

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY**

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

Plaintiffs

v.

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

Defendants.

No. 5:13-cv-123-GFVT-REW

**MOTION FOR APPROVAL OF SETTLEMENTS
WITH MULTIPLE DEFENDANTS IN ARMENTA AND BURRELL ACTIONS;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

Robb Evans and Robb Evans & Associates LLC appointed herein as Permanent Receiver for Fortune Hi-Tech Marketing, Inc. and other related and affiliated entities (“Receiver”), hereby moves the Court for an order approving the Receiver’s settlements of the Receiver’s claims against certain defendants in the Receiver’s actions entitled *Evans v. Armenta, et al.*, U.S.D.C., E.D. Ky. Case No. 5:14-cv-00329 GFVT-REW (“Armenta Action”) and *Evans v. Burrell, et al.*, U.S.D.C., E.D. Ky. Case No. 5:14-cv-00330 GFVT-REW (“Burrell Action”).

A. Summary of the Compromises

The Receiver specifically seeks approval of settlements with the following defendants (the “Settling Defendants”) for the following amounts and terms:

Defendant	Total Settlement Amount	Payment Terms
Kevin Mullens and Catch the Vision, LLC	\$206,250	Stipulation for Entry of Judgment for \$271,875 (Filed Only Upon Default); \$25,000 Initial Cash Payment on Execution (not credited to judgment amount if judgment is entered for default); 8 Quarterly Payments of \$21,750; Final Payment of \$7,250 in 25th Month (Ex. 2 to Kane Decl.)
Joel McNinch	\$185,000	Stipulation for Entry of Judgment for \$202,500 (Filed Only Upon Default); \$50,000 Initial Cash Payment on Execution (not credited to judgment amount if judgment is entered for default); 8 Quarterly Payments of \$16,875 (Ex. 3 to Kane Decl.)
Joanne McMahon and Blessed Life, LLC	\$100,000	Stipulation for Entry of Judgment for \$105,000 (Filed Only Upon Default); \$30,000 Initial Cash Payment on Execution (not credited to judgment amount if judgment is entered for default); 8 Quarterly Payments of \$8,750 (Ex. 4 to Kane Decl.)
Thang Vu	\$95,000	All Cash on Execution per Settlement Agreement (Ex. 5 to Kane Decl.)
Tom Waggoner and Globalcom Network, LLC	\$74,000	All Cash on Execution per Settlement Agreement (Ex. 6 to Kane Decl.)
Susan Frank and Susan and Josh, Inc.	\$22,500	All Cash on Execution per Settlement Agreement (Ex. 7 to Kane Decl.)
Teresa Morales and Equipo Latino Corp.	\$20,000	Stipulation for Entry of Judgment for \$50,000 (Filed Only Upon Default); \$10,000 Initial Cash Payment On Execution (not credited to judgment amount if judgment is entered for default), 8 Quarterly Payments of \$1,250 (Ex 8 to Kane Decl.)
Terry Walker and Global Wealth, Inc.	\$10,000	Stipulation for Entry of Judgment for \$50,000; \$5,000 Initial Cash Payment on Execution (not credited to judgment amount if judgment is entered for default), 8 Quarterly Payments of \$625 (Ex. 9 to Kane Decl.)
Tommy Chapa	\$8,400	Stipulation for Entry of Judgment for \$50,000; 8 Quarterly Payments of \$1,050 (Ex. 10 to Kane Decl.)
Michael Misenheimer and MB Team, Inc.	\$5,000	All Cash on Execution per Settlement Agreement (Ex. 11 to Kane Decl.)
Robert Rivera	\$5,000	Stipulation for Entry of Judgment for \$50,000 (Filed Only Upon Default); 8 Quarterly Payments of \$625 (Ex. 12 to Kane Decl.)
Anna Burrell	\$1,000	All Cash on Execution per Settlement Agreement (Ex. 13 to Kane Decl.)

Each of the Settlement Agreements and Stipulations for Entry of Judgment (“Stipulations for Judgment”) (collectively “Compromises”) includes mutual releases, with the Receiver’s release of the Settling Defendants being deferred until 92 days following the last payment made under the settlement by each Settling Defendant. The Compromises include other customary provisions including (a) a “no admission of liability” by the Settling Defendants provision; (b) a provision for revival of the Receiver’s claims against the Settling Defendants if any portion of the settlement payments are recovered as Voidable Transfers (as fraudulent transfers, preferences or similar payment avoidance theory); (c) a provision for dismissal of the action as to the Settling Defendants subject to certain terms and conditions¹; (d) representations and warranties in favor of the Receiver as to the accuracy and completeness of each of the individual Settling Defendant’s financial statements and any other financial information given to the Receiver in connection with the settlements, breach of which would be a material default under the settlements; and (e) a provision requiring Court approval of the Compromises. Copies of the Compromises are attached to the Declaration of Brick Kane filed concurrently in support of this Motion.

B. Relief Sought

The Receiver seeks an order approving each of the Compromises, including an order authorizing the Receiver to take all steps necessary or reasonable to implement and perform thereunder. The Receiver further moves the Court for an order approving notice of this Motion as sufficient based on (a) service of the Motion and all supporting papers on the parties to this action; (b) service of a Notice of Filing of the Motion on all known non-consumer, non-employee creditors of the receivership estate with the Receiver offering to provide a complete copy of the Motion to any interested party upon written request; and (c) posting of the Motion and supporting pleadings on the Receiver’s web site for this case, without copies of the

¹ Stipulations for Judgment provide for a dismissal order to include a retention of jurisdiction provision whereby the Court retains jurisdiction over the action and the Receiver’s claims for purposes of entering the Stipulation for Judgment if there is a later default. *See Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375,381-82 (1994).

Compromises attached, in order to limit the accessibility of information concerning the Settling Defendants through the internet. All interested parties will have access to copies of the Motion and all supporting pleadings through the Court's web site, and copies may be obtained by interested creditors upon written request to the Receiver through its counsel.

C. Why the Compromises Should Be Approved

The Compromises resolve the Receiver's claims against all but four of the defendants named in the Armenta Action and the Burrell Action who are represented by counsel, Brian Johnson of Dickinson Wright PLLC.² There are five defendants in the Armenta Action and Burrell Action who are not represented by counsel, and the Receiver continues to litigate its claims against those defendants, four of whom have been unresponsive to attempts by the Court and counsel to contact them, and who have failed to respond to discovery.

Prior to entering into the proposed Compromises, the Receiver has investigated the financial condition of each of the Settling Defendants. The Receiver has obtained written personal financial statements signed under penalty of perjury and in most instances has obtained credit reports with the consent of the Settling Defendants.³ The Receiver has conducted independent research regarding assets of the Settling Defendants and other information relevant to the Receiver's determination to enter into the proposed Compromises. The financial terms of

² This includes two individuals (Michael Chorost ("Chorost") and Quang Nguyen ("Q. Nguyen")) and two related entities (Liger Marketing Int'l. ("Liger") and Quang & Crystal Enterprise, LLC ("Quang & Crystal")), but does not include Todd Rowland against whom the Receiver has brought a complaint in the Bankruptcy Court in the Northern District of Florida where he filed bankruptcy for a determination that his debt to the Receiver is non-dischargeable. The Receiver has reached agreements in principal with Chorost, Q. Nguyen, Liger and Quang & Crystal, and the settlement documentation is out for execution. Those settlements will be the subject of a subsequent settlement motion.

³ The Receiver has not included specific details regarding the financial condition of the Settling Defendants or included their financial statements in the pleadings filed with this Motion in the interests of protecting the Settling Defendants' financial and other privacy interests. The Receiver agreed to maintain the financial statements confidential when the Receiver obtained the financial statements in the course of confidential settlement negotiations. If the Court deems it necessary or appropriate for such financial statements to be provided to support the Motion, the Receiver contends such statements should only be submitted to the Court *in camera* and that the Settling Defendants must be notified of the submission in advance so that they may object if they deem appropriate.

the proposed Compromises reflect the wide disparity in the financial wherewithal of the defendants to respond to the Receiver's damages claims and demonstrate that the Receiver made individual, particularized determinations as to each Settling Defendant based on the defendant's ability to pay and other related factors. Each of the Compromises contains protections for the Receiver and the receivership estate by including representations and warranties by the Settling Defendants that the financial information they provided to the Receiver is accurate and complete and making any violation of those representations and warranties a material breach of the settlement.

In some instances, the Receiver's settlements also take into account personal circumstances of the Settling Defendants, including family medical issues adversely affecting the Settling Defendants' ability to respond to the Receiver's claims. In the interests of protecting the privacy concerns of the Settling Defendants, the Receiver submits that any additional disclosures regarding such circumstances should be provided solely to the Court *in camera* if the Court deems that information necessary to its determination of this Motion.

The Receiver believes its claims against the Settling Defendants are legally and factually strong, and that the defenses raised by the Settling Defendants would likely be unpersuasive if the claims proceeded to trial. Nevertheless, the Receiver has evaluated the financial condition of the Settling Defendants and the information available on the use and disposition of funds transferred to the Settling Defendants from the Receivership Defendants that were the subject of the Receiver's claims. Though the Settling Defendants received collectively millions of dollars from the Receivership Defendants as CAB bonuses and CGU commissions, many of the Settling Defendants have demonstrated that they incurred substantial expenses for travel and other business related expenses to generate those payments, and that they have expended large amounts on living expenses both during the time they were affiliated with FHTM and in the four years since FHTM's business ceased operations. While the Receiver disputes that any business expenses or other use or disposition of the funds paid to the Settling Defendants would provide an offset or reduction to the Receiver's claims against the Settling Defendants if the claims were

litigated, the expenses and dissipation of the funds create practical limitations on the Receiver's ability to recover on its claims whether through settlement or litigation.

Further, the costs of litigation of the Receiver's claims would be substantial. Though the Receiver believes the evidence is extremely strong that an illegal pyramid scheme was conducted by the Receivership Defendants and that the transfers to the Settling Defendants are avoidable, the costs of litigation through trial would be substantial. There are hundreds of thousands of pages of documents that have been gathered through discovery and proof of the pyramid scheme at trial would involve extensive expert testimony, factors warranting resolving the claims without trial particularly when considered in relationship to the financial condition of the Settling Defendants.

The Receiver has relied strongly on its assessment of the ability of the Settling Defendants to make settlement payments, and alternatively, their ability to respond to and satisfy any judgment. The Receiver has taken into account the associated delays and expenses of litigation and judgment enforcement in reaching the proposed settlements presented for approval. The Receiver contends the settlements with the Settling Defendants presented for approval in this Motion are fair and equitable and within the sound business judgment of the Receiver in that (a) the settlements will provide aggregate recoveries for the estate of \$732,150 assuming payments are made as agreed, including immediate cash recoveries of \$317,500 which have already been remitted to the Receiver, and with an outer payment time frame of approximately two years; (b) the settlements resolve disputed claims without the delay, risks and uncertainty of litigation; (c) the settlements limit the continuing expense of litigation borne by the estate while freeing the Receiver to focus on concluding the litigation against the remaining defendants.

The Receiver has conferred with plaintiff Federal Trade Commission ("FTC") prior to filing this Motion to advise the FTC of the Receiver's Motion to approve these settlements. The FTC does not object to the proposed settlements addressed in this Motion. The FTC has been supportive of the Receiver's efforts to settle these lawsuits.

This Motion is made pursuant to Local Civil Rule 7.1, applicable authority cited in the supporting memorandum, the Stipulated Preliminary Injunction filed May 28, 2013 (Doc. No. 134) and the Stipulated Order for Permanent Injunction and Monetary Judgment entered on May 9, 2014 (Doc. No. 202) and is made and based on the separate Notice of Filing of the Motion, this Motion, the supporting memorandum of points and authorities, declaration of Brick Kane and proposed order granting the Motion filed concurrently herewith, the other pleadings, records and files of the Court in this case and in the related cases of *Evans v. Armenta*, Case No. 5:14-cv-329 GFVT-REW and *Evans v. Burrell*, Case No. 5:14-cv-330 GFVT-REW of which the Receiver requests the Court take judicial notice, and on such further oral and documentary evidence and arguments of counsel as may be presented at any hearing on the Motion.

DATED: May 9, 2017

Respectfully submitted,

/s/ Mary L. Fullington
Mary L Fullington (KY 85335)
WYATT, TARRANT & COMBS, LLP
250 West Main Street, Suite 1600
Lexington, Kentucky 40507-1746
Tel.: (859) 233-2012
Fax: (859) 259-0649
E-mail: Lexbankruptcy|a|wyattfirm.com

and

/s/ Gary Owen Caris
Gary Owen Caris (Cal. SBN 088918)
Lesley Anne Hawes (Cal. SBN 117101)
DIAMOND McCARTHY LLP
1999 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: (310) 951-2997
Facsimile: (424) 253-1101
E-Mail: gcaris|a|diamondmccarthy.com
E-Mail: lhawes|a|diamondmccarthy.com

Attorneys for Permanent Receiver Robb Evans and
Robb Evans & Associates LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action (the "FTC Action") is a civil enforcement action commenced by the Federal Trade Commission ("FTC"), the State of Illinois, the Commonwealth of Kentucky and the State of North Carolina (collectively "Plaintiffs") against defendants Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc., Fortune Network Marketing (UK) Limited, Paul C. Orberson and Thomas A. Mills (collectively "Defendants"). The FTC Action was originally filed in the United States District Court for the Northern District of Illinois ("Illinois District Court"). On January 24, 2013, the Illinois District Court issued a Temporary Restraining Order (Doc. No. 23) appointing the Receiver as Temporary Receiver over Fortune Hi-Tech Marketing, Inc. ("FHTM"), FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc., Fortune Network Marketing (UK) Limited "and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities" ("Receivership Defendants"). The Temporary Restraining Order was extended and the hearing on FTC's motion for preliminary injunction was postponed from time to time. The FTC Action was subsequently transferred to this Court, and the Plaintiffs and Defendants subsequently stipulated to the Preliminary Injunction entered by this Court on May 28, 2013.

Under the Preliminary Injunction, the Receiver was appointed as permanent receiver over the Receivership Defendants. The Defendants entered into extensive settlement negotiations with the Plaintiffs resulting in the filing and entry of judgment against the Defendants under the Stipulated Order for Permanent Injunction and Monetary Relief ("Final Judgment") (Doc. No. 202) which was entered by the Court on May 9, 2014. The Final Judgment continued the permanent receivership over the Receivership Defendants and, among other things, authorized the Receiver to liquidate assets turned over to the Receiver pursuant to the Final Judgment without further order of the Court.

In the course of the receivership, the Receiver filed a motion with the Court seeking authorization to file litigation against the highly compensated former independent representatives

of FHTM, which was granted. The Receiver filed two lawsuits naming a total of 36 individual and corporate defendants. Nineteen defendants have settled and are the subject of this Motion. The Receiver has obtained default judgments against seven of the defendants. Five of the remaining litigating defendants are unrepresented. As noted above, the four other defendants represented by the Dickinson Wright firm have reached agreements in principle to settle the litigation with the Receiver, but the settlement documents have not been executed and one other defendant in the Armenta Action, Todd Rowland, filed a voluntary bankruptcy petition. The Receiver's claims against him in the Armenta Action are stayed, but the Receiver is pursuing claims against him in his bankruptcy proceeding, seeking to declare his debt to the receivership estate non-dischargeable.

The proposed Compromises for which the Receiver seeks approval by this Motion would render claims against 26 of the 36 defendants resolved by settlements or default judgments. They will result in \$732,150 in recoveries of which \$317,500 has already been paid, and end ongoing litigation expense as to 19 defendants. The payment terms under the proposed Compromises are for a reasonable, limited period of time which will provide the Receiver the time needed to complete the litigation or settlement against the remaining defendants, to continue collection efforts on judgments already obtained and to prepare the receivership estate for eventual wind up and closure. The Receiver strongly recommends approval of the proposed Compromises.

II. THE COMPROMISES SHOULD BE APPROVED UNDER APPLICABLE LEGAL STANDARDS

The leading treatise on receivership law states:

The only justification for the compromise of claims is that it is done for the best interests of the receivership and the estate under the control and possession of the court.

3 *Clark on Receivers* § 655 (3d ed. 1992)

The court appointing a receiver must use its discretion in determining whether it is for the best interests of the estate that the receiver be authorized to compromise a claim, and when the appointing court has not abused its discretion in giving instructions to the receiver, its orders will not be disturbed or reviewed in the appellate court.

3 *Clark on Receivers* § 770 (3d ed. 1992).

The court in a federal equity receivership has broad authority to approve proposed settlements by a receiver and approval of a proposed settlement will be reviewed only for abuse of discretion. *Liberte Capital Group, LLC v. Capwill*, 462 F. 3d 543, 551 (6th Cir. 2006); *Gordon v. Dadante*, 336 Fed. Appx. 540, 549 (6th Cir. 2009) (settlement by receiver in a federal equity receivership within the receiver’s discretion and not subject to the standard for approval of a class action settlement); *Securities and Exchange Commission v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395, 2002 WL 1792053 at *4-5 (S.D.N.Y. Aug. 2, 2002); *Securities and Exchange Commission v. Princeton Economic International, Inc.*, No. 99 Civ. 9667, 2002 WL 206990 at *1 (S.D.N.Y. Feb. 8, 2002). “[R]eivers benefit from the general presumption that district courts favor settlements.” *Sterling v. Stewart*, 158 F. 3d 1199, 1202 (11th Cir. 1998). Further:

[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate.

Gordon v. Dadante, 336 Fed. Appx. at 549 (citing *Liberte Capital Group, LLC v. Capwill*, 462 F. 3d at 551).

The District Court’s determination of the fairness of a settlement by the Receiver is subject to the sound discretion of the Court and will only be overturned based on a clear showing of abuse of discretion. *Gordon v. Dadante*, 336 Fed. Appx. at 545 (holding that district court did not abuse its discretion in approving settlement agreement entered into by a receiver); *Sterling v.*

Stewart, 158 F. 3d at 1202 (quoting *Bennett v. Behring*, 737 F. 2d 982, 986 (11th Cir. 1984)); *Securities and Exchange Commission v. Arkansas Loan and Thrift Corp.*, 427 F. 2d 1171, 1172 (8th Cir. 1970) (court finds no abuse of discretion in trial court's approval of receiver's settlement on fidelity bond claim).

Courts in receivership proceedings often look to bankruptcy for analogous authority addressing administrative issues. Under Rule 9019 of the Federal Rules of Bankruptcy Procedure, the court in a bankruptcy case may approve a proposed compromise of controversies after notice and an opportunity for hearing. Decisions addressing the approval of compromises in bankruptcy often focus on four factors cited in the Ninth Circuit decisions in *In re A & C Properties*, 784 F. 2d 1377 (9th Cir. 1986) and *In re Woodson*, 839 F. 2d 610 (9th Cir. 1988):

“(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.”

In re A & C Properties, 784 F. 2d at 1381. *See also In re Woodson*, 839 F. 2d at 620.

Each of the proposed Compromises meets these standards for approval. While the Receiver believes the probability of its success in litigating the claims against the Settling Parties is high, the litigation would come at a substantial cost given the extensive records involved, the number of defendants and potential witnesses, and the need for expert testimony at a trial on the claims. The difficulties of collection of any judgment are of paramount concern and consideration under the circumstances. The Receiver has investigated the financial condition of each of the Settling Defendants and has confidential financial information regarding the Settling Defendants, some of which was provided by the Settling Defendants and some of which was obtained independently by the Receiver. The terms of the Compromises themselves each provide an assurance of reliability of the accuracy of the information provided by the Settling

Defendants regarding their personal financial circumstances, as each has represented and warranted the accuracy and completeness of the information provided. The Compromises make those representations and warranties material terms on which the Receiver is relying in entering into the settlements and if the representations and warranties are later determined to be materially false, the misrepresentation and breach of the warranty constitute material breaches of the Compromises.

The total recoveries under these Compromises are substantial and advance the interests of the estate. Under the circumstances, for all of these reasons, the Compromises are fair, are within the broad discretion granted to the Receiver in an equity receivership and should all be approved.

III. CONCLUSION

The Receiver respectfully requests that the Court approve the Compromises and grant relief as requested in the Motion.

DATED: May 9, 2017

Respectfully submitted,

/s/ Mary L. Fullington
Mary L Fullington (KY 85335)
WYATT, TARRANT & COMBS, LLP
250 West Main Street, Suite 1600
Lexington, Kentucky 40507-1746
Tel.: (859) 233-2012
Fax: (859) 259-0649
E-mail: Lexbankruptcy|a|wyattfirm.com

and

/s/ Gary Owen Caris
Gary Owen Caris (Cal. SBN 088918)
Lesley Anne Hawes (Cal. SBN 117101)
DIAMOND McCARTHY LLP
1999 Avenue of the Stars, 11th Floor
Los Angeles, CA 90067
Telephone: (310) 951-2997
Facsimile: (424) 253-1101
E-Mail: gcaris|a|diamondmccarthy.com
E-Mail: lhawes@diamondmccarthy.com

Attorneys for Permanent Receiver Robb Evans and
Robb Evans & Associates LLC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

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

Plaintiffs

No. 5:13-cv-123-GFVT-REW

v.

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

Defendants.

**DECLARATION OF BRICK KANE
IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENTS
WITH MULTIPLE DEFENDANTS IN ARMENTA AND BURRELL ACTIONS**

I, Brick Kane, declare:

1. I am the President and Chief Operating Officer of Robb Evans & Associates LLC, and I make this declaration on behalf of the Permanent Receiver Robb Evans and Robb Evans & Associates LLC ("Receiver") appointed pursuant to the Stipulated Preliminary Injunction filed May 28, 2013 (Doc. No. 134) ("Preliminary Injunction"). If called upon to testify as to the facts set forth in this declaration, I could and would testify competently thereto as the facts are personally known to me to be true.

2. The Federal Trade Commission, the State of Illinois, the Commonwealth of Kentucky and the State of North Carolina brought this action against defendants Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc., Fortune Network Marketing (UK) Limited, Paul C. Orberon and Thomas A. Mills ("FTC Action"). The FTC Action was originally filed in the United States District Court for the Northern District of Illinois ("Illinois District Court"). On January 24, 2013, the Illinois District Court issued the Temporary Restraining Order appointing the Temporary Receiver as Temporary Receiver over Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings, LLC, FHTM Canada, Inc.,

Fortune Network Marketing (UK) Limited “and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities” (“Receivership Defendants”). The Temporary Restraining Order was extended from time to time by stipulation of the parties. The Illinois District Court granted the defendants' motion to transfer venue of the case to this Court, entering an order that further extended the Temporary Restraining Order to allow this Court to rule on the Plaintiffs' motion for a preliminary injunction. On May 28, 2013, this Court entered the Preliminary Injunction Order making the Receiver the permanent receiver of the Receivership Defendants. I understand that the Defendants entered into extensive settlement negotiations with the Plaintiffs resulting in the filing and entry of judgment against the Defendants under the Stipulated Order for Permanent Injunction and Monetary Relief (“Final Judgment”) which was entered by the Court on May 9, 2014. The Final Judgment continued the permanent receivership over the Receivership Defendants and, among other things, authorized the Receiver to liquidate assets turned over to the Receiver pursuant to the Final Judgment without further order of the Court.

3. I have been primarily responsible for the supervision and administration of the receivership estate and for the Receiver’s review and investigation of assets and analysis of financial and business records relevant to the receivership and the Receiver’s exercise of its powers and duties under the Temporary Restraining Order and the Preliminary Injunction. I have also been primarily responsible for supervising and monitoring the Receiver’s pending litigation against 36 former representatives of FHTM, specifically *Evans v. Armenta, et al.*, Case No. 5:14-cv-00329 GFVT-REW (“Armenta Action”) and *Evans v. Burrell, et al.*, Case No. 5:14-cv-00330 GFVT-REW (“Burrell Action”). I personally attended two days of settlement conferences before Magistrate Judge Robert E. Wier on December 12 and 13, 2016.

4. This declaration is submitted in support of the Receiver’s motion for approval of five agreements titled Settlement Agreement and Release (“Settlement Agreement”) and seven agreements entitled Stipulation for Entry of Judgment (“Stipulation for Judgment”) (collectively the “Compromises”) with a total of 19 defendants in the Armenta Action and Burrell Action (the

“Settling Defendants”). The chart attached hereto as Exhibit 1 identifies the Settling Defendants and describes the general payment terms of their proposed Compromises with the Receiver. The proposed Compromises are attached hereto as Exhibits 2 through 13 in the order in which the Compromises appear in the Chart, Exhibit 1. Personal addresses listed in the notice provisions of the Compromises have been redacted in Exhibits 2 through 13.

5. All cash payments to the estate in full satisfaction of the agreed settlement amount are documented in the Settlement Agreements and provide that the cash settlement payment is to be paid to the Receiver concurrent with the execution of the Settlement Agreement. Settlements that provide for payments over time are documented in the Stipulations for Judgment. Each of the Stipulations for Judgment provides a payment plan comprised of a series of quarterly payments over a period of generally 24 months, with one exception, and in some instances an initial settlement payment to be made concurrently with the execution of the Stipulation for Judgment. The Stipulations for Judgment further provide that the Settling Defendant stipulates to entry of a judgment for a higher amount than the settlement amount if the Settling Defendant defaults under the settlement payment plan. Each of the Compromises includes mutual releases, with the Receiver’s release of the Settling Defendants being deferred until 92 days following the last payment made under the settlement by each Settling Defendant. The Compromises include other customary provisions including (a) a “no admission of liability” by the Settling Defendants provision; (b) a provision for revival of the Receiver’s claims against the Settling Defendants in certain circumstances if any portion of the settlement payments are recovered as Voidable Transfers (as fraudulent transfers, preferences or similar payment avoidance theory); (c) a provision for dismissal of the action as to the Settling Defendants subject to certain terms and conditions; (d) representations and warranties in favor of the Receiver as to the accuracy and completeness of each of the individual Settling Defendant’s financial statements and any other financial information given to the Receiver in connection with the settlements, breach of which would be a material default under the settlements; and (e) a provision requiring Court approval of the Compromises.

6. The Receiver has already obtained over \$4.6 million in default judgments against seven defendants and is pursuing a non-dischargeability judgment in an adversary complaint filed in the Chapter 7 bankruptcy of another defendant, Todd Rowland. The Compromises resolve the Receiver's claims against all but four of the defendants, consisting of two individuals and two related entities, named in the Armenta Action and the Burrell Action who are represented by counsel, Brian Johnson of Dickinson Wright PLLC. The Receiver has reached agreements in principal with these four defendants and the settlement documentation is out for execution. Those settlements will be the subject of a subsequent settlement motion. There are five defendants in the Armenta Action and Burrell Action who are not represented by counsel, and the Receiver continues to litigate its claims against those defendants, four of whom have been unresponsive to attempts by the Court and counsel to contact them and have failed to respond to discovery.

7. The Compromises were facilitated by the Court through the two days of settlement conferences conducted by Magistrate Judge Wier in the Armenta and Burrell Actions in December 2016. The Receiver and some of the participating defendants reached tentative settlements at the conclusion of the settlement conferences, subject to written documentation and some other conditions, including the Receiver completing its financial investigation. The parties through counsel for the Receiver and for the Settling Defendants continued their settlement dialogue after the settlement conferences and successfully reached the proposed Compromises after extensive negotiations and the Receiver's investigation of financial and other factors relevant to settlement.

8. Specifically, the Receiver has investigated the financial condition of each of the Settling Defendants prior to entering into the proposed Compromises. The Receiver has obtained written personal financial statements signed under penalty of perjury and in most instances has obtained credit reports with the consent of the Settling Defendants. This declaration and the Motion to approve the Compromises does not include specific details as to the financial condition of the Settling Defendants or their financial statements in the interests of

protecting the Settling Defendants' financial and other privacy interests. The Receiver agreed to maintain the confidentiality of the financial statements when the Receiver obtained them in the course of its settlement negotiations. The Receiver has conducted independent research regarding assets of the Settling Defendants and other information relevant to the Receiver's determination to enter into the proposed Compromises.

9. The financial terms of the proposed Compromises reflect the wide disparity in the financial condition of the defendants to respond to the Receiver's damages claims. That disparity demonstrates that the Receiver made individual, particularized determinations as to each Settling Defendant based on the defendant's ability to pay and other related factors. Each of the Compromises contains protections for the Receiver and the receivership estate by including representations and warranties by the Settling Defendants that the financial information they provided to the Receiver is accurate and complete and making any violation of those representations and warranties a material breach of the settlement.

10. In some instances, the Receiver's settlements also take into account personal circumstances of the Settling Defendants, including family medical issues adversely affecting the Settling Defendants' ability to respond to the Receiver's claims. In the interests of protecting the privacy concerns of the Settling Defendants, those details are also not included in this declaration or the Motion based on the Receiver's receipt of such information in confidential settlement negotiations.

11. The Receiver has evaluated the strength of its claims, the defenses asserted by the Settling Defendants and most important, the ability of the Receiver to collect any judgment that might be rendered against the Settling Defendants and the costs and risks of litigation through summary judgment or trial and the costs of post-judgment collection efforts. The Receiver believes its claims against the Settling Defendants are legally and factually strong, and that the defenses raised by the Settling Defendants would likely be unpersuasive if the claims proceeded to trial. The Receiver has evaluated the financial condition of the Settling Defendants and the information available on the use and disposition of funds transferred to the Settling Defendants

from the Receivership Defendants that were the subject of the Receiver's claims. Though the Settling Defendants received collectively millions of dollars from the Receivership Defendants as CAB bonuses and CGU commissions, many of the Settling Defendants have demonstrated that they incurred substantial expenses for travel and other business related expenses to generate those payments, and that they have expended large amounts on living expenses both during the time they were affiliated with FHTM and in the four years since FHTM's business ceased operations. While the Receiver disputes that any business expenses or other use or disposition of the funds paid to the Settling Defendants would provide an offset or reduction to the Receiver's claims against the Settling Defendants if the claims were litigated, the expenses and dissipation of the funds create practical limitations on the Receiver's ability to recover on its claims whether through settlement or litigation.

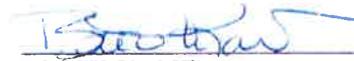
12. The Receiver believes the costs of continued litigation of the Receiver's claims would be substantial. Though the Receiver believes the evidence is extremely strong that an illegal pyramid scheme was conducted by the Receivership Defendants and that the transfers to the Settling Defendants are avoidable, the costs of proving the Receiver's case through trial would be significant. There are hundreds of thousands of pages of documents that have been gathered through discovery. Proof of the pyramid scheme at trial would involve extensive expert testimony. These factors warrant resolving the claims without trial particularly when considering the financial condition of the Settling Defendants.

13. The Receiver has relied strongly on its assessment of the ability of the Settling Defendants to make settlement payments, and alternatively, their ability to respond to and satisfy any judgment. The Receiver has taken into account the associated delays and expenses of litigation and judgment enforcement in reaching the Compromises. The Receiver contends the proposed Compromises with the Settling Defendants presented for approval in this Motion are fair and equitable and within the sound business judgment of the Receiver in that (a) the Compromises will provide aggregate recoveries for the estate of \$732,150, assuming payments are made as agreed, including immediate cash recoveries of \$317,500 which have already been

remitted to the Receiver, and with an outer payment time frame of approximately two years; (b) the Compromises resolve disputed claims without the delay, risks and uncertainty of litigation; (c) the Compromises limit the continuing expense of litigation borne by the estate while freeing the Receiver to focus on concluding the litigation against the remaining defendants.

14. The proposed Compromises for which the Receiver seeks approval by this Motion would render claims against 26 of the 36 defendants resolved by settlements or default judgments. They will result in \$732,150 in recoveries of which \$317,500 has already been paid, and end ongoing litigation expense as to 19 defendants. The payment terms under the proposed Compromises are for a reasonable, limited period of time which will provide the Receiver the time needed to complete the litigation or settlement against the remaining defendants, to continue collection efforts on judgments already obtained and to prepare the receivership estate for eventual wind up and closure. The Receiver strongly recommends approval of the proposed Compromises.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 8 day of May 2017 at Sun Valley, California.



BRICK KANE