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THE HONORABLE WALTER T. McGOVERN

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

FEDERAL TRADE COMMISSION, Plaintiff,

Civ. No. **C96-799M**

v.

**STIPULATED FINAL**

**JUDGMENT AND ORDER AS**

FORTUNA ALLIANCE, L.L.C., *et al.*,  
Defendants

**TO CERTAIN DEFENDANTS**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a complaint for a permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 53(b), naming as defendants Fortuna Alliance, L.L.C., Augustine Delgado, Libby Gustine Welch, and Donald R. Grant, (the "Fortuna Defendants") and alleging violations of Section 5 of the FTC Act, 15 U.S.C. 45.

The Fortuna Defendants and the Commission, by and through their respective counsel, have agreed to entry of this Order by this Court in order to resolve all matters in dispute between them in this action. The Fortuna Defendants have consented to the entry of this Order without trial or adjudication of any issue of law or fact herein. NOW, THEREFORE, the Fortuna Defendants and the Commission having requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

A. This Court has jurisdiction of the subject matter of this action and the parties consenting hereto.

B. Entry of this Order is in the public interest.

C. The Fortuna Defendants have waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order.

D. This Order does not constitute and shall not be interpreted to constitute either an admission by the Fortuna Defendants or a finding by the Court that the Fortuna Defendants have engaged in violations of the FTC Act.

## **DEFINITIONS**

For purposes of this Order the following definitions apply:

A. "Multi-level marketing program" means any marketing strategy in which participants pay money to the program promoter in return for which program participants obtain the right to (1) recruit additional participants, or to have additional participants placed by the promoter or any other person into the program participant's downline, tree, cooperative, income center, or other similar program grouping; (2) sell goods or services; and (3) receive payment; PROVIDED the payments received by program participants are derived primarily from the sale or purchase of the goods or services, and not from recruiting additional participants nor having additional participants placed into the program participant's downline, tree, cooperative, income center, or other similar program grouping. For purposes of this Order, the phrase "goods or services" does not include a membership or opportunity to participate in another sales or marketing program.

B. "Chain or pyramid marketing program" is a sales device whereby a person, under a condition that he or she make a payment, is granted a license or right to recruit for consideration one or more additional persons who are also granted a license or right upon condition of making a payment, and may further perpetuate the chain or pyramid of persons who are granted a license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the program as a chain or pyramid marketing program.

C. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

D. "Assisting" means providing the means and instrumentalities for or otherwise facilitating any conduct that a defendant knows or should know violates any provision of Sections I or II of this Order. This includes, but is not limited to, formulating or providing or arranging for the formulation or provision of written or electronic promotional materials.

## **ORDER**

### I.

IT IS THEREFORE ORDERED that the Fortuna Defendants, whether acting directly or through any business, entity, corporation, subsidiary, division, or other device, in or affecting commerce, as "commerce" is defined in the FTC Act, 15 U.S.C. 44, are permanently enjoined from engaging, participating, or assisting in any manner or capacity whatsoever in the advertising, promoting, offering for sale, or sale, of any chain or pyramid marketing program, except that the Fortuna Defendants are not enjoined from engaging, participating, or assisting in multi-level marketing programs.

## II.

IT IS FURTHER ORDERED that the Fortuna Defendants, whether acting directly or through any business, entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, offering for sale, or sale of any marketing or investment program, in or affecting commerce, as "commerce" is defined in the FTC Act, are hereby permanently restrained and enjoined from making, or assisting another in making, directly or by implication, orally or in writing, any misrepresentation about any material fact, including, but not limited to, misrepresentations about earnings that program participants have actually made or can potentially make.

## III.

IT IS FURTHER ORDERED that refunds of membership fees shall be offered to all eligible members of Fortuna Alliance by an independent Redress Contractor selected by the parties from those currently under contract to the FTC. The Redress Contractor shall use a notice and claim form containing the text of Attachment A to this order, and follow its standard procedures for administering redress funds in FTC cases. The Redress Contractor shall also provide with the notice a copy of the FTC's consumer information pamphlet called "Multilevel Marketing Plans."

The costs of administering the redress program shall come from a Redress Fund created from funds currently held by the court-appointed receiver. The balance of the Redress Fund shall be used to pay refunds. If requests for refunds exceed this initial Redress Fund, the Fortuna Defendants shall make sufficient additional funds available to the Redress Contractor to pay all refunds in full. The Fortuna Defendants shall secure this obligation with an irrevocable letter of credit confirmed by a U.S. bank, delivered and payable to the Redress Contractor as beneficiary, in an amount of \$2.8 million. The terms of the letters of credit and confirmation are attached as Attachment B.

For purposes of this section, an "eligible member" is one (1) whose membership fee(s) were actually paid to Fortuna, that is, not gifted or otherwise provided without payment; (2) who did not receive payments from Fortuna equal to or exceeding the membership fee(s) paid; and (3) who returns a properly filled out claim form. The Redress Contractor will accept claim forms up to 120 days of the mailing date on the notice, notwithstanding the shorter time period stated on the notice, and will commence making payments as soon as practicable thereafter. If a member has received payments from Fortuna but those payments were less than the membership fees paid, then any refund will be reduced by the amount of payments received.

If the Fortuna Defendants fail to meet the payment obligations set forth in this section, they shall pay the costs and attorneys fees incurred by the FTC and its agents in any attempts to collect amounts due pursuant to this Order.

## IV.

IT IS FURTHER ORDERED that the Fortuna Defendants shall aid and assist the Commission, or the designated Redress Contractor, without compensation from the Redress Fund or the FTC and in any manner reasonably requested by the Redress Contractor, in determining which Fortuna members may be eligible for refunds and in obtaining information from Fortuna's records to locate those members.

## V.

IT IS FURTHER ORDERED that within 15 days of entry of this Order, the FTC shall (1) place on the FTC Internet website the text of this Stipulated Order and the notice as set out in Attachment A; and (2) notify the two Internet Service Providers previously used by Fortuna for its websites that the prohibition on Fortuna's use of the websites is released.

## VI.

IT IS FURTHER ORDERED that:

A. The receiver shall transfer \$320,000 of Fortuna Alliance funds to the Redress Contractor identified in Section III within five days after entry of this Order.

B. Upon entry of this Order, Fortuna Alliance, L.L.C. shall be solely responsible for paying, challenging, or otherwise resolving (1) all outstanding claims of indebtedness to its creditors, where those claims arose or accrued before the appointment of the receiver by this Court, and (2) any accruals to those claims, where those accruals occurred after the appointment of the receiver, and the receiver is hereby released and discharged from all liability or obligation to those creditors on those claims.

C. The receiver may use Fortuna Alliance funds to pay the fees and costs of foreign counsel retained by the receiver for the purpose of securing foreign assets related to this case. Resolution of liability for payment of any other claims against Fortuna Alliance funds, except for those covered in section III and paragraphs VI.A-B above, shall be subject to agreement between the Fortuna Defendants and the receiver, or otherwise resolved by further order of this Court.

D. The receiver shall file its final accounting and application for discharge by the later of March 15, 1997, or within 30 days after receiving notice that the letter of credit confirmation has been delivered to the Redress Contractor, as described in section III above, or by such other date as the Court may direct. The parties shall file any comments or objections to the receiver's accounting and application within 10 days after service upon them of the filing. The receiver shall file any reply to those comments or objections within 10 days after service on it of the comments or objections.

E. Upon discharge, and after completing such disbursements as the Court may order, the receiver shall pay the remaining funds in the receivership estate to the Redress Contractor, or if at that time the redress program has been fully administered, to Fortuna Alliance L.L.C. or such agent as may be designated by the Fortuna Defendants' counsel, Robert O. Sailer.

## VII.

IT IS FURTHER ORDERED that:

A. When the Redress Contractor notifies the FTC that the Redress Contractor has received the \$2.8 million letter of credit confirmation provided for in Section III, the parties shall take whatever steps are necessary and appropriate, if not already taken, to lift any foreign court injunction against the transfer of the Fortuna Defendants' or Fortuna Alliance members' assets and, thereafter, to terminate all related foreign court claims or actions, including those in Antigua and Belize.

B. Neither the FTC, the Fortuna Defendants, nor the court-appointed receiver shall assert claims for fees, costs, or damages against any other party to the foreign actions for claims arising out of those actions.

C. The Fortuna Defendants shall withdraw and not reassert any administrative claims against the FTC.

D. The Fortuna Defendants' counterclaims and additional party claims, as stated in their Second Amended Answer, Counterclaims, and Additional Party Complaint, are hereby dismissed with prejudice, provided, however, that the Fortuna Defendants are not barred from raising new claims against

the receiver related to the administration or management of the receivership estate. Similarly, all counterclaims which could have been brought by the FTC and by third-party defendants and additional parties shall be considered to be released and dismissed with prejudice.

### VIII.

IT IS FURTHER ORDERED that upon (1) entry of this Order; and (2) delivery to the Redress Contractor of the irrevocable letter of credit confirmation, as described in Section III above, the freeze of the Fortuna Defendants' assets, including personal bank accounts wherever located, as ordered in Sections II and VI of the May 23, 1996, Temporary Restraining Order and the June 12, 1996, Preliminary Injunction, and the lien or encumbrance placed against Blue Mountain Farm, 6324 Saxon Road, Acme, Washington, as ordered by Section III of the June 12, 1996, Preliminary Injunction, shall be permanently released and discharged. The Court-appointed receiver and the Fortuna Defendants are authorized to file notice of this Order with the appropriate entities to effectuate the terms of this provision.

### IX.

IT IS FURTHER ORDERED that all prior orders of this Court for contempt sanctions and arrest warrants against certain of the defendants are hereby vacated.

### X.

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Order, defendants Fortuna Alliance, L.L.C. and Augustine Delgado, whether acting directly or through any trust, corporation, subsidiary, division, or other device, in connection with the continuation of any part of Fortuna Alliance's business or the advertising, promoting, recruitment, offering for sale, or sale of any marketing or investment program, in commerce, as "commerce" is defined in the FTC Act, shall:

A. Maintain and make available to representatives of the Commission, upon reasonable notice, sample copies, in printed form except for category 5, of:

1. Each type of contract or agreement used with members or participants in the program.
2. All printed advertisements or promotional material relating to the program.
3. All advertising or other promotional or commercial material posted in any Internet news group, on the World Wide Web, on any electronic bulletin board system, in any online interactive conversational space or chat room, in the classified advertising section of any online service, or in any other location accessible by modem communications. Each copy shall be accompanied by an indication of the online location where the material was posted.
4. All advertising or other promotional or commercial material made available through any fax-back service.
5. Electronic copies, in HTML format, of any advertising or other promotional material made available on the World Wide Web, together with copies of all graphics files, audio scripts, and other computer files used in presenting information on the World Wide Web. The records shall include the Internet address (URL) of the site, as well as any other information needed to gain access to the site.

B. Maintain and make available to representatives of the Commission, upon reasonable notice, records for every consumer complaint or refund request and responses thereto. These records need only be maintained for two years after the last action taken for a particular complaint or refund request.

#### XI.

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Order, defendants Fortuna Alliance, L.L.C. and Augustine Delgado, in connection with the continuation of any part of Fortuna Alliance's business or the advertising, promoting, recruitment, offering for sale, or sale of any marketing or investment program, in commerce, as "commerce" is defined by the FTC Act, shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the same from, each officer, director, and managing agent of the program.

B. Maintain, and upon reasonable notice make available to representatives of the Commission, the original and dated acknowledgments of the receipts of copies of this Order required by Paragraph XI.A above.

#### XII.

IT IS FURTHER ORDERED that for a period of five years from the date of entry of this Order, defendants Augustine Delgado, Libby Gustine Welch, and Donald R. Grant shall notify the FTC in writing of any affiliation or employment with any new marketing or investment business, in commerce, as "commerce" is defined in the FTC Act, within 21 days of the commencement of that affiliation. Each notice shall include the defendant's then-current business and home address and phone number, and a statement of the nature of the new business or employment along with a description of his or her interest, duties, and responsibilities in the business or employment.

#### XIII.

IT IS FURTHER ORDERED that the Fortuna Defendants shall, within 180 days after the date of entry of this Order, file with the Court a report, in writing, setting forth the manner and form in which he or she has complied with this Order.

#### XIV.

IT IS FURTHER ORDERED that all notices required of defendants by this Order shall be made to the following address:

Regional Director  
Federal Trade Commission  
915 Second Avenue, Suite 2896  
Seattle, Washington 98174

#### XV.

IT IS FURTHER ORDERED that in the event that the letter of credit confirmation required by Section III above is not delivered to the Redress Contractor within 120 business days of entry of this Order, or if any party seeks to dissolve the orders freezing assets held in foreign accounts before



or without transfer of funds sufficient to cause issuance of the letter of credit and confirmation, this Order shall be null and void as soon as the plaintiff notifies this Court of the occurrence of one of these events.

XVI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this \_\_\_\_\_ day of , 199\_\_, at Seattle, Washington.

\_\_\_\_\_  
Hon. Walter T. McGovern  
UNITED STATES DISTRICT JUDGE

The parties hereby consent to the terms and conditions set forth above and consent to entry of this Order without further notice to the parties. This Order may be signed in separate counterparts, and all the counterparts together shall together constitute a single agreement. The Fortuna Defendants hereby waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. 2412.

**FEDERAL TRADE COMMISSION**

Randall H. Brook  
Eleanor Durham  
Maxine Stansell  
Charles A. Harwood  
Regional Director

Attorneys for Plaintiff  
Federal Trade Commission

**DEFENDANTS**

By:

Fortuna Alliance, L.L.C.  
Augustine Delgado  
Libby Gustine Welch  
Donald R. Grant

**PERKINS COIE**

By:

Ronald M. Gould, WSBA #6458  
James F. Williams, WSBA #23613  
Perkins Coie  
1201 Third Avenue  
Seattle, WA 98101

**JUDD & SAILER, P.L.L.C.**

By:

Robert O. Sailer, WSBA #5430

Attorneys for Fortuna Alliance, L.L.C., Augustine Delgado, Libby Gustine Welch, and Donald R. Grant

**ATTACHMENT A**

**FTC v. Fortuna Alliance, L.L.C.**

Claims Administration Center

c/o [Redress Contractor, addr, phone #]

[date]

Dear Fortuna Alliance Member:

In May 1996, the Federal Trade Commission ("FTC") sued Fortuna Alliance, LLC ("Fortuna") and the individuals named above. The FTC claimed that the defendants were operating an illegal pyramid scheme and had made deceptive claims about profits that could be earned by becoming a member of Fortuna Alliance. Fortuna Alliance and the individual defendants denied all the charges.

The parties to the lawsuit have mutually agreed to settle this dispute by stipulating to a consent order. This agreement is not an admission of liability. Under the settlement, Fortuna will not offer or make payments to members based primarily on membership dues paid by members of your co-op or income center. Fortuna Alliance has also agreed to set up a fund to allow any current member who wishes a refund to obtain it. The defendants are obligated to pay all eligible refunds in full.

To be eligible to receive a refund, you must fill out the information required on the enclosed claim form and return it to the address above no later than [90 days after mailing]. If you are eligible and you elect to receive a refund, your Fortuna Alliance membership will be canceled. If you've already received payments from Fortuna Alliance that are more than your initial membership fee (for example, \$250 per Elite center), you are not eligible for a refund from this settlement. Also, you must have personally paid money for your membership. If it was gifted to you or received in any way other than by your paying Fortuna Alliance for it, you may not get a refund through this program.

You can elect to remain a member of Fortuna Alliance by simply not returning this form. Fortuna Alliance will be allowed to operate a multi-level marketing business consistent with the terms of the consent order. But any profits you earn in the future must come primarily from sales or purchases of goods or services. You will not be able to receive profits primarily from the distribution of membership fees or dues.

Neither the FTC nor the Claims Administrator make any recommendation about whether you should continue membership in Fortuna Alliance.

Sincerely ,  
The Claims Administration Center

[Redress Contractor] is the only Claims Administration Center authorized by the Federal Trade Commission to mail notices and claim forms and process and pay refund claims for the FTC vs. Fortuna Alliance et al. settlement. You are not required to pay anything to receive a refund. If any other company or individual contacts you and requests that you send them money or information in return for a refund from Fortuna Alliance, please call the Claims Administration Center immediately at the phone number above.

### **Privacy Act Notice**

This information is being collected in order to make a distribution of funds in connection with a consent decree entered by the U.S. District Court for the Western District of Washington pursuant to 15 U.S.C. 53(b). In addition, this information may be disclosed for other purposes authorized by the Privacy Act, 5 U.S.C. 552a and 47 Fed. Reg. 32,622, including disclosure to other government agencies. Failure to provide the requested information could delay processing or, in some cases, make it impossible for us to process your claim.

## **ATTACHMENT B**

[OUTLINE OF TERMS OF LETTERS OF CREDIT AND CONFIRMATION]

### **Terms Substantially Similar by and from:**

**Issuing Bank (Antigua Overseas Bank Ltd.) and  
Confirming/Paying Bank - Bank of America International (N.Y.)**

The following is substantially the terms of the irrevocable Letter of Credit ("L/C") the Antigua Overseas Bank Ltd. and the Bank of America International (N.Y.) would agree to issue and confirm/pay on behalf of Fortuna Alliance, L.L.C., once collateral for the L/C is in place.

To/From Bank of America International (Confirming and paying bank)  
One World Trade Centre  
New York NY

Test Key:  
Currency and Amount: USD 2,800,000

ATTENTION: L/C Department

**Beneficiary: The Redress Contractor**

We have issued, in your favour, and for the account of Fortuna Alliance, LLC, our irrevocable standby letter of credit number \_\_\_\_\_/97, which is available for a maximum amount of \$US 2,800,000 against presentation of draft(s) drawn at sight on us and marked "drawn under L/C number \_\_\_\_\_/97," accompanied by a signed statement from the Redress Contractor certifying that the funds request is in accordance with the district court order in the case of *F.T.C. v. Fortuna Alliance, L.L.C., et al.*

**Special Condition**

- a) Drawings are not permitted in amounts of less than US\$25,000;
- b) All fees, including confirmation fees, are for the applicants account;
- c) This letter of credit is not assignable or transferable.

Expiry: This letter of credit will expire 150 days from date of issuance [unless another date is agreed to in writing by the parties prior to issuance].

Except so far as expressly stated, this documentary credit is subject to the Uniform Customs and Practices for Documentary Credits (1993), International Chamber of Commerce Publication No. 500.

We hereby engage with the bonafide holders of all drafts drawn and documents presented under and in compliance with the terms of the letter of credit that such drafts and documents will be duly honored upon presentation to us, on or before the expiry date of this letter of credit.

Our mission: To prevent business practices that are anticompetitive, deceptive, or unfair to consumers

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