scott
3 and Molly Aguilar made several training videos and tapes that were distributed by the other
4 Defendants over the internet, in an attempt to solicit additional recruits.
5

6 43. Another National Sales Manager of Fortune, Joel McNinch, stated during a
7 Fortune recruitment presentation that is available online on YouTube: “When you build a group
8 of 12 people – you sponsor three, and help them build nine total – 12, you promote yourself to
9 regional sales manager. We just had a guy in Indian River, Michigan last week do it in one
10 day.”⁴
11

12 44. In the same presentation, McNinch stated: “As a regional manager, every time
13 you go out and personally enroll a new manager who gathers three customers, you’re going to
14 earn a \$200 bonus.” *Id.*
15

16 45. McNinch described the process of earning more bonuses as more representatives
17 are recruited to join Fortune: “As these IRs start to bring in IRs, not only do you earn an override
18 percentage of their customers, but you earn a \$100 customer acquisition bonus for every rep
19 that’s gathered by any of your IRs. . . . \$100, \$100, \$100 unlimited for every rep that joins.” *Id.*
20

21 46. In another presentation, National Manager Misenheimer is quoted as saying the
22 key to making money in Fortune is to “get a rep, get a rep, get a rep, get a rep . . . [successful
23 IRs] are making money, but they don’t understand what they’re doing . . . The whole thing’s
24 about getting the preliminary stuff out of the way, and getting to regional [sales manager] fast.”⁵
25

26 ⁴ <http://www.youtube.com/watch/watch?v=F0sE2ID9bXo>

27 ⁵ <http://www.youtube.com/watch?v=lqLcrsXO1Hw&feature=related>
28

1 47. Summarizing the emphasis on recruitment, McNinch stated: "We're not looking
2 to sign you up and sell you something; we're looking for team members." *Id.*

3 **2. Official Fortune training materials emphasize recruitment of new**
4 **members over the sale of products and services to actual end users**
5 **outside of Fortune IRs**

6 48. Defendants provide IRs with written training materials entitled "Business
7 Building Steps," which is attached as **Exhibit 3.**

8 49. These training materials clearly emphasize recruitment of new IRs, not the sale of
9 products and services to end users.

10 50. This list provides guidance for recruiting new managers into Fortune. It tells
11 newly appointed managers: "You are not trained as a sales person and you should not act like
12 one." It further tells managers to tell prospective managers: "you don't have to be a salesperson"
13 to succeed at Fortune.

14 51. Furthermore, this list provides answers to hypothetical questions that a manager
15 may face in attempting to recruit new managers.

16 52. One such hypothetical question is: "Is this a pyramid?" Fortune encourages
17 representatives to respond as follows: "No. Pyramids are illegal and I certainly wouldn't be
18 involved in anything illegal. Just let me show it to you."

19 53. The Building Business steps encourage managers to quickly sign up new
20 managers by requesting an answer from a prospective participant within a short period of time.

21 **3. Bonuses paid to Fortune IRs are based upon recruiting others to join**
22 **Fortune as managers.**

23 54. Fortune's compensation plan involves an elaborate set of bonuses which are
24 effectively the only way to earn money in Fortune and which are all tied not to real sales to
25
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28

1 outside customers, but rather to recruitment of new IRs.

2 55. An IR receives a "Quick Start Bonus" of \$100 for sponsoring a manager who
3 acquires only three personal customer points within 60 days of the manager's enrollment.
4 Managers are told that these "customers" need not be actual customers but rather may be
5 purchases of Fortune products and services made by the manager him or herself. New managers
6 are encouraged to make these three purchases the same day as they join the Fortune Pyramid,
7 thus qualifying themselves immediately for bonuses and triggering the Quick Start Bonuses to
8 those above them on the Fortune Pyramid. Thus, a Quick Start Bonus is compensation for
9 recruitment and is not based on actual product sales to end users outside of Fortune.
10
11

12 56. Additionally, an IR may earn a "Quick Start Bonus Override" ("QSBO")
13 whenever a manager within his or her downline receives a Quick Start Bonus. If the new
14 manager recruited in the downline falls on Level 2-7, the amount of the QSBO is \$5. If the new
15 manager is on Level 8, the QSBO is \$10. Within the last year, these QSBO amounts have been
16 raised to \$15 for Levels 2-7 and \$20 for Level 8. This structure provides further incentive to
17 build a pyramid all the way through eight levels of recruitment.
18

19 57. Once an IR becomes a Regional Sales Manager, he or she is eligible to receive
20 customer acquisition bonuses. These bonuses are based not on the acquisition of new customers,
21 but rather on the recruitment of new managers into the Regional Sales Manager's downline. The
22 amount of the customer-acquisition bonus is \$100 for each new manager, to unlimited levels
23 deep, who enters the QRSM's regional-coded group and qualifies for a Quick Start Bonus. If 16
24 such new managers enter the group, then the amount of the bonus is doubled to \$200 per new
25 manager.
26
27

28 58. At the level of Executive Sales Manager and National Sales Manager, these

COMPLAINT FOR DAMAGES

1 “customer” acquisition bonuses become more lucrative as the Executive or National Sales
2 Manager receives a bonus for each new manager in his or her downline that is recruited to join
3 Fortune and qualifies for a Quick Start Bonus.
4

5 **4. Fortune’s “Trainer Coach” Program is merely another thinly veiled**
6 **means of paying IRs for the recruitment of new IRs.**

7 59. Fortune also encourages new participants to pay \$299 (or slightly less in some
8 states) to become a “Trainer Coach.” As a Trainer Coach, one purportedly will be paid \$40 for
9 the initial training of a new manager. However, managers are not obligated to undergo such
10 training. Many managers are simply trained on the use of their “Fortune Back Office” and sign a
11 form, causing the \$40.00 training fee to be paid.

12 60. Trainer Coaches are required to pay an annual renewal fee of \$100 to maintain
13 their status as Trainer Coach.
14

15 61. As with the advancement in the ranks of manager, IRs may advance to higher
16 levels of trainers. A Trainer Coach who becomes a Regional Sales Manager may become a
17 “Certified Regional Trainer” for an additional \$200. A Certified Regional Trainer, in turn,
18 receives \$80 for training each new Trainer Coach.
19

20 62. Certified Trainer Coaches can become eligible to receive bonuses tied directly to
21 the training of new managers by any Trainer Coach in their “training downline.” However, a
22 Certified Trainer Coach can become eligible for these bonuses only by sponsoring four active
23 managers who are also Trainer Coaches.
24

25 63. Thus, the Trainer Coach program amounts to nothing more than another means
26 for Fortune to push IRs to recruit new participants into the Fortune Pyramid and to receive
27 payment from IRs.
28

1 **5. Commissions ostensibly earned on sales of products and services are,**
2 **in fact, tied to recruitment of new managers.**

3 64. Although Fortune's compensation structure allows IRs to earn commissions on
4 the sale of Fortune products and services by themselves and those recruited in the eight levels
5 below them, these commissions are relatively small compared to the \$100 "Quick Start Bonuses"
6 that an IR can earn when new representatives are recruited to join Fortune in his or her downline.
7

8 65. Even this commission structure rewards recruitment, not sales to customers
9 outside the Fortune Pyramid, because IRs are encouraged to purchase Fortune products and
10 services themselves or sell them to IRs they recruit rather than to sell them to customers outside
11 the Fortune Pyramid. **See Exhibit 1, Fortune Marketing Materials, Compensation Model.**
12

13 66. Fortune's commission structure makes this possible by allowing IRs to earn
14 commissions on sales without ever actually selling anything to a customer outside the Fortune
15 Pyramid. In fact, prospective IRs are told while joining Fortune that they must purchase certain
16 products to earn their first "customer points" and therefore allow bonuses to be paid to their
17 sponsors.
18

19 67. For example, until at least April 2010, new Fortune IRs were required to purchase
20 a "Fortune Back Office" website that required a \$20.00 setup fee and a \$24.95 recurring monthly
21 payment. This website qualified as the IRs first customer point/customer.
22

23 68. Fortune's commission structure allows IRs to earn commissions on sales of
24 products and services by themselves, to themselves, and by those IRs they recruit to join the
25 company for up to eight levels below them on the pyramid.
26
27
28

1 69. To earn commissions on all eight levels, an IR is required to recruit and sponsor
2 one new manager. Thus, an IRs ability to receive commissions on the sale of any products is tied
3 to recruitment of new individuals to join the Fortune Pyramid.
4

5 70. An IR qualifies to receive commissions on sales by any IR he or she recruits
6 personally (Level 1) by acquiring three “active personal customers” and one “personally
7 sponsored Manager,” i.e., a new Fortune IR.
8

9 71. These “active personal customers” need not be actual human beings, let alone
10 human beings outside of the Fortune Pyramid; rather, a product or service purchased from
11 Fortune by the IR him or herself qualifies as a “customer” for purposes of allowing IRs to
12 receive commissions and bonuses. The “customer points” assigned to each Fortune product or
13 service determine how much of any given Fortune product or service must be purchased to
14 qualify as one customer.
15

16 72. A “Customer Point Sheet” provided to new IRs explains what products or services
17 may be purchased to qualify as a new “customer.” As an example, the purchase of \$39.99 of
18 True Essentials products by an IR counts as one “customer” and one “customer point.”
19

20 73. To obtain the required three customer points, new IRs are encouraged to merely
21 purchase Fortune products and services themselves, rather than attempt to sell them to outsiders.
22 Potential IRs are frequently told at recruiting meetings that they are already paying for the types
23 of products and services offered by Fortune – e.g., television, Internet service, cellular phone
24 service, vitamins or travel – so they should simply switch from their current service provider to a
25 product offered by Fortune.
26

27 74. Although one of the three “customers” purportedly must be “other than his/her
28

1 own personal or household account,” Fortune neither tracks nor enforces this policy, and the
2 policy itself permits this customer to be another IR.

3 75. Thus, a new Fortune IR must recruit another manager and either purchase or sell
4 three Fortune products or services in order to receive commissions on the products or services
5 purchased or sold by the manager he or she recruits (Level 1 commissions).
6

7 76. To earn commissions on Levels 2-7, an IR must acquire five customer points, i.e.,
8 purchase five Fortune products or services, and sponsor two managers. There is no requirement
9 that these customers be actual purchasers outside of the Fortune Pyramid.
10

11 77. To earn commissions on Level 8, an IR must acquire 10 customer points, i.e.,
12 purchase ten Fortune products or services, and sponsor three managers. There is no requirement
13 that these customers be actual purchasers outside of the Fortune Pyramid.

14 78. An IR who meets the requirements for earning Level 8 commissions – i.e., one
15 who has purchases 10 Fortune products or services and personally sponsors three new managers
16 – is eligible to receive the first promotion available within Fortune, to the position of Qualified
17 Representative.
18

19 79. To advance to the next level in the company, Regional Sales Manager, a Qualified
20 Representative must develop a minimum of 12 managers within his or her first five levels, and
21 needs only to maintain the same 10 “customer points” required to become a Qualified
22 Representative. Thus, Qualified Representatives, to advance in Fortune, have an incentive solely
23 to recruit and to ensure that those immediately below them recruit new managers into Fortune.
24

25 80. During recruitment presentations, the individual Defendants and others near the
26 top of the Fortune Pyramid encourage prospective IRs to quickly advance to the level of
27 Regional Manager in order to begin earning the bonuses described below.
28

1 81. A Regional Sales Manager becomes a Qualified Regional Sales Manager merely
2 by maintaining the 10 "customer points" that were necessary to be promoted to Qualified
3 Representative and Regional Sales Manager.
4

5 82. As set forth below in the description of Fortune's bonus structure, the benefit of
6 advancing to each new level within the company is the eligibility for bonuses tied directly to the
7 recruitment of new managers within an IRs downline.

8 83. The next level in Fortune is Executive Sales Manager. A Regional Sales Manager
9 may be promoted to Executive Sales Manager by having 15 or more active personal "customer
10 points," i.e., buying 15 products or services from Fortune, developing six Regional Sales
11 Managers within a certain range on his or her downline, and developing a minimum downline
12 organization of 90 managers within his or her downline. Thus, advancement to ESM occurs only
13 through recruitment.
14

15 84. The second-highest level in Fortune is National Sales Manager. To be promoted
16 to this level, an IR need not acquire any more active customers. But he or she must have six
17 Qualified Executive Sales Managers in a portion of her downline, 90 managers in his or her
18 Regional Sales Manager group, and 540 managers in his or her Executive Sales Manager group.
19 To be a Qualified National Sales Manager, the IR must maintain his or her 15 customer points at
20 the end of the month.
21

22 85. The highest level obtainable in Fortune is Presidential Ambassador. A
23 Presidential Ambassador need only have 15 personal customer points but must have three
24 Qualified National Sales Managers within a certain portion of his or her downline, a downline
25 organization of 1620 managers in his or her National Sales Manager group, and a monthly
26 income exceeding \$100,000. Presidential Ambassadors are appointed by Fortune, and, as a
27
28

1 special bonus, they receive a share of the revenue/profits of the entire Fortune Pyramid.

2 86. Advancement in Fortune is therefore tied directly to recruitment of new managers.
3 As described below, the benefit of advancement in Fortune is the receipt of bonuses based on
4 new members who are sponsored in one's downline. These bonuses increase based on the IRs
5 position in the company, which is obtained by recruiting new representatives.
6

7
8 **6. In furtherance of the illegal pyramid scheme, Fortune makes**
9 **false claims about its legitimacy and success.**

10 87. Defendants have further made representations that alleged "partners" of Fortune,
11 such as Dish Network, have sent legal teams to verify the legality of Fortune's operation.
12 Defendants have also made representations that former high-level government attorneys
13 represented Fortune and ensured that it complied with the law and was legal in all 50 states. All
14 of these representations are false.
15

16 88. Defendants and other individuals high in the Fortune Pyramid have made false
17 representations that Fortune is licensed to transact business in every state and that its
18 compensation structure must be approved by each state's financial regulators before such a
19 license is given.
20

21 89. In an effort to add legitimacy to the Fortune Pyramid's operations, the Defendants
22 have made representations that well known actors, athletes, businesspersons and politicians.
23 Many of the individuals named in these lists have released public statements stating that they
24 have never even heard of Fortune, let alone were a member of it.
25

26 **7. Cease and Desist Orders in North Dakota and Montana — Settlement**
27
28

1 **7. Cease and Desist Orders in North Dakota and Montana — Settlement**

2 90. Recognizing that the Defendants operate an illegal pyramid scheme, regulators in
3 North Dakota and Montana have taken action against Fortune.

4 91. On December 10, 2009, the North Dakota Attorney General issued a cease and
5 desist order against Fortune, ordering it to cease from doing business in North Dakota. The North
6 Dakota cease and desist order is attached as **Exhibit 4** and incorporated herein by reference.

7 92. In short, the North Dakota Attorney General alleged that, among other things,
8 Fortune operated as a pyramid scheme illegal under North-Dakota law.

9 93. On January 14, 2010, Fortune reached a settlement with the North Dakota
10 Attorney General in which Fortune agreed to refund any North Dakota customer the entire
11 amount he or she paid and to pay the Attorney General's investigation costs and attorney's fees.
12 A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 5** and
13 incorporated herein by reference.

14 94. On March 4, 2010, the Montana Commissioner of Securities issued a cease and
15 desist order prohibiting Fortune from doing business in Montana, and likewise alleging that
16 Fortune operated as an illegal pyramid scheme. A true and correct copy of the Cease and Desist
17 Order is attached hereto as **Exhibit 6** and incorporated herein by reference.

18 95. Fortune reached a settlement agreement with Montana requiring it to pay
19 potentially over \$800,000, including a \$100,000 fine to the state treasurer and any refunds of
20 enrollment fees that Montana IRs may seek. A true and correct copy of the Settlement
21 Agreement is attached hereto as **Exhibit 7** and incorporated herein by reference.

1 96. As part of the Montana settlement, Fortune was also required to, among other
2 things, train Montana IRs to emphasize the sale of products to customers outside of the Fortune
3 Pyramid.

4 97. Fortune was also required to charge only \$75 for new IRs to enroll in Montana.

5 98. Finally, Fortune was forced to disclose certain financial information. These
6 Montana disclosures are attached as **Exhibit 8** and are incorporated herein by reference.
7

8 99. The disclosures reveal that a very small number of individuals at the top of the
9 Fortune Pyramid are making, on average, thousands of dollars per month, while the vast majority
10 of Fortune IRs, who are in the lower rungs of the pyramid, earn virtually nothing.
11

12 100. For example, the disclosures show that:

13 A. Nearly 30% of the active IRs earn nothing at all.

14 B. Of those IRs that do earn something, over 54% are managers on the
15 bottom rung of the pyramid. These managers receive an average of only
16 \$93 per month from Fortune.
17

18 C. National Sales Managers comprise just .38 % of the total number of paid
19 IRs. On average, they earn \$19,865 per month in commissions.

20 D. Presidential Ambassadors constitute only .07% of paid IRs. They earn an
21 average of \$103,416 per month in commissions.
22

23 101. To perpetuate the fraudulent pyramid scheme described above, Fortune claims to
24 have special relationships with or to be a "partner" of several large, major national companies
25 whose products and services Fortune offers.

26 102. These companies include, but are not limited to: AT&T, Verizon Wireless, Sprint,
27 Dish Networks, General Electric Security ("GE Security"), DuPont, and Home Depot. Fortune
28

1 103. In reality, Fortune does not have any sort of special relationship with these
2 companies. Fortune is not a "partner" with Dish Network. Rather it is a third-party independent
3 contractor authorized to sell Dish Network service. There are numerous other such third-party
4 vendors of Dish Network.⁶

5
6 104. Counsel for Home Depot informed authorities in the state of Montana that
7 Fortune has no partnership or sales agreement with Home Depot.

8 105. GE Security also informed Montana authorities that Fortune has no direct
9 relationship with GE Security or GE. Instead, Fortune purchases GE Security products from
10 Protect America, an authorized GE Security dealer.

11
12 106. Fortune purchases all wireless products from Simplexity, a third-party online
13 affiliate program of the wireless carriers. Fortune has no direct relationship with any of the
14 nation's top wireless carries.

15
16 **8. Following North Dakota and Montana, Fortune promulgates new
Policies & Procedures**

17 107. Following the cease and desist orders and subsequent settlements in North Dakota
18 and Montana, Fortune has made various changes to its Policies & Procedures manual, including
19 changes to the compensation structure.

20
21 108. The new Policies & Procedures manual became available on Fortune's website in
22 July 2010.

23 109. These changes are an admission by Fortune that the previous Policies and
24 Procedures were illegal.
25

26
27
28 ⁶ See, e.g., http://www.vmcsatellite.com/red_design/program_overview.cfm.

1 110. The new policies are still deficient, and Fortune has not disgorged the money
2 illegally taken from thousands of California citizens in the prior years.

3 **9. The Fortune Pyramid Violated The *Amway* rules.**

4 111. As stated above, new IRs are recruited into an existing "line of sponsorship" to
5 which the recruiting Rep already belongs. In truth, IRs are recruited to Fortune because Fortune
6 omits to inform the IRs that they are entering into in illegal pyramid scheme, and that the
7 overwhelming majority of IRs lose money rather than earn it. These are material omissions.

8 112. Defendants scheme violates the federal RICO, mail and wire statutes and the
9 California Penal Code § 327 because it is a fraudulent pyramid scheme or "endless chain."
10 Accordingly, even if Defendants can establish compliance with the FTC's decision in *In re*
11 *Amway Corp.*, 93 F.T.C. 618 (1979), which they cannot, as explained below, the scam
12 nevertheless violates the federal mail and wire statutes and the California Penal Code § 327.

13 113. In Amway, the FTC ruled that Amway was not a pyramid scheme because it
14 adopted and purportedly enforced certain rules that were intended to avoid the characteristics of
15 a pyramid scheme.

16 114. The FTC held that a direct marketing business like Amway would not be
17 considered a pyramid scheme if the sponsor of the business did not violate the "initial
18 investment" rule, the "70%" rule, the "buyback" rule, and the "10 customer" rule, all of which are
19 described in more detail below.

20 115. The FTC reasoned in *Amway* that the company's operations did not constitute a
21 pyramid scheme because:

22 The Amway system is based on retail sales to consumers. Respondents
23 have avoided the abuses of pyramid schemes by (1) not having a
24 'headhunting' fee; (2) making product sales a precondition to receiving the
25

1 performance bonus; (3) buying back excessive inventory; and (4)
2 requiring that products be sold to consumers Amway's buy-back, 70% and
3 ten customer rules deter unlawful inventory loading Id. at 107-109.

4 Accordingly, if any one of these rules is not followed, then the business at issue may be deemed
5 a pyramid scheme.

6 116. **The Initial Investment Rule:** The FTC decision noted that pyramid schemes
7 involve a payment or initial disbursement by a new participant in exchange for the right to sell
8 products and the right to receive rewards in return for recruiting other participants into the
9 program, and which are unrelated to the sale of products to the ultimate user. The FTC found that
10 Amway did not require such an investment because "the *Amway* system does not involve an
11 'investment' inventory by a new Rep. A kit of sales literature costing only \$15.60 is the only
12 requisite." *In re Amway Corp.*, 93 F.T.C. 618, [107] (1979). Today, however, Fortune requires a
13 significant investment by a new IR. Each new IR is effectively required to make an initial
14 investment of hundreds, and in some cases thousands of dollars, through the purchase of Fortune
15 products and services and through the purchase of the required marketing materials and support.
16 While Fortune's initial sign up fee is either \$75.00 or \$299.00, in practice, Defendants require an
17 initial investment by a new IR in an average amount of between \$1000 and \$2000 in the first
18 twelve months, through the purchase of products and services and the marketing materials.

19 117. In *Omnitrition*, like Fortune, there was no significant charge to become an IR and
20 the IRs had no quota of product that they had to buy. *Omnitrition* at 780. However, in order to
21 receive any benefit from the system or to move up to the next level as a "Bronze Supervisor," the
22 IRs had to purchase and convince three other recruits to purchase a certain amount of product. Id.
23 Fortune has a similar structure where advancement is based on both the amount of product the
24 self consumes and the number of persons the IR can recruit as IRs to likewise purchase Fortune's
25
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28

1 products and services. In *Omnitrition* the multilevel marketer argued that its business plan did
2 not meet the first element of the *Koscot* test because: "it does not charge for the right to sell its
3 products at the IR level"— but the court disagreed. *Id.* at 782. The court explained that in order
4 to move up within the *Omnitrition* pyramid scheme:

5
6 A participant must pay a substantial amount of money to *Omnitrition* in
7 the form of large monthly product orders. In exchange, for these
8 purchases, the supervisor receives the right to sell the products and earn
9 compensation based on product orders made by the supervisor's recruits.
10 This compensation is facially 'unrelated to the sale of product to ultimate
11 users" because it is paid based on the suggested retail price of the amount
12 ordered from *Omnitrition* rather than based on actual sales to consumers.
13 On its face, *Omnitrition's* program appears to be a pyramid scheme.
14 *Omnitrition* cannot save itself simply by pointing to the fact that it makes
15 some retail sales.

16 *Id.* at 782 (emphasis added). Fortune's pyramid scheme is analogous to *Omnitrition's*.

17 118. **The "70%" Rule:** In the *Amway* decision, the FTC explained the 70% rule as
18 follows: "[t]o ensure that IRs do not attempt to secure the performance bonus solely on the basis
19 of purchases, *Amway* requires that, to receive a performance bonus, IRs must resell at least 70%
20 of the products they have purchased each month....*Amway* enforces the 70% rule." *Amway*, 93
21 F.T.C. 618 at 72-75. Fortune has a non-enforced discretionary 70% rule in its Policies and
22 Procedures:

23 "All IRs ***should*** satisfy the following sales requirements: a) At least 70%
24 of the IRs total personal sales volume should be sold to End User
25 Consumer Active Customers; and b) IRs should attempt to acquire at least
26 three new customers every month."

27 **See Exhibit 2, Policies and Procedures at p. 31.** In practice, Fortune's 70% rule is illusory and
28 Fortune encourages self-consumption of product purchases by IRs, so that they can achieve
additional bonuses. As stated above, an IR qualifies to receive commissions on sales by any IR
he or she recruits personally (Level 1) by acquiring three "active personal customers" and one

1 "personally sponsored Manager," i.e., a new Fortune IR. These "active personal customers" need
2 not be actual human beings, let alone human beings outside of the Fortune Pyramid; rather, a
3 product or service purchased from Fortune by the IR him or herself qualifies as a "customer" for
4 purposes of allowing IRs to receive commissions and bonuses. The "customer points" assigned
5 to each Fortune product or service determine how much of any given Fortune product or service
6 must be purchased to qualify as one customer. Thus, Fortune also violates the 70% rule of the *Amway*
7 decision.
8

9
10 119. **The "Buyback" Rule:** In the *Amway* decision, the FTC described the buyback
11 rule as follows: "Amway, the Direct Rep or the sponsoring Rep will buy back any unused
12 marketable products from a Rep whose inventory is not moving or who wishes to leave the
13 business....Amway enforces the buy-back rule...." *Amway*, 93 F.T.C. 618 at [72-75]. Fortune's
14 buyback rule as set forth in Section 7 of its Policies and Procedures does not provide for the
15 buyback of products and services by Fortune. Rather if product must be returned, it can only be
16 returned to the manufacturer. Fortune does provide for return of marketing materials, however,
17 that return is limited to 90% and subject to various offsets. **See Exhibit 2, Policies and**
18 **Procedures at p. 33.**
19

20 21 120. **The Ten Customer Rule:** The "ten customer rule" approved by the FTC in
22 *Amway* provided that "IRs may not receive a performance bonus unless they prove a sale to each
23 different retail customers during each month....The ten customer rule is enforced by *Amway* and
24 the Direct IRs...." *Amway*, 93 F.T.C. 618 at [72-75]. The FTC added: "[p]yramid sales plans
25 based on inventory loading or headhunting fees create an incentive for recruiting rather than
26 selling products to consumers... Amway's ten-customer rule deters inventory loading by
27
28

1 sponsoring IRs." Id at 142-147. Fortune does not enforce the ten customer rule and, indeed,
2 tacitly approves systematic noncompliance with it.

3 121. First, by Fortune's own definition, sales to individuals who are affiliated with
4 Fortune in some manner, and who are thus not retail customers, count as sales to customers,
5 contrary to what California Penal Code §327 and the FTC *Amway* Order contemplated. Fortune's
6 Policies and Procedures 4, A provides:

7
8 "A Qualified Representative (QR) is an IR that has qualified for all
9 commission levels in the eight (8) level compensation program.
10 Requirements are: (i) The IR must have (10) or more active personal
11 customers; and (ii) the IR must have a minimum of three (3) personally
12 sponsored first-level managers.

13 **See Exhibit 2, Policies and Procedures at p. 3.** Fortune, by its own rule, does not require IRs to
14 sell products to retail customers unaffiliated with the scheme in order to qualify for a bonus.
15 Accordingly, Fortune's business plan violates the FTC's ten-customer rule because it does not
16 require IRs to sell products to any true unaffiliated retail customers.

17 122. Second, Fortune does not even enforce the ten-customer rule as written. In order
18 to appear to enforce this rule, in Section 4.5, Reporting Policy Violations, Fortune shift the
19 burden of enforcement to the IRs:

20 "IRs observing a policy violation by another IR should submit a written
21 report of the violation directly to the attention of FHTM Compliance
22 department. Details of the incidents such as dates, number of occurrences,
23 persons involved and any supporting documentation should be included in
24 the report. In most instances, the Compliance Department can-not and will
25 not initiate action in the absence of a written report documenting the
26 alleged violations." **See Exhibit 2, Policies and Procedures at p. 30.**

27 123. All of the Defendants are aware of, approve, actively encourage, promote, and
28 facilitate the systematic noncompliance with or breach of the rules that purportedly protect

1 against the operation of a pyramid scheme, as discussed in the Amway FTC Order. Fortune's
2 rules governing pyramid schemes are therefore a sham.

3 **10. The Arbitration Provision Is Unconscionable and Unenforceable**

4
5 124. Before becoming IRs, prospective IRs, including Plaintiffs and members of the
6 class, were required to sign Fortune's IR Agreements. In very small print buried in the policies
7 and procedures there is an arbitration provision. The arbitration provision is provided on a "take-
8 it-or-leave-it" basis with no opportunity for negotiation. The prospective IRs received no
9 explanation of the arbitration provision and would not have been permitted to become IRs unless
10 they signed the Rep Agreement which contains the offending and unenforceable arbitration
11 provision. As a result of the unequal bargaining positions, the hidden terms and the overall
12 harshness of the adhesive arbitration provision, Fortune's arbitration provision is procedurally
13 unconscionable.
14

15 125. Fortune's arbitration provision is also permeated with substantively unconscionable
16 terms as demonstrated by the following examples, which are not exhaustive.
17

18 126. Fortune's Rep Agreement (Agreement) expressly incorporates the Policies and
19 Procedures, which contain the terms of the arbitration provision. Policies and Procedures grant
20 Fortune the power to unilaterally modify the arbitration provision at anytime, thereby rendering
21 the arbitration provision illusory. More specifically, the Policies and Procedures provide that:
22

23 1.1: Policies and Compensation Plan Incorporated into Independent
24 Representative Agreement: "These Policies and Procedures, in
25 their present form and as amended at the sole discretion of Fortune
26 Hi-Tech Marketing, Inc. (hereafter FHTM or company), are an
27 integral part of the FHTM Independent Representative
28 Agreement/Application (hereafter "IR Agreement") and Trainer
Coach Agreement/Application."

1.2: "FHTM IRs are required to comply with all of the terms and
conditions set forth in this agreement. FHTM may amend this

1 agreement at its sole discretion from time to time.” See **Exhibit 2,**
2 **Policies and Procedures at p. 14.**

3 Fortune's unilateral right to modify renders the arbitration provision substantively
4 unconscionable. See *Torres v. S.G.E. Management, LLC, et al.* No. 09-20778 (5th Cir. Oct 5,
5 2010).

6 127. Fortune's arbitration provision is also substantively unconscionable to the extent it
7 provides arbitrators biased by virtue of Fortune's ability to "pick" the arbitrators who are to
8 resolve disputes.

9 128. Fortune's arbitration provision subjects IRs to prohibitively expensive arbitration
10 fees thereby rendering the provision substantively unconscionable. Fortune's arbitration
11 provision requires an individual to pay "location" costs for the arbitration and hearing costs that
12 total approximately \$12,000.00 for a three-day trial. For example, Plaintiffs will have to travel
13 over 2,000 miles to vindicate their rights. These excessive hearing fees work to preclude IRs
14 from vindicating their rights.

15 129. The Fortune arbitration provision also requires that IRs waive their right to a jury
16 trial and access to the courts but expressly reserves the right for “Fortune to apply to any Court
17 having jurisdiction for a writ of attachment, a temporary injunction or any other relief available
18 to Fortune to protect its interests prior to, during, or filing of any arbitration or other proceeding
19 or pending the rendition of a decision or award in connection with any arbitration or
20 proceeding.” In essence, Fortune may have access to the Courts to seek a remedy, however, IRs
21 are precluded from receiving the same right; further demonstrating a lack of mutuality in the
22 provision.
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1 136. The members of the class number in the thousands and joinder of all Class
2 members in a single action is impracticable.

3 137. There are questions of law and/or fact common to the class, including but not
4 limited to:
5

- 6 a. Whether Defendants were operating an unlawful pyramid scheme;
- 7 b. Whether IRs paid money to Defendants in exchange for (1) the right to
8 sell a product and (2) the right to receive, in return for recruiting others in
9 to the program, rewards which were unrelated to the sale of the product to
10 retail consumers;
- 11 c. Whether IRs were required to make an investment into the pyramid
12 scheme;
- 13 d. Whether Defendants enforced the 70% rule;
- 14 e. Whether Defendants enforced the buy-back rule;
- 15 f. Whether Defendants enforced the ten-customer rule;
- 16 g. Whether Defendants conduct constitutes an "Endless Chain" under the
17 California Penal Code;
- 18 h. Whether Defendants omitted to inform Plaintiffs and the plaintiff class
19 that they were entering into an illegal pyramid scheme where the
20 overwhelming majority of participants lose money;
- 21 i. Whether Defendants engaged in acts of mail and/or wire fraud in direct
22 violation of RICO;
- 23 j. Whether and to what extent the conduct has caused injury to Plaintiffs and
24 the Plaintiff class;
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1 k. Whether Defendants' conduct constitutes an unlawful, unfair and
2 fraudulent business practice under the California Business and Professions
3 Code; and

4
5 l. Whether Defendant's conduct constitutes false advertising under the
6 California Business and Professions Code.

7 138. These and other questions of law and/or fact are common to the class, and
8 predominate over any question affecting only individual class members.

9
10 139. Plaintiffs' claims are typical of the claims of the class in that Plaintiffs were IRs
11 for Fortune and lost money as a result of the pyramid scheme.

12 140. Plaintiffs will fairly and adequately represent the interests of the class in that
13 plaintiffs' claims are typical of those of the class and Plaintiffs' interests are fully aligned with
14 those of the class. Plaintiffs have retained counsel who is experienced and skilled in complex
15 class-action litigation.

16
17 141. Class-action treatment is superior to the alternatives, if any, for the fair and
18 efficient adjudication of the controversy alleged herein, because such treatment will permit a
19 large number of similarly-situated persons to prosecute their common claims in a single forum
20 simultaneously, efficiently and without unnecessary duplication of evidence, effort, and expense
21 that numerous individual actions would engender.

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23 142. Plaintiffs know of no difficulty likely to be encountered in the management of this
24 action that would preclude its maintenance as a class action.

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VI

CLAIMS FOR RELIEF

A. COUNT I

JUDGMENT DECLARING FORTUNE'S ARBITRATION AND FORUM SELECTION
PROVISIONS UNCONSCIONABLE AND UNENFORCEABLE

143. Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

144. Plaintiffs and the class claim the arbitration and forum selection provisions contained within the IR Agreement are procedurally and substantively unconscionable and unenforceable.

145. Fortune's IR Agreement, and its incorporation of the Policies and Procedures, contain an arbitration and forum selection provision.

146. Fortune's arbitration and forums selection provisions were presented to plaintiffs and the plaintiff class on a "take it or leave it basis." Plaintiffs and the plaintiff class were not given any opportunity to negotiate the terms of the provisions. As such, the provisions are procedurally unconscionable.

147. Fortune's arbitration provision is permeated with substantively unconscionable terms examples of which, while not exhaustive, are as follows:

148. Fortune's provision incorporates Fortune's Rules of Conduct. Fortune's Policies and Procedures grant Fortune the power to unilaterally modify the terms of the arbitration provision at any time, thereby rendering the arbitration provision illusory. Fortune's unilateral right to modify the arbitration provision renders the arbitration agreement substantively unconscionable. See *Torres v. S.G.E. Management, LLC, et al.* No. 09-20778 (5th Cir. Oct 5, 2010).

1 149. Fortune's Policies and Procedures provide an inherently biased arbitrator and
2 arbitrator-selection process. Forcing IRs to arbitrate in an inherently biased arbitrator, in that
3 Fortune chooses the arbitrators, American Arbitration Association, which is greatly more
4 expensive than comparable arbitrators, and the rules governing the arbitration, renders the
5 arbitration provision substantively unconscionable.
6

7 150. Fortune's Policies and Procedures require arbitration to take place in the AAA
8 arbitral forum. The AAA arbitral forum requires an individual Rep to pay costs that total
9 \$12,000.00 for a three-day trial. Most IRs and class members, who have each already lost
10 thousands of dollars during their involvement with the Defendants, do not have the financial
11 means to pay these excessive hearing fees. Accordingly these prohibitively expensive arbitration
12 costs preclude IRs from vindicating their rights and render Fortune's arbitration provision
13 substantively unconscionable.
14

15 151. Fortune's arbitration provision prevents an IR from bringing a class action in
16 arbitration. The IRs have all lost money through their Fortune involvement and are unable to
17 afford to bring individual claims in arbitration. Accordingly, Fortune's class action prohibition
18 renders the arbitration provision substantively unconscionable.
19

20 152. The Fortune arbitration provision also requires that IRs waive their right to a jury
21 trial and access to the courts. However, it reserves the right for Fortune to apply to any Court
22 having jurisdiction for a writ of attachment, a temporary injunction, or any other relief available
23 to Fortune to protect its interests prior to, during, or filing of any arbitration or other proceeding
24 or pending the rendition of a decision or award in connection with any arbitration or proceeding.
25 In essence, Fortune may have access to the Courts to seek a remedy; however, IRs are precluded
26 from receiving the same right; further demonstrating a lack of mutuality in the agreement. This
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1 biased pre-arbitration requirement is intended to deter IRs from vindicating their rights.
2 Accordingly, Fortune's pre-arbitration conciliation process is substantively unconscionable.

3
4 153. Fortune's forum selection provision is also permeated with substantively
5 unconscionable terms. Section 8.5 of Fortune's Policies and Procedures limits jurisdiction and
6 venue to any matter not subject to arbitration to Fayette County, State of Kentucky, unless the
7 laws of the state in which the IR expressly require the application of its state law. The provision
8 governing the choice of law also has similar language. Fortune's forum selection provision
9 completely ignores federal law governing jurisdiction and venue, and attempts to usurp the
10 authority vested in federal courts by Congress to hear matters arising under federal law, such as
11 the authority granted under 28 U.S.C 1332, and 18 U.S.C 1965 (a)(b). The provision is a blatant
12 attempt to exculpate Defendants' unlawful conduct from the scrutiny of federal law, such as
13 Defendants violations of The Racketeering and Influence and Corrupt Organizations Act.
14 Further, for the above stated reasons, including Defendants' ability to unilaterally change the
15 forum selection provision at will, the provision is substantively unconscionable and is
16 unenforceable as a matter of law
17

18
19 154. Accordingly, the Court should declare that Fortune's arbitration and forum
20 provisions are procedurally and substantively unconscionable in their entirety and that the
21 plaintiffs' claims are properly before this Court.
22

23 **B. COUNT II**

24 **RACKETEERING ACTIVITY IN VIOLATION OF 18 U.S.C. 1962(C)**
25 **(VERSUS ALL DEFENDANTS)**

26 155. Plaintiffs re-allege each of the preceding paragraphs as if fully set forth here.
27
28

1 156. Each defendant is a "person" for purposes of RICO, 18 U. S.C. § 1962, because
2 each defendant is, and was at all relevant times, an individual or entity capable of holding legal
3 or beneficial interest in property.

4 157. All of the Defendants in this action collectively form an "enterprise" under RICO,
5 18 U.S.C. § 1962, in that they are a group of individuals and entities associated in fact, although
6 not a legal entity.

7 158. In the alternative, the enterprise consisted of Fortune, which is controlled by
8 Defendants Paul C. Orberon, Jeff Orberon, Thomas A. Mills, David Mills, and promoted by
9 National Sales Managers, such as Defendant Scott and Molly Aguilar.

10 159. In the alternative, the Fortune Pyramid is an enterprise, in that it is an association
11 in fact of all Defendants and others which, although not gathered under any legal entity, operates
12 the illegal pyramid scheme to draw new investors to Fortune.

13 160. The Defendants engaged in a pattern of racketeering activity by participating in a
14 scheme and artifice to defraud, in violation of the mail and wire fraud statutes: 18 U.S.C. §§
15 1341 and 1343.

16 161. The Defendants' promotion of an illegal pyramid scheme is a per se scheme to
17 defraud under the mail and wire fraud statutes; thus, the Defendants have committed racketeering
18 acts by promoting an illegal pyramid scheme by using and causing others to use the mail and by
19 transmitting and causing others to transmit, by means of wire in interstate commerce, writing,
20 signs, signals, pictures and sounds, all in furtherance of and for purposes of executing a scheme
21 or artifice to defraud, namely an illegal pyramid scheme.

22 162. Each Defendant has promoted the Fortune Pyramid. Each use of the mail or wire
23 by the Defendants in furtherance of the Fortune Pyramid is therefore an act of racketeering.
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COMPLAINT FOR DAMAGES

1 163. Moreover, the Defendants have used false and fraudulent pretenses to deceive the
2 plaintiffs and the Class, and to thereby obtain money and property from the same. The
3 Defendants have engaged in materially misleading statements of facts and nondisclosure of
4 particular facts, including:
5

- 6 A. Creating the false impression that the Fortune Pyramid is legal and has
7 been investigated and approved by several major national companies, as
8 well as state governments, which purportedly would have closed Fortune
9 permanently if it was an illegal operation.
10 B. Creating the false impression that the majority of investors in the Fortune
11 Pyramid will profit from their investment by merely working hard.
12 C. Creating the false impression that Fortune has a unique business model
13 that is unusually generous to investors.
14 D. Creating the false impression that several magazine covers and articles
15 used to induce investments in the Fortune Pyramid were articles written by
16 objective third-parties, when in reality they were paid advertisements.
17 E. Creating the false impression that several well known athletes, actors,
18 politicians, and successful business people were in fact IRs and endorsed
19 the Fortune Pyramid.
20 F. Failing to disclose that the purported success and wealth achieved by the
21 individual Defendants through their participation in the Fortune Pyramid
22 is no longer possible and that Presidential Ambassadors represent only the
23 top .07% of investors in the Fortune Pyramid who earned any money at
24 all.
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1 G. Failing to disclose that nearly 30% of active participants in the Fortune
2 Pyramid earn nothing at all.

3 164. These and other misrepresentations at the heart of the Defendants' enterprise were
4 reasonably calculated to deceive a person of ordinary prudence and comprehension.
5

6 165. Plaintiffs and the class relied on these misrepresentations.

7 166. All of the Defendants acted with intent to defraud.

8 167. The Defendants' numerous acts of mail fraud and wire fraud amount to a pattern
9 of racketeering activity because they are related and continuous. The pattern consists of more
10 than two acts, which occurred from 2002 until present, and consistently throughout that period.
11 The predicate acts of mail and wire fraud are related because they have had the same or similar
12 purpose: to convince new investors to pay to join the Fortune Pyramid by paying money to do so,
13 and to convince those investors to in turn recruit new investors. They have the same result:
14 convincing investors to join the Fortune Pyramid by paying money and having those investors
15 recruit new ones to do the same. They have the same participants: Fortune's executives,
16 Presidential Ambassadors, and National Sales Managers; all of whom promote the Fortune
17 Pyramid. They have the same victims: plaintiffs and class members who were fraudulently
18 deceived into investing in the Fortune Pyramid. Finally, they have similar methods of
19 commission: fraudulent misrepresentations concerning numerous aspects of Fortune's operations
20 made via online presentations, in-person gatherings, and written materials. In short, the predicate
21 acts of wire and mail fraud committed by the Defendants constitute an intricately related set of
22 predicate acts sufficient to meet the relatedness standard.
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26 168. Moreover, the predicate acts are continuous. They pose a threat of continued
27 illegal conduct in that the Defendants continue to promote and operate the Fortune Pyramid and
28

1 have expressed their intention to continue to do so. Additionally, the predicate acts have
2 extended over a significant period of time — the nearly 10 years that Fortune has been in
3 existence. The Defendants' regular business of attracting new independent representatives is
4 conducted by ongoing mail and wire fraud that misrepresents that Fortune is a legitimate
5 multilevel marketing enterprise and not an illegal pyramid scheme. Without the repeated acts of
6 wire and mail fraud, the Defendants' fraudulent pyramid scheme would not be in existence.
7

8 169. As a direct and proximate result of the Defendants' acts of mail and wire fraud,
9 plaintiffs and the class were injured in their business and property. Each plaintiff was injured in
10 his or her business or property by reason of the Defendants' pattern of racketeering activity, in
11 that plaintiffs surrendered valuable consideration of at least \$299, and in most cases much more,
12 in order to participate in the inherently fraudulent scheme promoted by the Defendants.
13

14 170. Each enterprise alleged above was engaged in, or affecting, interstate commerce
15 by reason of, at least, each of the Defendants' numerous acts or omissions constituting use of the
16 mail or interstate wire communication facilities in furtherance of their scheme to defraud.
17 Additionally, each enterprise affected interstate commerce because the members comprising it
18 engaged in business in several states and made use of the mail and interstate wire communication
19 facilities in the process of doing so by causing marketing and promotional materials for Fortune,
20 as well as images, videos, and information to be communicated through regular mail and via the
21 Internet.
22

23 171. Each of the Defendants is employed by or associated with each enterprise above
24 to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a
25 pattern of racketeering activity, i.e., conducting the affairs of, promoting, and otherwise
26 supporting the pyramid scheme.
27
28

1 172. Specifically, Defendants Scott and Molly Aguilar, Paul C. Orberon, Jeff
2 Orberon, Thomas A. Mills, and David Mills oversaw the creation and dissemination of
3 marketing materials containing misrepresentations regarding Fortune and have authorized the
4 Presidential Ambassadors and National Sales Managers to direct conference calls, websites, web
5 presentations and speeches that contain numerous misrepresentations and that deceive people
6 into participating in the Fortune Pyramid.
7

8 173. Pursuant to 19 U.S.C. § 1964, Plaintiffs are entitled to recover treble damages,
9 costs, and attorneys' fees.
10

11 C. COUNT III

12 RACKETEERING ACTIVITY IN VIOLATION OF 18 U.S.C. 1962(A) 13 (VERSUS ALL DEFENDANTS)

14 174. Plaintiffs re-allege each of the preceding paragraphs as if fully set forth here.

15 175. Revenue derived from the pattern of racketeering activity set forth above, which
16 upon information and belief constitutes a significant portion of the Defendants' total income, was
17 reinvested into the Fortune Pyramid for at least the following purposes: (1) to expand the
18 operations of the Fortune Pyramid through additional false and misleading advertising and
19 promotional materials aimed at recruiting new participants in the Fortune Pyramid; (2) to
20 facilitate the execution of the Fortune Pyramid; and (3) to convince existing participants in the
21 Fortune Pyramid to recruit new ones, resulting in harm to plaintiffs and the class.
22

23 176. Plaintiffs and the class were injured in their business or property as a result of
24 such reinvestment into the Fortune Pyramid because they were induced, with funds used to
25 establish new levels of the Fortune Pyramid, to invest in Fortune.
26

27 177. Pursuant to 19 U.S.C. § 1964, plaintiffs and the class are entitled to recover treble
28 damages, costs, and attorneys' fees.

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D. COUNT IV

**CONSPIRACY TO COMMIT RACKETEERING ACTIVITY IN VIOLATION OF
18 U.S.C. & 1962(D)**
(AGAINST ALL DEFENDANTS)

178. Plaintiffs re-allege each of the preceding paragraphs as if fully set forth here.

179. The Defendants conspired to violate 18 U.S.C. § 1962(a) and (c) in violation of 18 U.S.C. § 1962(d).

180. Each defendant knew about and knowingly and intentionally agreed to participate in and promote an illegal pyramid scheme. Specifically, the Defendants had a meeting of the minds on an object and course of action, namely, to create, support, and maintain the pyramid scheme for their own financial benefit.

181. Each of the Defendants has committed multiple overt acts in furtherance of the unlawful objects of the pyramid scheme.

182. The plaintiffs and the class were injured in their business or property as a result.

183. Pursuant to 19 U.S.C. § 1964, plaintiffs and the class are entitled to recover treble damages, costs, and attorneys' fees.

E. COUNT V

INJUNCTIVE RELIEF UNDER 18 U.S.C. & 1964(A)
(AGAINST ALL DEFENDANTS)

184. Plaintiffs re-allege each of the preceding paragraphs as if fully set forth here.

185. To prevent and restrain ongoing violations of 18 U. S.C. § 1962 by the Defendants, the court should order the Defendants to divest themselves of any interest, direct or indirect, in the enterprise; impose reasonable restrictions on the future activities or investments of the enterprise, including, but not limited to: prohibit the Defendants from engaging in the

1 same type of endeavor as the enterprise engaged in, or order dissolution or reorganization of the
2 enterprise.

3
4 **F. COUNT VI**

5 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES UNDER THE**
6 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**
7 **(AGAINST ALL DEFENDANTS)**

8 186. Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

9 187. Defendants are engaged in an illegal pyramid scheme or “endless chain” as
10 defined under California Penal Code § 327. Defendants utilize this illegal pyramid scheme with
11 the intent, directly or indirectly, to dispose of property in the form of Fortune products and “tools
12 and function materials,” and to convince IRs to recruit others to do the same.

13 188. Defendants' business acts, false advertisements, and materially misleading
14 omissions alleged herein constitute unfair trade practices and false advertising in violation of the
15 California Business and Professions Code § 17500, et seq.

16 189. Defendants engaged in false, unfair, and misleading business practices consisting
17 of false advertising and materially misleading omissions that were likely to deceive the public
18 and include, but are not limited to:

- 19
20 A. Defendants' failing to disclose to consumers that they were entering into
21 an unlawful pyramid scheme;
22
23 B. Defendants' misrepresenting the amount of money that a Rep would earn;
24
25 C. Defendants' misrepresenting that purchasing the "tools and functions"
26 materials was necessary in order to be a successful Rep; and
27
28

1 D. Defendants' misrepresenting those IRs would not need to engage in retail
2 sales to make money and instead would earn the promised revenue by
3 simply self-consuming products and convincing others to do the same.
4

5 190. Defendants' marketing and promotion of the illegal pyramid scheme constitutes
6 misleading, unfair and fraudulent advertising in connection with their false advertising to induce
7 consumers to join the illegal pyramid scheme. Defendants knew or should have known, in the
8 exercise of reasonable care that the statements they were making were untrue or misleading and
9 did deceive members of the public. Defendants knew or should have known, in the exercise of
10 reasonable care, those California citizens, including Plaintiffs, would rely, and did in fact rely on
11 Defendants' misrepresentations and omissions.
12

13 191. Defendants should be ordered to disgorge, for the benefit of Plaintiffs and the
14 Plaintiff Class, their Fortune profits and compensation and/or make restitution to the Plaintiffs
15 and the Class.
16

17 **G. COUNT VII**

18 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, ET SEQ.**
19 **(AGAINST ALL DEFENDANTS)**

20 192. The Plaintiffs re-allege the foregoing paragraphs as though fully set forth herein.

21 193. Defendants' business acts, false advertisements, and materially misleading
22 omissions alleged herein constitute unfair trade practices and false advertising, in violation of the
23 California Business and Professions Code §17500, et seq.
24

25 194. Defendants engaged in false, unfair, and misleading business practices consisting
26 of false advertising and materially misleading omissions that were likely to deceive the public
27 and include, but are not limited to:
28

- 1 a. Defendants failing to disclose to consumers that they were entering into
2 an unlawful pyramid scheme;
- 3 b. Defendants misrepresenting the amount of money that a distributor
4 would earn;
- 5 c. Defendants misrepresenting that purchasing the "tools and functions"
6 materials was necessary in order to be a successful distributor; and
- 7 d. Defendants misrepresenting that distributors would not need to engage in
8 retail sales to make money and instead would earn the promised revenue
9 by simply self-consuming products and convincing others to do the same.
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11

12 195. Defendants marketing and promotion of the illegal pyramid scheme constitutes
13 misleading, unfair, and fraudulent advertising in connection with their false advertising to induce
14 consumers to join the illegal pyramid scheme. Defendants knew or should have known in the
15 exercise of reasonable care that the statements they were making were untrue or misleading and
16 did deceive members of the public. Defendants knew or should have known, in the exercise of
17 reasonable care, that California citizens, including Plaintiffs, would rely, and did in fact rely on
18 Defendants' misrepresentations and omissions.
19

20 196. Defendants should be ordered to disgorge, for the benefit of the plaintiffs and the
21 plaintiff class, their Fortune profits and compensation and/or make restitution to the plaintiffs
22 and the class.
23

24 **VII.**

25 **PRAYER FOR RELIEF**

26 197. The named plaintiffs and the plaintiff class request the following relief:
27
28

- 1 A. Judgment declaring Fortune's arbitration and forum selection provisions
2 unconscionable and unenforceable;
3
4 B. Certification of the class;
5
6 C. Jury trial and judgment against the Defendants;
7
8 D. Damages in the amount of the named plaintiffs' and the class's financial
9 loss as a result of Defendants' conduct and for injury to plaintiffs' and the
10 class's business and property, all as a result of Defendants' violations of 18
11 U.S.C. § 1962(a),(c), and (d) and that such amount be tripled in
12 accordance with 18 U.S.C. § 1964(c);
13
14 E. Temporary and permanent injunctive relief enjoining the Defendants from
15 further unlawful, unfair, fraudulent, or deceptive acts, including but not
16 limited to: operating and supporting the Fortune Pyramid.
17
18 F. Restitution and disgorgement of monies, pursuant to the California
19 Business and Professions Code;
20
21 G. The cost and expense of suit, including reasonable attorneys' fees, in
22 accordance with 18 U.S.C. § 1964(c);
23
24 H. For general, compensatory, and exemplary damages in an amount yet to
25 be ascertained; and
26
27 I. For such other damages, relief, and pre- and post judgment interest that the
28 Court may deem just and proper.

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VIII.

DEMAND FOR A JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Geoffrey J. Spreter

Geoffrey J. Spreter
Law Offices of ALEXANDER M. SCHACK
16870 W. Bernardo Drive, #400
San Diego, CA 92128
(858) 485-6535 (858) 485-0608 fax
geoffspreter@amslawoffice.com