

AMERICAN ARBITRATION ASSOCIATION

FILED ELECTRONICALLY

FORTUNE HI-TECH MARKETING, INC.

Claimant/Counter-Respondent,

vs.

AAA Case No. _____

JOSEPH M. ISAACS, ET AL.

Respondents/Counter-Claimants.

**ANSWERING STATEMENT AND COUNTERCLAIM OF RESPONDENTS/
COUNTER-CLAIMANTS JOSEPH M. ISAACS AND FORTUNE SOCIAL, LLC**

Pursuant to Commercial Rule R-4, Respondents/Counter-Claimants Joseph M. Isaacs and Fortune Social, LLC (collectively “Isaacs”) deny each and every claim brought by Claimant/Counter-Respondent Fortune Hi-Tech Marketing, Inc. (“FHTM”). In addition, Isaacs asserts his own counterclaim for relief against FHTM, Paul C. Orberon (individually and in his capacity as President of FHTM), Jeff Orberon (individually and in his capacity as Chief Operating Officer of FHTM), and Thomas A. Mills (individually and in his capacity as Vice-President and Chief Executive Officer of FHTM) (collectively “FHTM”). The following description of Isaacs’ claims should provide sufficient detail to make it painfully clear who the real ‘bad guys’ are in this escalating dispute.

CONTRA STATEMENT OF FACTS

FHTM operates an unlawful pyramid scheme that relies on untrue and misleading representations and unlawful, unfair, and fraudulent business practices. While FHTM purports to be in the business of selling name-brand services like wireless, satellite television, home security, vitamins, nutritional products and travel services, its true business is using consumers to generate fee income for representing non-existent partnerships, major sports figures, and prominent businessmen. To entice consumers to participate, FHTM makes untrue or misleading claims regarding its relationship with Fortune 100 companies like Verizon Wireless, GE Security, Dish Networks and Travelocity to create the illusion that consumers can become millionaires in three to five years.

FHTM's growth exploded when it began to lure consumers disenchanted with traditional jobs to inspirational and high-pressure seminars touting an innovative business model that promises huge financial rewards through multi-level network marketing. FHTM presenters claim to have proprietary tools, special relationships, and other support that allow consumers to grow their own business by partnering with FHTM's "companies". As the middle man who introduces products and services directly to customers, the consumer is told he will not have to waste dollars on advertising. Moreover, he can earn money when a friend, family member or acquaintance uses a product or service through his FHTM business. As an Independent Representative ("IR"), the consumer can earn residuals without selling any products or services. Finally, an IR who meets certain criteria can move "upline" in FHTM's hierarchy to enjoy even larger pieces of the pie. Levels of participation include:

- a. Qualified Representative;
- b. Manager;

- c. Regional Sales Manager;
- d. Qualified Regional Sales Manager;
- e. Executive Sales Manager;
- f. Qualified Executive Sales Manager;
- g. National Sales Manager;
- h. Qualified National Sales Manager; and
- i. Presidential Ambassador.

At the business presentation seminars, FHTM make the following representations about the success of its multi-level business model:

- (1) FHTM's founder, Paul C. Orberon, has partnered with numerous large companies like AT&T, Verizon Wireless, Dish Network, Travelocity, General Electric, and The Home Depot to bring customers for each company's services or products.
- (2) The companies' partnership with FHTM allows IRs to collect a residual income on all products and services purchased by customers they introduce (even themselves).
- (3) The IRs' business plan is simply to gather a few loyal customers and to introduce the multi-level scheme to a few other people who repeat the process.
- (4) With no obligation to handle billing, customer service, or equipment needs, IRs can sit back and receive residuals month-after-month as steady income.
- (5) Participants only need to pay a \$299 "licensing" fee to get started. (In response to an ABC news investigative report, FHTM lowered the fee for U.S. representatives to \$199.00 on May 22, 2010.)
- (6) Countless consumers who have become IRs have made thousands of dollars.
- (7) FHTM has met regulatory approval in all 50 states.

When the business presentation seminar is over, FHTM representatives pressure attendees to sign a pro-forma Application Agreement (the “Application”) that opens with the following disclaimer: “You must agree to the following terms before your application will be accepted.” Under Article 10, FHTM’s Policies and Procedures Manual (the “Manual”) supersedes the Agreement on any conflict. However, FHTM does not provide a copy of the Manual when a new recruit executes the Application. Otherwise, recruits would discover they are agreeing to a lot more than what is disclosed in the Application. According to the Manual, the “Agreement” between the parties actually incorporates several documents and practices that FHTM can change unilaterally without warning. These include:

[the] IR Application and Agreement, the FHTM Policies and Procedures, the FHTM Marketing and Compensation Plan, the Business Entity Form and Trainer Coach Application and Agreement (where appropriate) **and any other documents FHTM may deem appropriate from time to time in the future, all in their current form and as amended by FHTM in its sole discretion.** (emphasis added)

Provisions for dispute resolution include: (1) a Kentucky choice of law provision, (2) an arbitration provision, and (3) a forum selection clause. Specifically, Article 13 of the Application provides:

This agreement will be governed by and construed in accordance with the laws of the State of Kentucky. Except as set forth in the FHTM Policies and Procedures, all disputes and claims relating to FHTM, the Representative Agreement, the FHTM Marketing and Compensation Plan or its products and services, the rights and obligations of an independent Representative and FHTM, or any other claims or cause of action relating to the performance of either as independent Representative of FHTM under the Agreement or the FHTM Policies and Procedures shall be settled totally and finally by arbitration in Lexington, Kentucky, or such other location as FHTM prescribes, in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association.

The decision of the arbitrator shall be final and binding on the parties and may, if need be, be reduced to a judgment in any court of competent jurisdiction.

This agreement to arbitrate shall survive any termination or expiration of the Agreement.

Such was the state of affairs when Joseph Isaacs entered the scene. Isaacs and his team of programmers had begun developing the computer code for Fortune Webinars in 2005. Like the ‘Go To Meeting’ program used by most IRs for online collaborations, Isaacs’ software conducts online meetings, shares documents, and hosts presentations that allow up to 500 participants to interact in real time. Isaacs’ webinar business was launched in 2007 as a resource for all social networking segments and Fortune 500 professionals.

Intrigued by FHTM’s phenomenal growth, Isaacs attended a one-on-one meeting with other IRs and a multi-media DVD presentation to explore the possibility of working together. In reliance upon the above representations, Isaacs became an IR in September of 2009. Before long, he organized a website called www.fortunesocial.com (the “Website”) to network socially with fellow IRs and other network marketing companies globally as well as to promote networking seminars. In addition, Isaacs immediately sensed his webinar tool could greatly aid the MLM industry. Thus, after months of customization, Isaacs made www.fortunewebinars.com available to multi-level marketing organizations.

Since none of FHTM’s websites use the word “fortune”,¹ Isaacs reasonably believed that no IR or partnering company would assume his website was sponsored by FHTM. After all,

¹ www.fhtm.net, www.fhtm.us, www.fhtmca.com, www.fhtm.university.com, www.thereelfhtm.com.

FHTM had allowed other IRs to use similar domain addresses without complaint, including www.thefortunebusiness.com, www.yourfutunelifecommunity.com (FHTM's favored network run by National Sales Manager Trey Knight), www.fortunelife.com, and even www.fhtmtools.com. Spurred on by endorsements from National Sales Managers like Kevin Mullins, Woodson Gardner, Rich Miller, Todd Rowland, and Captain Mosley, Isaacs unveiled his social network at FHTM's 2010 January Jam to rave reviews.

It would not be long before Isaacs (and the world) made several troubling discoveries about FHTM's business plan and practices that doused his enthusiasm: (1) Paul Orberon had not made any special arrangements with the companies mentioned at the business opportunity/presentation seminar or in the company produced videos; (2) the only way to earn a significant income and be promoted up the ranks was to recruit additional IRs; (3) FHTM had not received regulatory approval for its pyramiding scheme in every state; (4) only a handful of IRs had earned anywhere near the residuals projected; (5) the prominent businessmen, politicians, former attorney generals and sports figures to whom FHTM constantly alluded were in fact IRs actively promoting their own FHTM business; and (6) a growing number of state attorneys general had already begun investigating FHTM in response to numerous complaints.

It turns out that FHTM's 'innovative' marketing plan is nothing more than a face lift to an age-old scheme. According to the FTC's Consumer Protection Bureau:

Pyramid schemes now come in so many forms that they may be difficult to recognize immediately. However, they all share one overriding characteristic. They promise consumers or investors large profits based primarily on recruiting others to join their program, not based on profits from any real investment or real sale of goods to the public. Some schemes may purport to sell a product, but they often simply use the product to hide their pyramid structure. There are two tell-tale signs that a product is simply being used to disguise a pyramid scheme: inventory loading

and a lack of retail sales. Inventory loading occurs when a company's incentive program forces recruits to buy more products than they could ever sell, often at inflated prices. If this occurs throughout the company's distribution system, the people at the top of the pyramid reap substantial profits, even though little or no product moves to market. The people at the bottom make excessive payments for inventory that simply accumulates in their basements. A lack of retail sales is also a red flag that a pyramid exists. Many pyramid schemes will claim that their product is selling like hot cakes. However, on closer examination, the sales occur only between people inside the pyramid structure or to new recruits joining the structure, not to consumers out in the general public.

Pyramid schemes force participants to pay money in return for two things. First is "the right to sell a product", second is "the right to receive, in return for recruiting other participants into the program, rewards which are unrelated to sale of the product to ultimate users." In re Koscot Interplanetary, Inc., 6 F.T.C. 1106 (1975), aff'd sub. nom. Turner v. FTC, 580 F.2d 701 (D.C. Cir. 1978). In particular, paying bonuses for recruiting:

. . . will encourage both a company and its distributors to pursue that side of the business, to the neglect or exclusion of retail selling. The short-term result may be high recruiting profits for the company and select distributors, but the ultimate outcome will be neglect of market development, earnings misrepresentations, and insufficient sales for the insupportably large number of distributors whose recruitment the system encourages.

Id. at 1180. True to form, FHTM's modus operandi has all the look, feel, and touch of the classic pyramid scheme described by the FTC. **Rather than provide a sustainable plan for selling goods and services, FHTM simply recycles fees from new IRs to entice veteran IRs to recruit more IRs.** While FHTM's short-term growth looks exponential, most revenues come from IRs who buy their own products or recruit new participants. According to one source, consumers paid over \$200 million to FHTM in 2009 for fees and websites. However, these same

IRs made only \$10 million in residual commissions. Of more than 100,000 consumers who purchased the right to market FHTM's products and services or maintain websites that year, 82% failed to earn a single residual commission over \$20.00 despite making personal purchases. In contrast, FHTM generated 85% of its net revenue of over \$500 million from the sale of websites and annual fees. Another 10% was generated through the sale of training and marketing materials. *Only 5% was generated from the sale of products and services.*

Shocked by these revelations, Isaacs felt a moral responsibility to allow the Website's users to report the real facts about FHTM's scheme on the Website. He also registered his concerns with the U.S. Department of Justice, the Federal Trade Commission, and several state administrative agencies. Finally, Isaacs asked administrators to allow an open and honest discussion on the Website about FHTM's practices— whether favorable or unfavorable.

Isaacs quickly discovered that FHTM's enforcement strategy is driven by status rather than substance. While regional sales managers are relentlessly prosecuted, National Sales Managers and Presidential Pool members (making millions for FHTM) have free rein. Thus, FHTM commissioned a Compliance Officer to pressure Isaacs before shifting to the legal department, who threatened to terminate the agreement if Isaacs did not close the Website immediately. FHTM's surprising stance increased the stakes beyond what Isaacs had anticipated. His unique system of social networking (rated by Alexa as being among the top 100,000 international and 40,000 domestic websites), self-service e-calendar tool, and webinar platform cost Isaacs about \$185,000 to develop. To salvage his investment and life savings, Isaacs tried hard to diffuse the conflict by listening to FHTM's concerns and offering several concessions.

After three days of silence, Isaacs concluded that FHTM was intent on closing him down. In a last ditch effort to get senior management's attention, Isaacs offered to sell the Website to

FHTM for \$2.5 million. In classic ‘David and Goliath’ style, FHTM immediately terminated Isaacs’ agreement and filed federal suit in the Eastern District of Kentucky. Dwarfed by mounting and unaffordable legal costs, Isaacs reluctantly agreed to suspend his entire online operation pending the outcome of litigation. By the time Isaacs could persuade the court to compel arbitration, FHTM had trampled ‘bread and butter’ enterprises that had taken him years to build.

Nonetheless, the truth is catching up with FHTM. On December 10, 2009, The *North Dakota* Attorney General's Office filed a Cease and Desist Order for violation of the Consumer Fraud Law, the Transient Merchant Law, the Home Solicitation Sales Law, and the North Dakota Pyramid Schemes Act. On January 19, 2010, FHTM entered into a Assurance of Voluntary Compliance with the North Dakota Attorney General's Office. On March 16, 2010, the *Montana* State Auditor's Office filed a Temporary Cease and Desist Order against FHTM, Paul C. Orberon, Thomas A. Mills, and Dianne Graber (a Montana IR). According to the Montana State Auditor's Office, FHTM has engaged in acts or practices constituting violations of the Securities Act of Montana, Montana Code ANN.30-10-101 et seq. On April 22, 2010, FHTM agreed to pay nearly \$1 million and to change its business practices to resolve the charge that it is operating a pyramid promotional scheme.

With each passing day, more states are jumping on FHTM’s bandwagon. The alarming rise in consumer complaints and governmental sanctions has prompted the Better Business Bureau of Central and Eastern Kentucky to downgrade FHTM’s rating from “B-” to “F”. At the same time, a proliferation of online bulletin boards and blogs criticizing FHTM’s pyramid scheme confirms that Isaacs’ experience is not unique. Following are excerpts of consumer complaints on www.complaintsboard.com:

Myself and a very good friend of mine were talked into signing up for FHTM Canada on the good word of a close friend of mine who was suppose to be our "Sponsor", the only thing is that I found out that she wasn't a very good friend at all, she only had \$\$\$\$\$ signs in her eyes. Needless to say we unwittingly signed up and had our friends and family sign up only to be left in the dust, scratching our heads saying "what just happened here"?

* * * * *

Anyone who listens to the FHTM spiel and signs up is a fool. What is it about people in this day and age that think it is normal to make money by sitting on your butt and getting other people to pay \$250 that you gladly syphon off your share along with all the other leaches sitting high on the pyramid. And this is a pyramid scheme, nothing more.

* * * * *

Is it just me or do all the FHTM reps seem like sleezy used car salesman that are trying to brain wash you into joining? First of all I was tricked into even going to the meeting, which is probably my fault to begin with. . . . Got there to find out the meeting was nothing more than this Pyramid crap. . . . They would say "your making money for bills that you would have to pay anyway!" But that's not how you make money through FHTM - you have to go out of your way to find other people willing to pay 299 - which in this economy is not easy. I tried declining politely but they just wouldn't take no for an answer - so i finally said I had no interest, didn't want to give any of my information away and walked out.

Perhaps a recent email from one consumer burned in Missouri sums up FHTM's scam the best: *"It's like a wildfire burning across a field. Goes like hell with nothing left behind but smoke and ashes."* Since the lawsuit was filed, Isaacs has lost two key clients and other business relationships are in jeopardy. Unable to market Fortune Webinars, Isaacs stands to lose millions in potential revenues. To add insult to injury, FHTM and Paul Orberson have engaged in a slanderous smear campaign around the country, telling IRs that Isaacs was terminated for spreading false rumors and improprieties (even accusing Isaacs of forging a complaint from the

attorney general's office of California). FHTM has also released Isaacs' Website offer to the public, while Paul Orberson uses every opportunity to mock him in public speeches. Isaacs' only hope is that justice will reveal who the real bad guys are in his terrible ordeal.

COUNTERCLAIM

In asserting the following claims against FHTM, Isaacs incorporates the foregoing allegations as if fully rewritten therein:

COUNT ONE DECLARATORY JUDGMENT

1. There is a real and actual controversy between Isaacs and FHTM over several topics covered in the parties' agreement.
2. The parties dispute the scope and effect of FHTM's purported integration clause in paragraph 10 of the Application Agreement.
3. The parties also dispute the enforceability of FHTM's attempt in paragraph 13 of the Agreement to foreclose Isaacs' ability to pursue his claims as a representative claimant in a class action.
4. The parties also dispute whether the Eastern District of Kentucky can exercise personal jurisdiction over Isaacs in light of the parties' agreement to arbitrate all disputes according to AAA rules.
5. Isaacs contends the integration clause is either unenforceable or of limited application to the instant controversy.
6. Isaacs further contends the class action prohibition is unenforceable under the circumstances presented in the instant controversy.

7. Isaacs also contends the Eastern District of Kentucky cannot exercise personal or subject-matter jurisdiction over Isaacs in light of the parties' agreement to arbitrate all disputes according to AAA rules.

COUNT TWO
BREACH OF FIDUCIARY DUTY

8. Isaacs placed special trust, confidence, and reliance in FHTM's discretion, integrity, fidelity, and expertise to provide a multi-level marketing program that would produce the results represented at the seminars and projected in supporting documentation.

9. FHTM knowingly accepted Isaacs' special trust, confidence, and reliance in FHTM's discretion, integrity, fidelity, and expertise to provide a multi-level marketing program that would produce the results represented by FHTM.

10. FHTM's undertaking on behalf of Isaacs created a fiduciary duty to act primarily for the benefit of Isaacs and other IRs in all matters connected with such undertaking.

11. Because of FHTM's fiduciary relationship with Isaacs, FHTM had a duty to exercise all of the skill, care, and diligence at its disposal when acting on his behalf.

12. As fiduciary to Isaacs, FHTM also had a duty of honesty and full disclosure in regard to Isaacs' interests that precludes FHTM from obtaining a personal benefit at Isaacs' expense.

13. As fiduciary to Isaacs, FHTM also had a duty of loyalty that precludes FHTM from placing itself in a position in which it would be difficult to be honest and faithful to Isaacs' trust.

14. In violation of the foregoing fiduciary duties, FHTM acted in a manner that was adverse or contrary to Isaacs' interests.

15. In further violation of FHTM's fiduciary duties, FHTM's actions were conducted for its own personal benefit.

16. As a proximate and foreseeable result of FHTM's breach of the foregoing fiduciary duties, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT THREE
BREACH OF CONTRACT

17. FHTM offered to provide certain services for Isaacs.

18. Isaacs accepted FHTM's offer to provide said services.

19. Isaacs gave valuable consideration for the performance of FHTM's services.

20. FHTM materially breached its contract with Isaacs.

21. As a proximate and foreseeable result of FHTM's breach of contract, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT FOUR
COMMON LAW FRAUD

22. FHTM made several material representations to Isaacs regarding its Independent Representative program that were false or recklessly made.

23. Said representations were known by FHTM to be false or made recklessly at the time they were made.

24. Said representations relate to past or present material facts likely to affect the conduct of a reasonable person as an inducement to enter a contract.

25. FHTM made said representations to Isaacs as an inducement to be acted upon and Isaacs did, in fact, act in reliance upon said representations.

26. As a proximate result of FHTM's misrepresentations, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT FIVE
UNFAIR OR DECEPTIVE TRADE PRACTICE
KRS § 367.170

27. FHTM committed unfair, false, misleading, or deceptive acts or practices against Isaacs in marketing the Independent Representative program to Isaacs.
28. As a proximate result of FHTM's unfair, false, misleading, or deceptive acts or practices, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT SIX
FAILURE TO REGISTER SECURITY
KRS § 292.340

29. FHTM's multi-level marketing plan constitutes a "security" within the meaning and intent of KRS § 292.310(18).
30. FHTM is a "person" and "issuer" of securities as described under KRS § 292.310(12) and (14).
31. FHTM "offered" or "sold" its multi-level marketing plan to Isaacs as defined in KRS § 292.310(16).
32. In violation of KRS § 292.340, FHTM offered or sold its multi-level marketing plan to Isaacs without registering the plan as a security with proper authorities in the state of Kentucky.
33. As a proximate result of FHTM's securities violation, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT SEVEN
FRAUDULENT PRACTICE IN SALE OF SECURITIES
KRS § 292.320

34. In connection with the offer, sale, or purchase of said security to Isaacs, FHTM:
- (a) Employed a device, scheme, or artifice to defraud Isaacs;

(b) Made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading to Isaacs; and

(c) Engaged in other acts, practices, or courses of business which operated as a fraud or deceit upon Isaacs.

35. As a proximate result of FHTM's securities fraud, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT EIGHT
CIVIL RACKETEERING CONSPIRACY
18 U.S.C. § 1962(d)

THE ENTERPRISE

36. FHTM is a legal entity organized under the laws of the State of Kentucky and constitutes an Enterprise as that term is defined in Title 18, United States Code, Section 1961(4). The Enterprise engaged in, and the activities of which affected, interstate and foreign commerce.

THE RACKETEERING CONSPIRACY

37. From about 2001 and continuing to the present, FHTM did knowingly combine, conspire, confederate, and agree with certain officers and Individual Representatives of FHTM (known as National Sales Managers and Presidential Ambassadors) to violate Title 18, United States Code, Section 1962(c) in the state of Kentucky; that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise through a pattern of racketeering activity as that term is defined in Title 18, United States Code, Sections 1961(1) and (5), as set forth herein below at paragraph 38.

THE PATTERN OF RACKETEERING ACTIVITY

38. The pattern of racketeering activity as defined in Title 18, United States Code, Sections 1961(1) and 1965(5), through which FHTM and its co-conspirators agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the Enterprise consisted of multiple acts that subjected the conspirators to civil liability or are indictable under the criminal laws of the United States, namely:

- i. Title 18, United States Code, Section 1341 (mail fraud);
- ii. Title 18, United States Code, Section 1956(a)(1) (laundering of monetary instruments);
- iii. Title 18, United States Code, Section 1957 (engaging in monetary transactions); and
- iv. Title 18, United States Code, Section 1956(h) (conspiracy to launder monetary instruments and engage in monetary transactions).

THE PURPOSE AND OBJECT OF THE RACKETEERING ACTIVITY

39. The principal purpose of the racketeering conspiracy was to generate money for FHTM and its co-conspirators through the operation of the Enterprise and through various unlawful civil or criminal activities, including mail fraud and money laundering.

40. FHTM and its co-conspirators agreed to engage in a pattern of racketeering activity through its base of operation at the offices of FHTM. The conspirators also utilized other locations to further the objective of the Enterprise. FHTM and its co-conspirators unlawfully obtain millions of dollars from investors by fraud in connection with an investment ploy commonly known as a “pyramid” scheme, whereby FHTM recycles fees from new IRs to entice veteran IRs to recruit more IRs without producing sustainable sales in product goods and services.

THE ROLES AND RESPONSIBILITIES OF THE CONSPIRATORS

41. The roles of the conspirators were and are as follows:

A. In his capacity as shareholder and President of FHTM, Paul C. Orberon promotes, manages, and supervises the administration of the Enterprise by fraudulently inducing investors through false statements to invest funds with the expectation of significant income with little effort.

B. In his capacity as Chief Operating Officer of FHTM, Jeff Orberon aids and abets Paul C. Orberon in his plan to fraudulently induce investors through the use of false statements to invest funds with the expectation of significant income with little effort.

C. In his capacity as Vice President of FHTM, Thomas A. Mills also aids and abets Paul C. Orberon in his plan to fraudulently induce investors through the use of false statements to invest funds with the expectation of significant income with little effort.

D. Through its Board of Directors, FHTM has approved and continues to ratify Paul C. Orberon's plan to fraudulently induce investors through the use of false statements to invest funds with the expectation of significant income with little effort.

MANNER AND MEANS OF THE RACKETEERING CONSPIRACY

42. It was part of the conspiracy that FHTM agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the Enterprise.

43. FHTM and the other conspirators initiated the unlawful civil or criminal conduct in order to personally enrich themselves, to supplement their income, and to sustain FHTM's daily operation.

44. Through the pyramid scheme, FHTM and the other conspirators fraudulently solicits investors to invest money based upon expectations of significant returns with little effort.

45. FHTM and the other conspirators make false and misleading statements and omissions which are intended to fraudulently induce potential investors into investing their funds.

46. Misrepresentations made by FHTM and other conspirators to induce potential investors like Isaacs to invest in the Enterprise include, but are not limited to, the following:

- A. Misrepresentations about relationships with companies since 2001;
- B. Misrepresentations about relationships with businessmen, politicians and sports figures since 2007;
- C. Misrepresentations about the residual income portion of FHTM's revenue stream;
- D. Misrepresentations about the income potential of an Independent Representative;
- E. Misrepresentations about FHTM being a debt free company who owns its' office building in Lexington, Kentucky;
- F. Misrepresentations about the number of IR's who are successful and earn money from residual income;
- G. Misrepresentations about the number of IR's that drop out of the scheme;
- H. Misrepresentations about FHTM's size; and
- I. Misrepresentations about the net growth of FHTM's national network of Independent Representatives.

47. Throughout this time, FHTM and the other conspirators purposely associated with well-known figures in public forums and elsewhere in order to gain greater notoriety and to create the appearance of wealth and legitimacy. Such acts were calculated in part to enhance FHTM's ability to solicit potential investors in its pyramid scheme.

48. All of the foregoing acts are in violation of Title 18, United States Code, Section 1962(d).

49. As a proximate result of FHTM's RICO violations, Isaacs has suffered damages in an amount to be proven at arbitration.

50. Isaacs acknowledges that an award of treble damages under the federal statute is subject to reduction to conform to Isaacs' demand for relief.

COUNT NINE
DEFAMATION

51. FHTM's smear campaign against Isaacs includes numerous defamatory statements.

52. FHTM published these defamatory statements to third parties without Isaacs' knowledge or consent.

53. FHTM's defamatory statements have caused injury to Isaacs' personal and business reputation.

54. As a proximate result of FHTM's defamation, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT TEN
ABUSE OF PROCESS

55. FHTM had the following ulterior purposes in filing the Federal diversity action against Isaacs:

- i. To make an example of independent representatives who dare to challenge FHTM's business practices;
- ii. As a deterrent to other independent representatives who may consider acting as a whistleblower against FHTM with any governmental agency;
- iii. To leverage its superior financial resources to put Isaacs permanently out of business.

56. As willful acts in the improper use of said judicial process, FHTM:
- i. Chose to file a Federal diversity action in Kentucky without a good faith basis for personal or subject matter jurisdiction;
 - ii. Ignored the parties' mandatory arbitration clause; and
 - iii. Moved for preliminary injunctive relief despite Isaacs' preemptive actions rendering judicial intervention moot.
57. The foregoing acts would not be considered proper in the regular conduct of judicial proceedings.
58. As a proximate result of FHTM's abuse of process, Isaacs has suffered damages in an amount to be proven at arbitration.

COUNT TEN
PUNITIVE DAMAGES
(KRS § 411.184)

59. FHTM acted toward Isaacs with oppression, fraud, or malice.
60. After demonstrating FHTM's intentional tortious conduct, Isaacs requests the following factual determinations by arbitration:
- (a) Isaacs' qualification for punitive damages under KRS § 411.184;
 - (b) An award of punitive damages based upon the factors listed in KRS § 411.186.
61. Isaacs acknowledges that the arbitrator's award for punitive damages is subject to reduction in order to conform to Isaacs' demand for relief.

PRAYER FOR RELIEF

I. Declaratory Relief

WHEREFORE, pursuant to Kentucky Rule of Civil Procedure 57, Isaacs asks the Arbitrator to determine by declaratory judgment that:

- A. The integration clause in the parties' agreement is unenforceable against Isaacs under the circumstances presented.
- B. Alternatively, the integration clause has limited application to the instant controversy.
- C. The purported prohibition against class treatment of Isaacs' claims in the parties' agreement is unenforceable under the circumstances presented.
- D. In light of the agreement to arbitrate all disputes according to AAA rules, the arbitrator has exclusive personal and subject matter jurisdiction over the parties and their dispute.

III. Monetary Relief

WHEREFORE, Isaacs further requests the following monetary relief:

- A. Compensatory damages resulting from FHTM's unlawful conduct.
- B. Treble damages for FHTM's RICO violation
- C. Prejudgment interest
- D. Reasonable attorney's fees as permitted by applicable statute.
- E. Costs of suit
- F. All other relief deemed fair and equitable by this Court.
- G. To comply with AAA's administrative fee schedule, Isaacs will voluntarily limit the arbitrator's total damage award to \$75,000 but reserves the right to amend his counterclaim in the future.

Respectfully Submitted,

s/ Edward J. Smith _____
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