

**ROBB EVANS &  
ROBB EVANS & ASSOCIATES, LLC**

**Receiver of**

**Fortune Hi-Tech Marketing, Inc., et al.**

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**Federal Trade Commission, State of Illinois,  
Commonwealth of Kentucky and State of North Carolina**

**v.**

**Fortune Hi-Tech Marketing, Inc., et al.**

**CASE No. 5:13-CV-123 GFVT-REW**

**Receiver's Second Motion for Approval of Settlements with  
Multiple Defendants in Burrell Action  
Memorandum of Points and Authorities in Support Thereof**

**Filed May 22, 2017**

**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

**RECEIVER'S SECOND MOTION FOR APPROVAL OF SETTLEMENTS  
WITH MULTIPLE DEFENDANTS IN BURRELL ACTION;  
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 defendants Michael Chorost (“Chorost”), Liger Marketing International, LLC (“Liger”), Quang Nguyen (“Q. Nguyen”) and Quang & Crystal Enterprise, LLC (“Quang & Crystal”) in the Receiver’s action entitled *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
Quang Nguyen and Quang & Crystal Enterprise, LLC	\$35,000	Stipulation for Entry of Judgment for \$50,000 (Filed Only Upon Default); \$20,000 Initial Cash Payment on June 16, 2017 (not credited to judgment amount if judgment is entered for default); Three Additional Payments of \$5,000 each on December 15, 2017, June 16, 2018 and December 16, 2018 (Ex. 2 to Kane Decl.)
Michael Chorost and Liger Marketing International, Inc.	\$20,000	Stipulation for Entry of Judgment for \$50,000 (Filed Only Upon Default); \$12,500 Initial Cash Payment on Execution (not credited to judgment amount if judgment is entered for default); Three Additional Payments of \$2,500 each on October 1, 2017, February 1, 2018 and June 1, 2018 (Ex. 1 to Kane Decl.)

Each of the Stipulations for Entry of Judgment (“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 conditions<sup>1</sup>; (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

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<sup>1</sup> The Stipulations for Entry of 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 a judgment pursuant to the Stipulations for Entry of Judgment if there is a later default. *See Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 381-82 (1994).

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

This Motion is the Receiver's second motion (the "Second Settlement Motion") seeking approval of Compromises of the Receiver's claims with defendants in the Burrell Action and in the related action by the Receiver, *Evans v. Armenta*, Case No. 5:14-cv-00329-GFVT-REW ("Armenta Action"). 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 the Second Settlement Motion as sufficient based on (a) service of the Second Settlement Motion and all supporting papers on the parties to this action; (b) service of a Notice of Filing of the Second Settlement Motion on all known non-consumer, non-employee creditors of the receivership estate with the Receiver offering to provide a complete copy of the Second Settlement Motion to any interested party upon written request; and (c) posting of the Second Settlement Motion and supporting pleadings on the Receiver's web site for this case, without copies of the 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 Second Settlement 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

In the Receiver's first settlement motion filed on May 9, 2017, the Receiver reported that he had reached agreements in principal with Chorost, Q. Nguyen, Liger and Quang & Crystal. *See* Doc. No. 352. Those settlements have now been fully executed and the initial cash payments totaling \$32,500 have been received. The Compromises resolve the Receiver's claims against the remaining four defendants named in the Burrell Action who are represented by counsel, Brian Johnson of Dickinson Wright PLLC. Claims against all defendants represented

by Brian Johnson in the Armenta Action have been resolved by settlements for which approval has been sought in the Receiver's first settlement motion. *See* Doc. No. 352.

There are five defendants in the Armenta Action and Burrell Action who are not represented by counsel. 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. The Receiver has filed motions seeking terminating sanctions against the four unresponsive defendants. A sixth defendant, Todd Rowland, formerly represented by Brian Johnson, filed a Chapter 7 bankruptcy petition, and 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.

Prior to entering into the proposed Compromises for which approval is sought in this Second Settlement Motion, 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 credit reports with the consent of the Settling Defendants.<sup>2</sup> The Receiver has also investigated other information pertinent to the ability of the Settling Defendants to pay the claims asserted by the Receiver. The financial terms of the proposed Compromises for which approval has been sought in the first settlement motion and this Second Settlement Motion reflect the wide disparity in the financial wherewithal of the defendants to respond to the Receiver's damages claims. The settlements reached demonstrate that the Receiver made individual, particularized determinations as to each Settling Defendant based on

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<sup>2</sup> The Receiver has not included specific details regarding the personal facts impacting the Receiver's judgment to settle with the Settling Defendants, and the Receiver has not set forth the specific financial condition of the Settling Defendants or included their financial statements in the pleadings filed with this Second Settlement 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 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.

The Receiver's settlements also take into account personal circumstances of the Settling Defendants, including 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 Second Settlement 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 and the other defendants who are the subject of the first settlement motion received collectively millions of dollars from the Receivership Defendants as CAB bonuses and CGU commissions, the Settling Defendants have demonstrated that they incurred expenses for travel and other business related expenses to generate those payments, and that they have expended significant amounts on living expenses both during the time they were affiliated with FHTM and in the more than four and one-half 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 significant. 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 Second Settlement Motion are fair and equitable and within the sound business judgment of the Receiver in that (a) the settlements subject to this Second Settlement Motion will provide additional recoveries of \$55,000 and bring the Receiver's aggregate recoveries from settlement of its claims to \$787,150, assuming payments are made as agreed, including immediate cash recoveries \$32,500 from the two Settling Defendants subject to this Second Settlement Motion,<sup>3</sup> and with the settlements all having 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 five defendants.

This Second Settlement 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

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<sup>3</sup> Total recoveries actually paid to date, including those made by these Settling Defendants, is \$350,000.

Judgment entered on May 9, 2014 (Doc. No. 202) and is made and based on the separate Notice of Filing of the Motion, this Second Settlement Motion, the supporting memorandum of points and authorities, declaration of Brick Kane and proposed order granting the Second Settlement 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: June 22, 2017

Respectfully submitted,

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