

**ROBB EVANS &
ROBB EVANS & ASSOCIATES, LLC
Temporary Receiver of
Fortune Hi-Tech Marketing, Inc., et al.**

11450 Sheldon Street
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Telephone No.: (818) 768-8100
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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 KSF-REW

**Notice of Filing of Receiver's Motion for Authorization to
Commence Litigation Against Highly Compensated Representatives;
Request for Judicial Notice in Support Thereof**

Filed December 23, 2013

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON**

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-KSF-REW

**NOTICE OF FILING OF
RECEIVER'S MOTION FOR AUTHORIZATION
TO COMMENCE LITIGATION AGAINST
HIGHLY COMPENSATED REPRESENTATIVES**

PLEASE TAKE NOTICE that the Receiver, Robb Evans and Robb Evans & Associates LLC ("Receiver"), has filed with the above-referenced Court its Motion for Authorization to Commence Litigation Against Highly Compensated Representatives. Pursuant to the Motion, the Receiver seeks an order approving and authorizing the Receiver to commence litigation, in the Receiver's discretion, against highly compensated representatives of the Receivership Defendants to recover commission and bonus payments made by the Receivership Defendants.

In summary, the Receiver seeks authorization to commence litigation to recover commission and bonus payments made by the Receivership Defendants as fraudulent transfers and under other theories of relief under applicable law, including the Kentucky fraudulent transfer statutes (Kentucky Revised Statutes § 378.010 *et seq.*). The Receivership Defendants operated a pyramid scheme and used a network of "independent representatives" who received payments including those designated as Customer Acquisition Bonus ("CAB") payments and/or

Customer Generated Usage (“CGU”) payments. Representatives received CAB bonuses based on new representatives they recruited to enroll with the Receivership Defendants. CGU commissions were paid to representatives based on their sales of products and services. Between 2009 and 2012, approximately 126,000 to 191,000 representatives enrolled in the Receivership Defendants’ program annually. Each representative was required to pay an enrollment or renewal fee annually to remain in the program. The annual fee was due up-front, ranged from \$99 to \$299 and was unrelated to actual product sales. Between 2009 and 2012, a total of more than \$66 million in enrollment and renewal fees were paid by the representatives. An average of 74% of the representatives earned less than \$10.00 per year between 2009 and 2012, and more than 88% of the representatives did not earn enough to recoup their enrollment fees in the Receivership Defendants’ operation. In contrast, from 2009 through 2012 less than 0.1% or approximately 50 of the highest paid representatives generated commissions and bonuses totaling more than \$46 million. It is important to the receivership estate to bring selective litigation against certain of the highly compensated representatives for return of these enormous commissions and bonuses because of the potential for significant recovery for the estate, which can then be returned to the FTC for consumer redress to hundreds of thousands of victims. For further information regarding the basis for the Receiver’s request for authorization to pursue litigation to recover commissions and bonuses paid to the highly compensated representatives, please see the Receiver’s Motion which is on file with the Court and a copy of which is posted on the Receiver’s web site at www.robbevans.com.

The Receiver further moves the Court for an order approving notice of the 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.

PLEASE TAKE FURTHER NOTICE that the Motion is made pursuant to Local Civil Rule 7.1 and the Stipulated Preliminary Injunction filed May 28, 2013 (Doc. No. 134) and is made and based on this separate Notice of Filing of the Motion, the Motion, the memorandum of points and authorities and declaration of Brick Kane and proposed order granting the Motion filed therewith, the other pleadings, records and files of the Court in this case 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.

PLEASE TAKE FURTHER NOTICE that any interested party may request a complete copy of the Motion and all supporting pleadings and papers in writing directed to the Receiver as follows: Robb Evans & Associates LLC, ATTN.: Cherrie Eustaquio, 11450 Sheldon Street, Sun Valley, CA 91352.

DATED: December 23, 2013

Respectfully submitted,

McKENNA LONG & ALDRIDGE LLP

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DATED: December 23, 2013

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON**

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-KSF-REW

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
RECEIVER'S MOTION FOR AUTHORIZATION TO COMMENCE LITIGATION
AGAINST HIGHLY COMPENSATED REPRESENTATIVES**

TO THE COURT:

COMES NOW, the Receiver, Robb Evans of Robb Evans & Associates LLC ("Receiver"), and respectfully requests that, pursuant to Rule 201 of the Federal Rules of Evidence, the Court take judicial notice of the following pleadings, records and files in this action in support of the Receiver's Motion for Authorization to Commence Litigation Against Highly Compensated Representatives:

1. Declaration of Peter J. Vander Nat, Ph.D. in support of the Federal Trade Commission's Ex Parte Motion for Temporary Restraining Order, etc., filed on January 24, 2013, as Document No. 19-16 through 19-20, Page ID No. 2517-2599;
2. Report of Temporary Receiver's Activities January 24, 2013 through February 19, 2013 ("Receiver's Report"), filed on February 20, 2013 as Document No. 58; and

3. Stipulated Preliminary Injunction, filed on May 28, 2013, as Document No. 134.

Copies of the foregoing documents subject to this Request for Judicial Notice are on file with the Court and additional copies will be provided to the Court or any parties in interest upon request.

DATED: December 23, 2013

Respectfully submitted,

McKENNA LONG & ALDRIDGE LLP

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DATED: December 23, 2013

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