

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:17-cv-897

MARKET AMERICA, INC.; MARKET
AMERICA WORLDWIDE, INC; JAMES
HOWARD RIDINGER; LOREN
RIDINGER; and MARC ASHLEY,

Petitioners,

v.

CHUANJIE YANG; OLLIE LAN; and LIU
LIU,

Respondents.

**PETITION FOR ORDER
COMPELLING ARBITRATION**

Pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.*, Petitioners Market America, Inc. (“Market America”), Market America Worldwide, Inc., James Howard Ridinger, Loren Ridinger, and Marc Ashley (collectively, “Petitioners”) allege as follows:

PARTIES

1. Petitioner Market America is a 25-year-old product brokerage and Internet one-to-one marketing company. It is a corporation organized and existing under the laws of the State of North Carolina with its headquarters in Greensboro, North Carolina, where nearly 600 Market America employees work.

2. Petitioner Market America Worldwide, Inc. is a corporation organized and existing under the laws of the State of North Carolina with its headquarters in Greensboro, North Carolina. It is the parent company of Market America.

3. Petitioner James Howard Ridinger is a resident of Miami, Florida. Mr. Ridinger founded Market America in 1992 and serves as Market America's Chief Executive Officer.

4. Petitioner Loren Ridinger is a resident of Miami, Florida, and the Senior Executive Vice President of Market America.

5. Petitioner Marc Ashley is a resident of North Carolina and the President and Chief Operating Officer of Market America.

6. Respondents Chuanjie Yang, Liu Liu, and Ollie Lan ("Respondents") are individuals that, upon information and belief, reside in Los Angeles County, California. Respondents are plaintiffs in a putative class action filed against Petitioners in the United States District Court for the Central District of California, which is styled *Chuanjie Yang et al. v. Market America, Inc. et al.*, Case No. 2:17-cv-04012 (C.D. Cal.) (the "California Action"). A true and correct copy of the original class action complaint and the operative first amended class action complaint (the "FAC") are attached hereto as Exhibits 1 and 2.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this Petition based on 28 U.S.C. § 1332(a)(1) because the parties are completely diverse and the amount in controversy, as set forth in the FAC, exceeds \$75,000, exclusive of interest and costs, and

based on 28 U.S.C. § 1367 because the state law claims alleged in the California Action arise from the same case and controversy as Respondents' federal law claims. *See* 9 U.S.C. § 4 ("A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action . . . for an order directing that such arbitration proceed in the manner provided for in such agreement").

GENERAL ALLEGATIONS

I. Respondents Assent to the Terms and Conditions of Market America's Distributor Agreement.

8. Market America sells products through a network of independent distributors known within Market America as Independent UnFranchise Owners ("Distributors").

9. Since 1992, Market America has required all Distributors to sign an agreement that is now known as the "Independent UnFranchise Application and Agreement" (the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit 3.¹

¹ The version of the Agreement submitted as Exhibit 3 to this Petition is the same version that Respondents' attorney submitted as an exhibit to his declaration in support of a brief filed in the Central District of California. *Chuanjie Yang, et al. v. Market America, Inc., et al.*, Case No. 2:17-cv-04012-GW-JEM, Dkt. No. 43-9 (C.D. Cal.). Although the Agreement has changed in minor ways over the years, the arbitration provision and the choice of law provision have remained the same since 2010.

10. Distributors can sign the Agreement with Market America online or in paper form. To sign up online, a Distributor has to fill out his or her personal information before being presented with a copy of the Agreement. Before the Distributor can submit the Agreement, the Distributor must click a box indicating that he or she assents to the Agreement's Terms and Conditions. The Terms and Conditions are not presented in a hyperlink; rather, the Terms and Conditions are presented on the same page as the checkbox.

11. Similarly, if a Distributor signs up using a paper form, the Terms and Conditions are listed on the back of the Agreement, and the Distributor must sign the form acknowledging that he or she agrees to the terms.

12. Market America's records show that respondent Chuanjie Yang signed up as a Distributor online in May 2010 and remained a Distributor until August 2015.² Respondent Yang renewed his Agreement in 2010 and 2011. Beginning in 2012, Market America's records indicate that Yang opted in to automatically renew ("Auto Renewal") online by clicking "I agree" to the following terms:

Acceptance of Amendments to IDA&A. By agreeing to these terms and conditions for Auto Renewal, you agree to the incorporation by reference of all amendments and/or revisions of the IDA&A as you agreed to it originally, as provided during the previous year in official Market America literature. Renewal of the IDA&A and Forms 925/1001. You renew your IDA&A with Market America. You agree to be bound by the Terms and Conditions of that Agreement . . . as amended from time to time."

² In a declaration filed in the California Action Respondent Yang denied that he signed up online as Market America's records indicate, but admitted, nonetheless, that he signed a one-page piece of paper. Irrespective of whether Mr. Yang signed up online or by paper form, he would have assented to the Agreement's Terms and Conditions.

13. Respondent Ollie Lan signed up online in November 2015, but did not renew the Agreement in November 2016 and is currently listed as inactive in Market America's system.

14. Respondent Liu Liu signed up online on March 1, 2016, but did not renew the Agreement in March 2017, and is currently listed as inactive in Market America's system.

15. Market America's records indicate that all three Respondents assented to the Terms and Conditions of the Agreement by clicking "I agree" next to the Agreement's Terms and Conditions.

II. The Agreement Includes An Enforceable Arbitration Provision That Applies to "Any Controversy or Claim Arising Out Of or Relating To" the Agreement.

16. By assenting to the Terms and Conditions of the Agreement, Market America and the Respondents agreed to arbitrate any disputes arising out of or relating to the agreement in an arbitration administered by the American Arbitration Association.

The relevant provision provides as follows:

Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. You understand that this arbitration provision means you are giving up the right to have any dispute you have regarding this Agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of

Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy.

(Exhibit 3, § 29.)

17. The Agreement further provides that “North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions.” (Exhibit 3 § 28.)

18. Market America did not change the Arbitration Provision or the choice of law provision between 2010 and 2016, and all three Respondents assented to both provisions when they signed up to be Distributors.

19. As a written provision in a contract that involves interstate commerce, the Arbitration Provision is valid and enforceable against Respondents. *See* 9 U.S.C. § 2 (“A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable . . .”); *Zandford v. Prudential-Bach Secs., Inc.*, 112 F.3d 723, 726 (4th Cir. 1997) (noting that there is a “federal policy strongly favoring arbitration”).

III. Respondents File a Lawsuit Against Petitioners in California That Arises Out Of and Relates to Their Agreements with Market America.

20. Despite the Arbitration Provision, Respondents Chuanjie Yang and Ollie Yan filed the California Action on May 30, 2017. (Exhibit 1.)

21. Respondents amended their complaint on July 20, 2017, to add Respondent Liu Liu. (Exhibit 2.)

22. The FAC asserted eight claims for relief against Petitioners: (1) judgment declaring the Arbitration Provision unenforceable; (2) endless chain scheme under California Penal Code § 927 and California Civil Code § 1689.2; (3) unfair and deceptive practices claims under California Business & Professional Code § 17200, et seq.; (4) false advertising under California Business & Professional Code § 17500, et seq.; (5) violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(a); (6) RICO, 18 U.S.C. § 1962(c); (7) RICO, 18 U.S.C. § 1962(d); and (8) federal securities fraud. In short, the FAC alleges that Market America’s relationship with its Distributors constitutes an unlawful pyramid and/or fraudulent endless chain in violation of California state law and federal law.

23. Because the Agreement with Respondents is essential to their claims against Petitioners, the Agreement’s broad Arbitration Provision applies to all eight causes of action in the FAC. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967) (describing an arbitration clause that applied to “[a]ny controversy or claim arising out of or relating to this Agreement” as a “broad arbitration clause”); *Muriithi v. Shuttle Exp., Inc.*, 712 F.3d 173, 179 (4th Cir. 2013) (“Any uncertainty regarding the scope of arbitrable issues agreed to by the parties must be resolved in favor of arbitration.”).

24. Petitioners moved, over Respondents’ opposition, to transfer the California Action to this district pursuant to the Arbitration Provision. In a tentative ruling, the

Central District of California invited Petitioners to file this petition. (Exhibit 4, p. 5, fn.6.)³

25. A true and correct copy of the Central District of California's Minutes of its November 6, 2017, hearing, which encloses the Court tentative ruling, is attached hereto as Exhibit 4.

26. Petitioners intend to inform the Central District of California that they have filed this Petition and to ask the court to, among other options, stay the California Action until this Court can decide whether to compel arbitration in North Carolina.

CLAIM FOR SPECIFIC RELIEF

Specific Performance of Arbitration Provision

27. Respondents breached the Arbitration Provision by ignoring the Arbitration Provision and filing the California Action. Pursuant to 9 U.S.C. § 4, Petitioners are entitled to an order requiring Respondents to comply with the Arbitration Provision and directing that arbitration proceed in the manner provided for in the Arbitration Provision.

WHEREFORE, Petitioners pray as follows:

1. That Respondents be ordered to arbitrate all claims alleged against Petitioners in *Chuanjie Yang et al. v. Market America, Inc. et al.*, Case No. 2:17-cv-04012 (C.D. Cal.);

2. That Petitioners be awarded such other relief as the Court deems proper.

³ As described in the tentative ruling, Petitioners first asked the Central District of California to compel arbitration, but re-styled their motion as a motion to transfer to this District based on Ninth Circuit precedent that could be read to suggest that the Central District of California cannot compel arbitration in North Carolina.

Respectfully submitted this the 5th day of October, 2017.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

/s/ Pressly M. Millen

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Exhibit 1

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CHUANJIE YANG, OLLIE LAN, AND
ALL THOSE SIMILARLY SITUATED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CHUANJIE YANG, an individual; OLLIE
LAN, an individual; and all those similarly
situated,

Plaintiffs,

v.

MARKET AMERICA, INC., a North
Carolina Corporation; MARKET
AMERICA WORLDWIDE, INC., a North
Carolina Corporation; JAMES HOWARD
RIDINGER, an individual; LOREN
RIDINGER, an individual; MARC
ASHLEY, an individual; and DOES 1-
100;

Defendants.

Case No. _____

**ORIGINAL COMPLAINT –
CLASS ACTION**

[DEMAND FOR JURY TRIAL]

1 **I. INTRODUCTION TO THE CASE**

2 1. Market America, Inc. (“MarketAmerica”) and their cohorts represented
3 to plaintiffs Chuanjie Yang and Ollie Lan (collectively, the “Plaintiffs”) that Market
4 America provides a business opportunity “unlike any seen in history before” and
5 that Plaintiffs could formulate their growth for future financial success through
6 MarketAmerica. Plaintiffs and hundreds of thousands, have joined MarketAmerica
7 and have become distributors.

8 2. MarketAmerica touts that by following a “two-year blueprint,” any
9 person can formulate, grow, and shape his or her growth for financial success.
10 According to MarketAmerica, the only way to fail under MarketAmerica’s business
11 model is to quit. Meanwhile, MarketAmerica and its confederate conspirators now
12 assert a business valuation of \$7.3 billion that they have made off the backs of
13 millions of people in their pyramid.

14 3. MarketAmerica targets Chinese-American immigrants who do not have
15 regularly available legal channels to vindicate their legal rights, and in hope of
16 selling “wonder” products to their relatives in China. Further, these connections
17 help MarketAmerica connect to billions of potential victims thousands of miles
18 away.

19 4. Plaintiffs did not make money as promised. As with the case of
20 hundreds of thousands of MarketAmerica distributors before and after them, the
21 Plaintiffs failed. Plaintiffs and those similarly situated, failed even though they were
22 committed and put in the time and effort. They failed because they were doomed
23 from the start by a MarketAmerica marketing plan that systematically rewards
24 recruiting Distributors over the sale of products.

25 5. Over 90% of MarketAmerica Distributors average net losses. No
26 persons, except Individual Defendants and secretly placed individuals into the
27 “representative” tiers of the company, makes any money.
28

6. Defendants run an illegal pyramid scheme. Defendants take money in return for the right to sell products that they do not even manufacture, and reward for recruiting other participants into the pyramid.

7. Accordingly, Plaintiffs, for themselves, all others similarly situated, and the general public, allege:

II. **TYPE OF ACTION**

8. Plaintiffs sue for themselves and for all persons who were MarketAmerica participants from 2010 until the present under California's Endless Chain Scheme Law (California's Penal Code § 327 and California Civil Code § 1689.2), California's Unfair Competition Law (Business and Professions Code §17200 et seq.), False Advertising Law (Business and Professions Code §17500), and Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. against all defendants for the operation and promotion of an inherently fraudulent endless chain scheme.

III. **PARTIES**

9. Plaintiff Chuanjie Yang ("Yang"), is and at all relevant times, has done business in the County of Los Angeles.

10. Plaintiff Ollie Lan, is and at all relevant times, had done business in the County of Los Angeles.

11. Market America, Inc. is a North Carolina Corporation ("MarketAmerica") that operates and manages the pyramid scheme in California.

12. Market America Worldwide, Inc. is a North Carolina Corporation ("Marketing") that also operates and manages the pyramid scheme in California.

13. Defendant James Howard Ridinger aka JR Ridinger ("JR") is a natural person. JR is the founder of MarketAmerica and Marketing, Chairman, and CEO. He is at or near the top of the pyramid operated and promoted by the Defendants, and he actively participates in, promotes, and profits from MarketAmerica's pyramid scheme.

1 14. Defendant Loren Ridinger (“Loren”) is a senior executive Vice
2 President for MarketAmerica. She is at or near the top of the pyramid operated and
3 promoted by the Defendants, and she actively participates in, promotes, and profits
4 from MarketAmerica’s pyramid scheme.

5 15. Defendant Marc Ashley (“Ashley”) is the son of Loren and the
6 President and Chief Operating Office of MarketAmerica. He is at or near the top of
7 the pyramid operated and promoted by the Defendants, and he actively participates
8 in, promotes, and profits from MarketAmerica’s pyramid scheme.

9 16. JR, Loren, and Ashley are referred to hereinafter, as the “Individual
10 Defendants.”

11 **III. JURISDICTION AND VENUE**

12 17. Jurisdiction is conferred upon this Court because Defendants do business
13 in this judicial district, they hold themselves out and market to this jurisdiction, and
14 they actually conduct significant transactions in this jurisdiction. Under Plaintiff’s
15 California state law claims, more than 75% of those affected in the class (and perhaps
16 more persons) are residents of the State of California. Supplemental jurisdiction
17 exists over the RICO causes of action and Federal Securities claim, pled in the
18 alternative.

19 18. Venue is proper in this Court because a substantial part of the events or
20 omissions giving rise to Plaintiffs’ claims occurred here, a substantial part of the
21 property that is the subject of this action is situated here, and Defendants are subject
22 to personal jurisdiction, in this District.

23 19. Defendant MarketAmerica is subject to the jurisdiction of this Court.
24 MarketAmerica has been engaged in continuous and systematic business in
25 California. In fact, many of MarketAmerica’s representative business activities
26 originate from California.

27 20. MarketAmerica has committed tortious acts in this State.
28

1 21. Each of the Defendants named herein acted as a co-conspirator, single
2 enterprise, joint venture, co-conspirator, or alter ego of, or for, the other Defendants
3 with respect to the acts, omissions, violations, representations, and common course
4 of conduct alleged herein, and ratified said conduct, aided and abetted, or is other
5 liable. Defendants have agreements with each other, and other unnamed Director
6 co-conspirators and have reached agreements to market and promote the
7 MarketAmerica pyramid as alleged herein.

8 22. Defendants, along with unnamed Director co-conspirators, were part of
9 the leadership team that participated with MarketAmerica, and made decisions
10 regarding: products, services, marketing strategy, compensation plans (both public
11 and secret), incentives, contests and other matters. In addition, Defendants and
12 unnamed co-conspirators were directly and actively involved in decisions to develop
13 and amend the compensation plans.

14 23. Plaintiffs are presently unaware of the true identities and capacities of
15 fictitiously named Defendants designated as DOES 1 through 10, but will amend this
16 complaint or any subsequent pleading when their identities and capacities have been
17 ascertained according to proof. On information and belief, each and every DOE
18 defendant is in some manner responsible for the acts and conduct of the other
19 Defendants herein, and each DOE was, and is, responsible for the injuries, damages,
20 and harm incurred by Plaintiffs. Each reference in this complaint to “defendant,”
21 “defendants,” or a specifically named defendant, refers also to all of the named
22 defendants and those unknown parties sued under fictitious names.

23 24. Plaintiffs are informed and believe, and thereon allege that, at all times
24 relevant hereto, all of the defendants together were members of a single association,
25 with each member exercising control over the operations of the association. Each
26 reference in this complaint to “defendant,” “defendants,” or a specifically named
27 defendant, refers also to the above-referenced unincorporated association as a jural
28 entity and each defendant herein is sued in its additional capacity as an active and

1 participating member thereof. Based upon the allegations set forth in this Complaint,
2 fairness requires the association of defendants to be recognized as a legal entity, as
3 the association has violated Plaintiff and Class Members' legal rights.

4 25. Plaintiffs are further informed and believes and thereon alleges that each
5 and all of the acts herein alleged as to each defendant was authorized and directed by
6 the remaining defendants, who ratified, adopted, condoned and approved said acts
7 with full knowledge of the consequences thereof, and memorialized the authority of
8 the agent in a writing subscribed by the principal.

9 26. Plaintiffs are informed and believe and thereon allege that each of the
10 defendants herein agreed among each other to commit the unlawful acts (or acts by
11 unlawful means) described in this Complaint.

12 27. The desired effect of the conspiracy was to defraud and otherwise
13 deprive Plaintiffs and Class Members (as hereinafter defined) of their constitutionally
14 protected rights to property, and of their rights under other laws as set forth herein.
15 Each of the defendants herein committed an act in furtherance of the agreement.
16 Injury was caused to the Plaintiffs and Class Members by the defendants as a
17 consequence.

18 **IV. FACTS**

19 **A. MarketAmerica Operates A Pyramid Scheme**

20 28. MarketAmerica was founded in 1992 by a former Amway Distributor,
21 and co-defendant, JR Ridinger. MarketAmerica has very little costs, nor production
22 requirements because it does not directly manufacture its own products. Instead,
23 MarketAmerica offers products from third party manufacturers, but requires
24 distributors of MarketAmerica to pay monthly fees just for the opportunity to sell
25 these third-party products, the touchstone of a pyramid scheme.

26 29. To sign up as a Market America distributor, an enrollee must pay a
27 start-up fee of \$399.00 (which was even greater prior to 2013), and further, a
28 distributor must pay MarketAmerica a monthly fee of \$129.00, per month. Further,

1 an enrollee must spend between \$130-\$300 on products offered on Shop.com, per
2 month to allegedly maintain qualifications as an enrollee. MarketAmerica also
3 requires distributors to attend trainings, events and seminars, which cost between
4 \$20 and \$200.

5 30. Ridinger describes himself as a “secular economic evangelist.” JR
6 represents that to be successful with MarketAmerica, one must build two sales
7 distribution teams, bring in preferred customers, sell business, and sell tickets for
8 national events, and training seminars. Further representations are made that sales
9 requires recruiting people to build distribution teams.

10 31. MarketAmerica pays to an infinite level deep with the downline. In
11 other words, for every dollar earned by a distributor for start up-fees, all those lines
12 above the person on the pyramid receive revenues from the person being enrolled.

13 32. Rewards paid in the form of cash bonuses, where primarily earned for
14 recruitment, as opposed to merchandise sales to consumers, constitute a fraudulent
15 business model. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014).

16 **B. How MarketAmerica Perpetuates Its Pyramid Scheme**

17 33. To “build a serious business, it is based on bringing two likeminded
18 people-one on your right side, one on your left side.” *See*
19 <https://www.youtube.com/watch?v=TMSQnqK4l8A>, (last visited May 27, 2017) (at
20 6:40).

21 34. As each lower level is recruited, points and commissions are rewarded
22 to an infinite level deep, i.e. to each level of the pyramid scheme. According to
23 MarketAmerica, “people lead to more people.” (See Figure No. 1).

24 [Complaint continued on next page]
25
26
27
28

38. The purpose of “re-entry” is a feeble attempt to detract from the appearance of a perpetual pyramid scheme and to squeeze out those in the lower levels of the pyramid from bonuses, points, and commissions. Re-entries in MarketAmerica are represented by those in MarketAmerica to be “unlimited.”

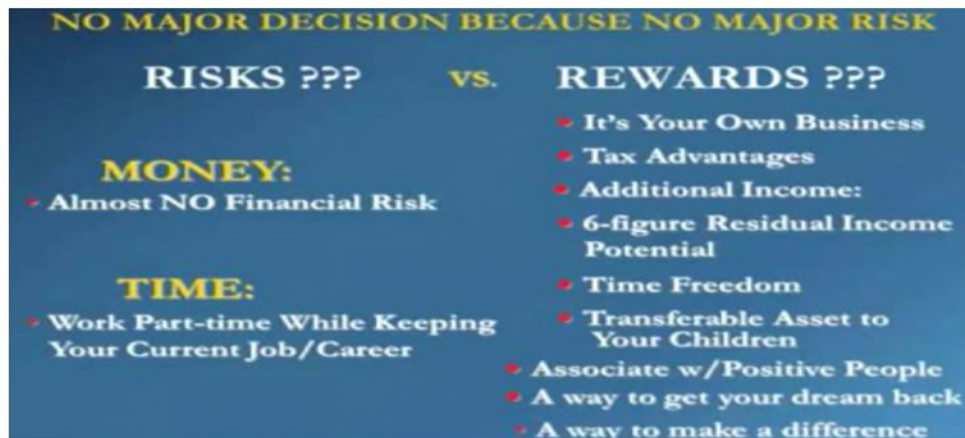
39. Finally, if one becomes a “Master Unfranchise Owner” he or she can earn even more money (*see* Figure No. 3 below). In short, enrollees are asked to pay a large upfront fee for the speculative chance to earn another source of income. Those on the top of the pyramid will give up some of the ill-gotten profits *if* a Distributor signs up three times. According to MarketAmerica, through this process, a distributor can earn “\$561,600.” Through MarketAmerica, a distributor can have at most, four front lines. In actuality, no true MarketAmerica distributor earns \$561,000, only those at the helm of the scheme, and more than 90% all enrollees earn nothing.

FIGURE NO. 3



40. MarketAmerica claims to its victims, “don’t overthink it. This is a proven system.” According to representations and advertisements, MarketAmerica has taken “all the risk away.”

FIGURE NO. 4



41. MarketAmerica represents that this business opportunity can be “willed or transferable” to an distributor’s children, you “get to dream big,” and get to “make a difference in the world” by being a part of this business.

C. Members Receive Benefits Only Through The Performance Of Those Downline To Them

42. As MarketAmerica’s sale presentation states, income is made only from the recruit of additional sales representatives because Market America has to pay wholesale prices to those companies that actually manufacture its products.

43. Some of the products offered by MarketAmerica are unhealthy and toxic, and after Plaintiff Lan’s mother took MarketAmerica’s products, she suffered health issues. MarketAmerica has been sued under Proposition 65 in a class action because certain of its products allegedly contained lead. *Environmental Research Center v. Market America, Inc.*, 30-2013-00650458 (Orange Ct. Sup. Ct, May 20, 2012).

D. Market America Encourages Inventory Loading

44. MarketAmerica encourages Distributors to recruit and to inventory load through its wholesale commissions.

45. The prospect of wholesale commissions encourages recruiting: the more recruits a Distributor has, the more potential there is for a wholesale commission. The prospect of wholesale commissions also encourages Distributors

1 to purchase product they do not otherwise need or want to increase their points so
2 that they can be eligible for greater discounts and thus, greater wholesale
3 commissions.

4 46. There are very few retail purchases made at Distributors' sites. These
5 are MarketAmerica webpages that allow retail customers to order directly from
6 MarketAmerica and attribute the purchase to a particular distributor (much like a
7 customer informing the cashier at a department store which clerk helped him find
8 the sweater he is purchasing). The customer does not receive a discount for
9 purchasing through a particular Distributor's Microsite, so the customer has little
10 incentive to order through the Microsite. As for the Distributors, they will want to
11 make retail sales directly to retail customers so they can offload product that they
12 have already purchased from MarketAmerica. In addition, for reasons described
13 herein, few profitable retail sales are made at all, via the sites or otherwise. Thus,
14 retail sales through a Distributor's site is not a reliable source of points.

15 47. The only reliable source of points for the majority of Distributors is
16 their own purchases. Purchases for normal consumption will be insufficient to meet
17 the thresholds required to qualify for bigger discounts. Thus, MarketAmerica's
18 wholesale commissions financially incentivize the Distributors to inventory load to
19 make purchases; not for the purpose of fulfilling retail demand, and not to satisfy
20 their normal desire for nutritional supplements and health products, but rather so
21 that they can increase their points, qualify for greater discounts, and qualify for
22 wholesale commissions. Moreover, as discussed above, every form of
23 compensation paid by MarketAmerica incentivizes recruiting - bringing more
24 Distributors into the scheme. In fact, Wholesale Commissions, Overrides, and
25 Leadership Bonuses are payable only if a Distributor has recruited new Distributors.
26 Thus, just like a classic pyramid scheme, the MarketAmerica scheme requires
27 participants to put money into the scheme and rewards participants who bring in
28 new participants.

E. Distributors Are Unable To Sell MarketAmerica Products For A Profit

48. Distributors are unable to consistently sell MarketAmerica products for a profit for many reasons. First, the products are overpriced. Interchangeable products are available online or in brick-and-mortar stores for amounts far less than MarketAmerica's suggested retail price, and even lower than its wholesale prices.

49. Second, MarketAmerica's products themselves are available online for the wholesale price or less. That these products are sold at or below the Advisor price makes it difficult for Distributors to sell the products for a profit.

MarketAmerica may have taken action to reduce resales, but the fact remains that MarketAmerica products are available below the discount prices. Moreover, many of these sales are likely made by current or former Distributors desperately trying to offload excess product at whatever price they can get, which further supports the propositions that Distributors Inventory Load and that the MarketAmerica products are overpriced.

50. Third, MarketAmerica prohibits Distributors from selling the products in the only forum for a where Distributors could reasonably expect to sell enough product to make a meaningful profit: the internet. Some examples of these prohibited websites include, but are not limited to: eBay, Amazon or Craigslist. In addition, MarketAmerica forbids its Distributors from selling MarketAmerica products at almost all brick-and-mortar establishments. MarketAmerica seeks to limit the Distributors to one-on-one situations in private locations (such as the Distributor's or a friend's home), but achieving significant, profitable retail sales by this method is extremely difficult.

51. Plaintiffs do not contend that Distributors make no retail sales at all. But Plaintiffs do allege that relatively little of the revenues received by Distributors—including both money paid them by MarketAmerica and proceeds from retail sales—comes from retail sales, and the vast majority comes from

1 Distributors' payments to MarketAmerica. Thus, the Distributors are primarily
2 feeding off each other.

3 52. MarketAmerica also makes false and/or inadequate income disclosures
4 in that in many instances, it does not disclose income of those who are distributors,
5 or provides statements of income that are false, and/or misleading, that affirmatively
6 represent a profitable business opportunity, when there is no profit to be made, and
7 nearly all participants in fact, lose money.

8 53. Because MarketAmerica pays the executives at the top of the pyramid
9 exorbitant incomes and because little non-Distributor money comes into the scheme
10 to pay Distributors, the Distributors at the bottom of the pyramid must lose money.
11 These losses are borne out by MarketAmerica's own financial disclosures and the
12 experiences of the Plaintiffs and multiple other Distributors.

13 **F. The Individual Defendants and Market America Promote the**
14 **Pyramid Scheme**

15 54. The Individual Defendants are persons at the top of MarketAmerica's
16 pyramid. All of the Individual Defendants achieved ranks of top executive. They are
17 in the top 1% of Distributors who make the most lucrative bonuses. They actively
18 participate in the MarketAmerica pyramid scheme, and they profit from the
19 compensation plan at the expense of the vast majority of Distributors.

20 55. MarketAmerica and the Individual Defendants promote the pyramid
21 scheme and make misleading claims of financial success.

22 56. In coordination with MarketAmerica, the Individual Defendants have
23 flooded the internet with promotional materials designed to lure in new Distributors.
24 MarketAmerica and Individual Defendants promote the scheme as a lawful program
25 that, with sufficient hard work, virtually guarantees financial success. MarketAmerica
26 and the Individual Defendants promote Market America as a reliable source of
27 significant income.
28

1 57. To sell the financial- success promise, MarketAmerica and the
2 Individual Defendants flaunt the wealth of the highest-ranked Distributors and those
3 few insiders at the top of the pyramid, as examples of the riches that await new
4 participants, if only they will work hard enough (i.e., tirelessly recruit new
5 Distributors).

6 58. All of the Individual Defendants have produced videos and made
7 statements via the internet knowingly promoting MarketAmerica's pyramid scheme
8 and touting the financial rewards supposedly available to participants. Each of these
9 statements furthered the pyramid scheme by encouraging persons to become
10 Distributors and by encouraging Distributors to remain Distributors and pursue the
11 MarketAmerica business opportunity.

12 59. The similarity of the statements made by the Individual Defendants
13 indicates a collusive effort to promote the MarketAmerica scheme. The following
14 paragraphs set forth just a small subset of publicly broadcast statements made by the
15 Individual Defendants to promote the MarketAmerica "business opportunity."

16 60. Defendant JR Ridinger ("JR"). Defendant JR is one of the most prolific
17 MarketAmerica promoters. Scores of videos on YouTube and other public internet
18 platforms feature JR promoting, touting, and explaining the MarketAmerica business
19 opportunity.

20 FIG. NO. 5



61. As seen above, JR tries to make his introduction to victims appear like a rock and roll concert with visual spectacles including pyrotechnics, laser lights, rock music, and jumbo screens. <https://www.youtube.com/watch?v=pZn5xjKpDns>.

62. JR represents: “[h]ow do we build a business, we have fun and we hiss a lot.” “We hiss in a lot of pots.” “For those that understand no explanation is necessary.” “We can sell anything.”

63. Further, JR represents “[i]t follows wherever people connect to maximize to infinity.” “One person doesn’t do it, it creates swiss cheese below. In reality if one person doesn’t do it, you have to get three in under them, and three in under them.” “It always maximizes profit.” “We are executive directors in one year. Some Chinese have done it faster. [Except unlike them] we buy tickets.”

FIG NO. 6



FIG. NO. 7



64. Defendant Loren Ridinger (“Loren”). Loren represents: “[w]e build people with teams.” “When you buy, you can buy from yourself.” “If you can’t buy from yourself...[convert spending to earning] why are you here?” Loren further represents that distributors, “[n]eed to buy a ticket here [for the next event MarketAmerica is having].” “If you don’t buy it here, *you are not coming [to the next event].*” Loren demands that distributors “build from event to event,” “build an empire, people power.” Among other things, Loren commands to her victims that through the MarketAmerica business opportunity, one can “[b]e a lion for a day rather than being a slave for thousands of years.” “We build people power,” and later she claims MarketAmerica requires an - “empire of people.”

FIGURE NO. 8



65. Defendant Marc Ashley. Defendant Marc Ashley (“Ashley”) is the COO of MarketAmerica and regularly promotes the recruiting scheme of MarketAmerica at events by discussing the recruitment scam of MarketAmerica.

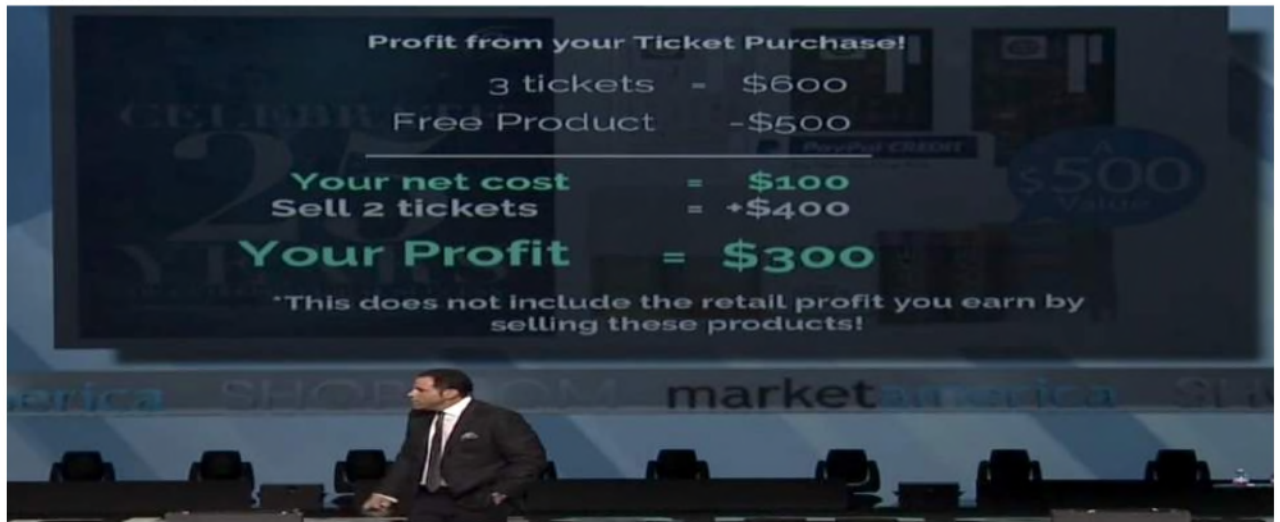
FIGURE NO. 9



FIGURE NO. 10



FIGURE NO. 11



66. Carl Eklund, an executive of MarketAmerica confirms in various seminar materials that the MarketAmerica business has “not changed” because of the shopping annuity, the shopping annuity just makes the business easier.

G. Plaintiffs Are Victims Of The Pyramid Scheme

67. Yang became an MarketAmerica distributor in 2010 through 2016 by making purchases and buying the starter pack. Plaintiff paid the monthly membership for years, attended multiple seminars, and in total paid MarketAmerica approximately \$35,000 towards this opportunity. Plaintiff Yang was deceived by MarketAmerica’s misleading opportunity believing, the opportunity was a legitimate way to earn money (even though that representation by Market and the

1 71. The signature line of the Agreement, only requires a MarketAmerica
 2 distributor to “AGREE TO THE **TERMS** SET FORTH IN THIS AGREEMENT.”
 3 (emphasis added). None of the “terms” in the Agreement provide for arbitration.
 4 Nowhere on the form, does MarketAmerica ask class members to assent or sign that
 5 they agree to any *conditions*. No term of the Agreement provides for arbitration, so
 6 no class member is bound by arbitration.

7 72. At the bottom of the form and *below* the signature box (See Figure No.
 8 12 above), next to a box labeled “INTERNAL USE ONLY,” the Agreement states
 9 “SEE REVERSE SIDE FOR TERMS **AND CONDITIONS** OF THIS
 10 AGREEMENT.” (emphasis added).

11 73. The “conditions” on the reverse side include an arbitration provision,
 12 which provides as follows:

13
 14 29. Arbitration. Any controversy or claim arising out of or relating to this
 15 Agreement, or the breach thereof, shall ultimately be settled by arbitration
 16 administered by the American Arbitration Association in accordance with its
 17 Commercial Arbitration Rules and judgment on the award rendered by the
 18 arbitrators may be entered in a court of competent jurisdiction. You understand
 19 that this arbitration provision means you are giving up the right to have any
 20 dispute you have regarding this Agreement heard by a jury and determined in a
 21 court of law. The arbitration shall be heard by one arbitrator, and it shall take
 22 place in Greensboro, North Carolina. Either party may seek emergency or
 23 provisional relief in the General Court of Justice, Guilford County, North
 24 Carolina, prior to invoking the arbitration remedy.

25 74. The arbitration provision is unenforceable because no class members
 26 were required to assent to the arbitration conditions by the terms of the Agreement
 27 itself, and the signature line block confirms only the “terms” of the Agreement need
 28 be assented to. In the alternative, this is highly misleading.

 75. In the alternative, the arbitration provision is unconscionable because
inter alia, it permits MarketAmerica the unilateral right to modify the conditions of

1 the arbitration policy, the rules of Commercial Arbitration for AAA do not provide
 2 for prevailing party fees and class members would have to pay the cost and fees of
 3 arbitration despite their entitlement to costs of suit and fees should they be the
 4 prevailing party in this action, the pre-litigation requirements of MarketAmerica prior
 5 to bringing action are unconscionable, and for other reasons to be asserted to the
 6 extent motion practice is initiated.

7 76. In the alternative, the arbitration provision is unenforceable as a matter
 8 of law and as a matter of fact on other grounds.

9 77. In the alternative, the arbitration provision is unenforceable related to the
 10 injunctive relief requested in this Complaint, based on recent California Supreme
 11 Court authority.

12 V. **CLASS ACTION ALLEGATIONS**

13 77. Plaintiffs seek to represent a nationwide class defined as follows:

14 78. Plaintiffs bring this action as a class action under Federal Rule of Civil
 15 Procedure 23.

16 79. Plaintiffs seek to certify a class pursuant to Fed. R. Civ. Proc. 23(a),
 17 23(b), 23(c)(4), and 23(c)(5), if necessary.

18 80. Plaintiffs seek relief on behalf of themselves and the following class:
 19 persons who paid start-up fees, monthly fees, annual fees, seminar ticket fees, any
 20 other fees imposed by Market America, and/or purchased products from
 21 MarketAmerica between March 9, 2010, to the present date, who lost money from
 22 their participation in the MarketAmerica scheme.

23 81. Subject to confirmation, clarification and/or modification based on
 24 discovery to be conducted in this action, Plaintiffs also seek to represent a sub-class
 25 in California, defined as follows: persons residing in California who paid start-up
 26 fees, monthly fees, annual fees, seminar ticket fees, any other fees imposed by Market
 27 America, and/or purchased products from MarketAmerica between March 9, 2010, to
 28

1 the present date, who lost money from their participation in the MarketAmerica
2 scheme.

3 82. Subject to confirmation, clarification and/or modification based on
4 discovery to be conducted in this action, Plaintiff also seeks to represent a sub-class
5 of all worldwide participants of MarketAmerica, defined as follows: persons
6 residing anywhere in the World who paid start-up fees, monthly fees, annual fees,
7 seminar ticket fees, any other fees imposed by Market America, and/or purchased
8 products from MarketAmerica between March 9, 2010, to the present date, who lost
9 money from their participation in the MarketAmerica scheme.

10 83. Pursuant to the previous paragraph of this complaint, the damage to any
11 person living anywhere else other than the United States involved a domestic injury
12 to business or property because all contracts of independent business owners were
13 negotiated, executed, and stored on a server in the United States owned by
14 MarketAmerica, and are available on the worldwide web, involved a significant
15 connection to domestic commerce in that the labeling, products, and other parts of
16 the manufacturing and sales and marketing process were conducted from the United
17 States, and for other reasons to be provided according to proof, and after the
18 opportunity for discovery.

19 84. Excluded from the class are the Defendants, family members, this
20 Court, and any "Director" of MarketAmerica.

21 85. Plaintiffs seek to pursue a private attorney general action for injunctive
22 relief for themselves and all members of the class, and they satisfy the standing and
23 class action requirements.

24 86. While the exact number of members in the Class and Subclasses are
25 unknown to Plaintiffs at this time, and can only be determined by appropriate
26 discovery, membership in the class and subclasses is ascertainable based upon the
27 records maintained by Defendant. It is estimated that the members of the Class are
28 greater than 250,000, nationwide.

1 87. Therefore, the Class and Subclasses are so numerous that individual
2 joinder of all Class and Subclass members is impracticable.

3 88. There are questions of law and/or fact common to the class and
4 subclasses, including but not limited to: (a) Whether the arbitration policy is
5 enforceable; (b) Whether MarketAmerica is operating an endless chain; (c) Whether
6 Distributors paid money to MarketAmerica for (1) the right to sell a product and (2)
7 the right to receive, in return for recruiting others, rewards which were unrelated to
8 the sale of the product to retail consumers; (d) Whether MarketAmerica's rules
9 apply to Section 327 claims; (e) If the MarketAmerica rules do apply, are
10 MarketAmerica's rules effective; (f) If the MarketAmerica rules do apply, and
11 MarketAmerica's rules are effective, did MarketAmerica enforce those rules; (g)
12 Whether MarketAmerica or the Individual Defendants omitted to inform the
13 Plaintiffs and the plaintiff class that they were entering into an illegal scheme where
14 an overwhelming number of participants lose money; (h) Whether MarketAmerica's
15 statements of compensation during the Class Period were deceptive and misleading;
16 (i) Whether MarketAmerica's conduct constitutes an unlawful, unfair and/or
17 deceptive trade practice under California state law; (j) Whether MarketAmerica's
18 conduct constitutes unfair competition under California state law; and (k) Whether
19 MarketAmerica's conduct constitutes false advertising under California state law.

20 89. These and other questions of law and/or fact are common to the class
21 and subclasses and predominate over any question affecting only individual class
22 members.

23 90. Plaintiffs' claims are typical of the claims of the class and subclasses in
24 that Plaintiffs were Distributors for Defendant MarketAmerica and lost money
25 because of the illegal scheme.

26 91. Plaintiffs will fairly and adequately represent the interests of the class
27 and subclasses. Plaintiffs' claims are typical of those of the class and subclasses.
28 Plaintiffs' interests are fully aligned with those of the class and subclasses. And

1 Plaintiffs have retained counsel experienced and skilled in complex class action
2 litigation.

3 92. Class action treatment is superior to the alternatives for the fair and
4 efficient adjudication of the controversy alleged, because such treatment will allow
5 many similarly-situated persons to pursue their common claims in a single forum
6 simultaneously, efficiently and without unnecessary duplication of evidence, effort,
7 and expense that numerous individual actions would engender.

8 93. Plaintiffs know of no difficulty likely to be encountered in the
9 management that would preclude its maintenance as a class action.

10 VI. CLAIMS FOR RELIEF

11 FIRST CLAIM FOR RELIEF

12 **Judgment Declaring the Arbitration Provision Unenforceable**

13 (Plaintiffs on Behalf of Themselves And Those Similarly Situated, Against All
14 Defendants, including DOES 1 through 10)

15 94. Plaintiffs reallege all allegations as if fully set forth herein, and
16 incorporate previous allegations by reference.

17 95. Because the MarketAmerica Agreement itself does not require any
18 class member to assent, by signature, to the “conditions,” the arbitration provision is
19 unenforceable related to the claims in this action.

20 96. MarketAmerica’s “conditions” buried at the bottom of the form, below
21 the signature block and next to a box “for internal use only” include an arbitration
22 provision. The conditions grant MarketAmerica the power to unilaterally modify
23 the terms of the Agreement, including the arbitration provision, at any time and
24 without prior notice, thereby rendering the arbitration provision illusory, lacking
25 consideration, and therefore unenforceable.

26 97. The arbitration provision is alternatively, unenforceable as a matter of
27 fact, and law.

102. Independently, the MarketAmerica operations constitute an endless chain because defendants tell victims they earn commissions by recruiting other people to buy memberships and the members, were in turn, instructed to recruit more members.

103. Independently, the MarketAmerica operations constitute an endless chain because Defendants' commissions, income, lottery gifts like vehicles, and free products were based on a current member's sales of memberships to new members whether any of these members actually used their MarketAmerica membership to sell any products.

104. Plaintiffs and the class have suffered an injury in fact and have lost money or property because of MarketAmerica and the Individual Defendants' operation of an endless chain, business acts, omissions, and practices.

105. Plaintiffs and the class are entitled to: (a) rescind the contracts/agreements upon which the scheme is based and recover all consideration paid under the scheme, less any amounts paid or consideration provided to the participant under the scheme; (b) restitution, compensatory and consequential damages (where not inconsistent with their request for rescission or restitution); and (c) attorneys' fees, costs, pre and post-judgment interest.

THIRD CLAIM FOR RELIEF

Unfair and Deceptive Practices Claims Under Cal. Bus. & Prof. Code § 17200, *et seq.*

(Plaintiffs on behalf of themselves and the Class Against All Defendants including DOES 1 through 10)

106. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

107. All claims brought under this Third Cause of action that refer or relate to the unlawful, fraudulent or unfair "endless chain" of the Defendants are brought on behalf of Plaintiffs and the Class.

1 108. All claims brought under this Third Cause of Action that refer or relate
2 to the unlawful, fraudulent or unfair the statements, the touted MarketAmerica
3 “business opportunity” are brought on behalf of Plaintiffs and the Class.

4 109. MarketAmerica has engaged in constant and continuous unlawful,
5 fraudulent and unfair business acts or practices, and unfair, deceptive, false and
6 misleading advertising within the meaning of the California Business and
7 Professions Code § 17200, *et seq.* The acts or practices alleged constitute a pattern
8 of behavior, pursued as a wrongful business practice that has victimized and
9 continues to victimize thousands of consumers for which Plaintiffs’ seek to enjoin
10 from further operation. The MarketAmerica Sales and Marketing Plan Is Unlawful.

11 110. Under California Business and Professions Code § 17200, an
12 “unlawful” business practice is one that violates California law.

13 111. MarketAmerica’s business practices are unlawful under § 17200
14 because they constitute an illegal “endless chain” as defined under, and prohibited
15 by, California Penal Code § 327.

16 112. MarketAmerica utilizes its illegal “endless chain” with the intent,
17 directly or indirectly, to dispose of property in MarketAmerica’s products and to
18 convince Distributors to recruit others to do the same.

19 113. MarketAmerica’s business practices are unlawful pursuant to §17200
20 because they violate §17500 *et seq.*, as alleged in the Third Cause of Action.

21 114. Under California Business and Professions Code § 17200, a
22 “fraudulent” business practice is one that is likely to deceive the public.

23 115. MarketAmerica’s business practices are fraudulent in two separately
24 actionable ways: (1) MarketAmerica’s business constitutes an illegal and deceptive
25 “endless chain;” (2) the touted, yet non-existent, MarketAmerica “business
26 opportunity” is for everyone, including but not limited to MarketAmerica’s massive
27 advertising campaign and the misleading statements of compensation.
28

1 116. First, as detailed herein, Defendants promoted participation in the
2 MarketAmerica endless chain, which has a compensation program based on
3 payments to participants for the purchase of product by participants, not the retail
4 sale of products or services.

5 117. MarketAmerica has made numerous misleading representations about
6 the business opportunity of MarketAmerica and the income that a recruit or a
7 distributor can realize by becoming a distributor and participating in the scheme.

8 118. MarketAmerica knew, or should have known, that the representations
9 about the business opportunity of MarketAmerica were misleading in nature.

10 119. As a direct result of MarketAmerica' fraudulent representations and
11 omissions regarding the MarketAmerica endless chain described herein,
12 MarketAmerica wrongly acquired money from Plaintiff and the members of the
13 classes.

14 120. Second, MarketAmerica touted, in numerous different ways as part of a
15 massive advertising campaign, a "business opportunity," which MarketAmerica also
16 repeatedly and in many ways represented, among other things, as being "for
17 everyone" and allowing "full time" or "part time" opportunities.

18 121. The massive advertising campaign included among other things, the
19 website, emails, websites, presentations by MarketAmerica, training, word of mouth
20 among Distributors, and events.

21 122. As part of this campaign and a further inducement to potential
22 Distributors, MarketAmerica made and disseminated statements of compensation
23 that further misled the public, among other things: (1) by using cryptic and technical
24 terms known to MarketAmerica but not to the general public or to those exploring
25 the claimed "business opportunity," (2) by highlighting the successful persons, i.e.,
26 those that received compensation from MarketAmerica, and the average gross
27 compensation paid by MarketAmerica to those winners, (3) by failing to disclose the
28 actual number of successful persons as compared to the number of Distributors who

1 received no compensation from MarketAmerica (i.e., the “losers”), and (4) by
2 downplaying and omitting the risks and costs involved in starting an MarketAmerica
3 Distributorship and succeeding in such a Distributorship.

4 123. In reality, the touted “business opportunity” was only for a select few,
5 and those that were recruited specially. And these numbers did not include expenses
6 incurred by distributors in the operation or promotion of their businesses, meaning
7 there were likely more net losers who made no profit at all.

8 124. MarketAmerica knew, or should have known, that the selective
9 information presented to distributors in the compensation and its massive adverting
10 campaign during that time frame touting its purported “business opportunity” was
11 likely to mislead the public and did in fact mislead the public into believing that
12 there was a legitimate “business opportunity” in which Distributors, or a large
13 portion of them, could make money in either a full or part time capacity. In fact,
14 however, there was no such “business opportunity,” except for a very select few.

15 125. As a direct result of MarketAmerica’ fraudulent representations and
16 omissions regarding the Statement and the massive adverting campaign during that
17 time frame and thereafter touting MarketAmerica’s purported “business
18 opportunity” described herein, MarketAmerica wrongly acquired money from
19 Plaintiffs and the members of the classes.

20 126. The named Plaintiffs have standing to bring these § 17200 claims under
21 the fraudulent prong, and can demonstrate actual reliance on the alleged fraudulent
22 conduct.

23 127. For instance, Plaintiffs have been in receipt of misleading and false
24 financial statements and marketing materials/seminar papers, which promoted the
25 MarketAmerica’ scheme and claimed “business opportunity” and contained material
26 false representations regarding the success Distributors could achieve through
27 MarketAmerica by purchasing products and recruiting others to do the same.
28

128. There were other representations made to Distributors as part of the massive advertising campaign regarding the claimed “business opportunity,” on which Plaintiff or some of the Class Members, reasonably believed the representations they could succeed in the “business opportunity,” did not return the refund, purchased MarketAmerica products and did not immediately return them, signed up as MarketAmerica Distributors, and attempted to and recruited others to do the same. These other representations include, but are not limited to the following: (a) emails from MarketAmerica that promoted MarketAmerica and contained material false representations regarding the success that a distributor could achieve through MarketAmerica by purchasing products and recruiting others to do the same; (b) websites, such as www.shop.com and marketamerica.com, which promoted the fraudulent scheme through videos of Individual Defendants containing material false representations regarding the “business opportunity” available to Distributors and the wealth that a distributor could get by agreeing to become an MarketAmerica distributor; (c) Presentations by MarketAmerica Distributors which contained material false representations regarding the “business opportunity” and the success that a distributor could get through MarketAmerica by purchasing products and recruiting others to do the same; (d) Presentations by MarketAmerica, including the presentations described in this complaint, which contained material false representations regarding the “business opportunity” and the success that a distributor could get through MarketAmerica by purchasing products and recruiting others to do the same; (e) Training and events where MarketAmerica Distributors made material false representations regarding the “business opportunity” and the success that a distributor could get through MarketAmerica by purchasing products and recruiting others to do the same.

129. To the extent proof of reliance is required of Plaintiffs, MarketAmerica and the Individual Defendants knew that Plaintiffs and the class would reasonably rely on their representations and omissions, which would cause the Plaintiffs and the

1 class joining the fraudulent endless chain scheme and purchasing the products, and
2 Plaintiffs did in fact reasonably rely upon such representations and omissions.

3 130. Indeed, had Plaintiffs and the class known that MarketAmerica and its
4 Individual Defendants were promoting an endless chain, they would not have
5 become MarketAmerica Distributors in the first place and, if learned after becoming
6 a distributor, they would not have purchased MarketAmerica products thereafter.

7 131. Had Plaintiffs and the class known that MarketAmerica was promoting
8 a “business opportunity” that did not exist except for a select few, they would not
9 have become MarketAmerica Distributors in the first place and, if learned after
10 becoming a distributor, they would not have purchased MarketAmerica products
11 thereafter.

12 132. Finally, the fraudulent acts, representations and omissions described
13 herein were material not only to Plaintiffs and the class (as described in this
14 complaint), but also to reasonable persons.

15 133. Under California Business and Professions Code § 17200, a business
16 practice is “unfair” if it violates established public policy or if it is immoral,
17 unethical, oppressive or unscrupulous and causes injury which outweighs its
18 benefits.

19 134. For the reasons set forth herein and above, MarketAmerica’s promotion
20 and operation of an unlawful and fraudulent endless chain, and its fraudulent
21 representations and omissions regarding its purported “business opportunity,” are
22 also unethical, oppressive, and unscrupulous in that MarketAmerica is and has been
23 duping Plaintiff and the class out of billions, or at least hundreds of millions, of
24 dollars.

25 135. MarketAmerica’s actions have few, if any, benefits. Thus, the injury
26 caused to Plaintiff and the class easily and dramatically outweigh the benefits, if
27 any.

136. Defendants should be made to disgorge all ill-gotten gains and return to Plaintiff and the class all wrongfully taken amounts.

137. Finally, Defendants' unlawful, fraudulent and unfair acts and omissions will not be completely and finally stopped without orders of an injunctive nature. Under California Business and Professions Code section 17203, Plaintiffs and the class seek a judicial order of an equitable nature against all Defendants, including, but not limited to, an order declaring such practices as complained of to be unlawful, fraudulent and unfair, and enjoining them from further undertaking any of the unlawful, fraudulent and unfair acts or omissions described herein.

FOURTH CLAIM FOR RELIEF

False Advertising - California Business and Professions Code § 17500, et seq.

(Plaintiffs on behalf of themselves and the Class Against All Defendants including DOES 1 through 10)

138. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

139. All claims brought under this Fourth Claim for Relief that refer or relate to the false, untrue, fraudulent or misleading endless chain of Defendants are brought on behalf of Plaintiffs and the Class.

140. All claims brought under this Fourth Cause of Action that refer or relate to the false, untrue, fraudulent or misleading statements of income are brought on behalf of Plaintiffs.

141. All claims brought under this Fourth Claim for Relief that refer or relate to the false, untrue, fraudulent or misleading statements of income are brought on behalf of Plaintiffs and the Class.

142. Defendants' business acts, false advertisements and materially misleading omissions constitute false advertising, in violation of the California Business and Professions Code § 17500, *et seq.*

1 143. Defendants engaged in false, unfair and misleading business practices,
2 consisting of false advertising and materially misleading omissions regarding the
3 purported “business opportunity,” likely to deceive the public and include, but are
4 not limited to, the items set forth above. MarketAmerica knew, or should have
5 known, that the representations about the business opportunity of MarketAmerica
6 were misleading in nature.

7 144. Because of Defendants’ untrue and/or misleading representations,
8 Defendants wrongfully acquired money from Plaintiff and the class members to
9 which they were not entitled. The Court should order Defendants to disgorge, for the
10 benefit of Plaintiff and all other MarketAmerica Distributors in the class who signed
11 an agreement with MarketAmerica governed by California law their profits and
12 compensation and/or make restitution to Plaintiff and the Class.

13 145. Under California Business and Professions Code Section 17535,
14 Plaintiffs and the class seek a judicial order directing Defendants to cease and desist
15 all false advertising related to the Defendants’ illegal endless chain scheme, and
16 such other injunctive relief as the Court finds just and appropriate.

17 146. Because of Defendants’ untrue and/or misleading representations,
18 Defendants wrongfully acquired money from Plaintiff and the class members to
19 which they were not entitled. The Court should order Defendants to disgorge, for the
20 benefit of Plaintiff and all other MarketAmerica Distributors in the class who signed
21 a Distributor Agreement with MarketAmerica their profits and compensation and/or
22 make restitution to Plaintiff and the class.

23 147. Under California Business and Professions Code Section 17535,
24 Plaintiff and the class seek a judicial order directing Defendants to cease and desist
25 from all false advertising related to the Defendants’ illegal scheme, and such other
26 injunctive relief as the Court finds just and appropriate.

27 ///

28 ///

FIFTH CLAIM FOR RELIEF

(RICO 18 U.S.C. § 1962(a))

(Plaintiffs on behalf of themselves and the Class Against All Defendants including
DOES 1 through 10)

148. Plaintiff realleges all allegations as if fully set forth herein, and incorporate previous allegations by reference.

149. MarketAmerica, the Individual Defendants, and those in conspiracy, willfully and intentionally violated and continue to violate RICO and California law with the goal of obtaining money, directly and indirectly, through a pattern of racketeering activities in violation of the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, 18 U.S.C. § 1962(a), and California Penal Code § 327.

149. Each of the Defendants are engaged in activities of federal interstate and foreign commerce and are entities capable of holding a legal or beneficial interest in property. All Defendants are “persons,” as that term is defined by 18 U.S.C. § 1961(3).

150. The Defendants (with the individual defendants) together make up the “MarketAmerica Enterprise” as an association of entities and individuals associated in fact to operate an illegal pyramid scheme. The MarketAmerica Enterprise is not a legal entity within the meaning of “enterprise” as defined in 18 U.S.C. § 1961(4). The Defendants have been members of the MarketAmerica Enterprise from at least 1992, and continuing until the present. MarketAmerica and the Individual Defendants are separate entities from the MarketAmerica Enterprise and play separate and distinct roles in the operation of the MarketAmerica Enterprise.

a. MarketAmerica is creator, architect, and beneficiary of the MarketAmerica Pyramid. Through interstate wire and mails, it coordinates the MarketAmerica Enterprise, a worldwide scheme. It also pays and awards the commissions, bonuses, and other incentives to the Defendants and others through online.

- 1 b. All members of the pyramid scheme (whether located in the U.S. or
2 abroad) were signed up electronically in the United States.
- 3 c. MarketAmerica employs the Defendants to coordinate operations of the
4 MarketAmerica Pyramid in the countries in which MarketAmerica
5 operates, including determining and coordinating points, bonuses, and
6 other incentives.
- 7 d. MarketAmerica employs the other defendants as its operational arm of
8 the MarketAmerica Enterprise to conduct racketeering activities in the
9 U.S.
- 10 e. MarketAmerica employs the remainder of the Defendants to induce
11 new recruits into the MarketAmerica' Pyramid, to induce Distributors
12 to purchase MarketAmerica' product, and to induce Distributors to
13 recruit additional Distributors into the MarketAmerica Pyramid. The
14 Remaining Defendants also have an agreement with MarketAmerica
15 mandating that MarketAmerica will not reform its fraudulent marketing
16 plan without their consent.

17 151. From at least April 2009 and continuing until the present, within the
18 County of Los Angeles, and elsewhere, MarketAmerica in association with the other
19 defendants, did knowingly, willfully and unlawfully conduct and participate,
20 directly and indirectly, in the conduct of the affairs of the MarketAmerica Enterprise
21 through a pattern of racketeering activity.

22 152. From at least April 2009 and continuing until the present,
23 MarketAmerica with each other and the remaining defendants, executed a *per se*
24 scheme to defraud through a pattern of racketeering made up of distinct acts of mail
25 and wire fraud under 18 U.S.C. §§ 1341 and 1343. The MarketAmerica Enterprise
26 engaged in and affected interstate and foreign trade. The MarketAmerica Enterprise
27 transacts business through the instrumentalities of interstate commerce such as
28 telephones, facsimile machines, the internet, email, and the United States mail and

1 interstate commercial carrier to communicate in furtherance of the activities of the
2 MarketAmerica Enterprise.

3 153. The MarketAmerica Enterprise advertises, markets, and sells products
4 and services throughout the United States. The operation of the enterprise continued
5 over several years, including activities in every state, and has affected and damaged,
6 and continues to affect and damage, commercial activity.

7 154. To further the goals of the MarketAmerica Enterprise, which were to
8 (1) earn money through fraudulent means, (2) entice individuals to become
9 MarketAmerica Distributors, (3) entice individuals to purchase products from
10 MarketAmerica, (4) entice individuals to recruit others to become MarketAmerica
11 Distributors and profit off those recruits' purchases of MarketAmerica' travel
12 packages, (5) reap large profits for themselves based on false representations,
13 MarketAmerica and the remaining defendants engaged in various forms of illegal
14 activity, including (a) mail fraud, (b) wire fraud, and (c) conspiracy.

15 155. The pattern of racketeering activity alleged is distinct from the
16 MarketAmerica Enterprise. Each act of racketeering activity is distinct from the
17 MarketAmerica Enterprise in that each is a separate offense committed by an entity
18 or individual while the MarketAmerica Enterprise is an association of entities and
19 individuals. The MarketAmerica Enterprise has an ongoing structure and/or
20 organization supported by personnel and/or associates with continuing functions or
21 duties.

22 156. The racketeering acts set out above and below, and others, all had the
23 same pattern and similar purpose of defrauding Plaintiff and the class for the benefit
24 of the MarketAmerica Enterprise and its members. Each racketeering act was
25 related, had a similar purpose, involved the same or similar participants and methods
26 of commission and had similar results affecting Plaintiff and the class. The
27 racketeering acts of mail and wire fraud were also related to each other in that they
28 were part of the MarketAmerica Enterprises' goal to fraudulently induce Plaintiff

1 and the Class to join the illegal scheme, purchase products, and recruit others to join
2 the scheme.

3 157. MarketAmerica and other Defendants' wrongful conduct has been and
4 remains part of MarketAmerica Enterprises' ongoing way of doing business and
5 constitutes a continuing threat to the property of Plaintiff and the class. Without the
6 repeated acts of mail and wire fraud, the MarketAmerica Enterprise's fraudulent
7 scheme would not have succeeded.

8 158. Revenue gained from the pattern of racketeering activity, which
9 constitutes a significant portion of the total income of MarketAmerica and the
10 Individual Defendants, was reinvested in the operations of the MarketAmerica
11 Enterprise for the following purposes: (a) to expand the operations of the
12 MarketAmerica Enterprise through additional false and misleading advertising and
13 promotional materials aimed at recruiting new Distributors; (b) to facilitate the
14 execution of the illegal scheme; and (c) to convince current Distributors to recruit
15 new Distributors, and purchase MarketAmerica's products.

16 159. Plaintiffs and the class were injured by the reinvestment of the
17 racketeering income into the MarketAmerica Enterprise because they invested
18 billions of dollars of their own money through their purchasing of products,
19 promotional materials, and MarketAmerica products, all of which were packaged
20 and shipped at inflated charges.

21 160. In connection with promoting and executing their illegal scheme,
22 members of the MarketAmerica's Enterprise knowingly and recklessly placed and
23 caused to be placed in the United States mail or by interstate commercial carrier, or
24 took or received therefrom, matters or things to be sent to or delivered by the United
25 States mail or by interstate commercial carrier comprising, among other things
26 product, invoices, letters, promotional materials, brochures, products and checks to
27 Plaintiff and the class and received communications between and among themselves
28 through the United States mail, in all fifty states and the District of Columbia. It was

1 reasonably foreseeable that these mailings or receipts would take place in
2 furtherance of the fraudulent scheme.

3 161. In connection with promoting and executing their illegal scheme,
4 members of the MarketAmerica's Enterprise engaged in wire fraud, in violation of
5 18 U.S.C. § 1343, by, among other things, knowingly and recklessly transmitting or
6 causing to be transmitted with wire communications, in interstate and foreign trade,
7 materials promoting the illegal MarketAmerica Pyramid on internet web sites, radio,
8 satellite radio, television, email, facsimile, telephone, and text messages, including
9 promotional materials, registration information, product information, and invoices.
10 MarketAmerica and Individual Defendants maintain websites on the internet where
11 the enterprise was perpetrated.

12 162. MarketAmerica's Distributors can and do buy products and are given
13 inducements to continue working as Distributors within the MarketAmerica
14 Pyramid. MarketAmerica maintains various websites that host promotional videos
15 featuring the Individual Defendants promoting the unlawful scheme and other
16 marketing materials featuring the Individual Defendants promoting the illegal
17 scheme. MarketAmerica sent and received these interstate wire communications to
18 and from all fifty states and the District of Columbia.

19 163. Each Defendant has promoted the MarketAmerica Pyramid and
20 MarketAmerica Enterprise. Each use of the mail or wire by Defendants and the
21 Individual Defendants done in furtherance of the MarketAmerica pyramid is an act
22 of racketeering.

23 164. The pattern of racketeering activity through which the affairs of the
24 MarketAmerica Enterprise were conducted and in which MarketAmerica and the
25 Individual Defendants participated consisted of the following:

26 **Racketeering Act Number One**

27 165. Plaintiffs received, through private commercial interstate carrier and
28 the internet portal maintained by MarketAmerica, certain application materials,

1 which promoted the MarketAmerica Enterprise and contained material false
2 representations regarding the success Distributors could achieve through
3 MarketAmerica by purchasing products and recruiting others to do the same.

4 166. Because of her receipt of these materials, Plaintiffs signed up with
5 MarketAmerica purchased MarketAmerica products, and recruited others to do the
6 same. The materials and package items were sent to Plaintiffs with the purpose and
7 intent of promoting the MarketAmerica Enterprise's illegal scheme, all in violation
8 of 18 U.S.C. § 1341.

9 **Racketeering Act Number Two**

10 167. Plaintiffs received, through private commercial interstate carrier, and
11 the internet portal maintained by the Defendants, income disclosures, which
12 promoted the MarketAmerica Enterprise and the MarketAmerica pyramid through
13 the sales and marketing plan, and which contained material false representations
14 regarding the success that Distributors could achieve through MarketAmerica by
15 purchasing travel packages and recruiting others to do the same.

16 168. Because of their receipt of the representations, Plaintiffs signed up with
17 MarketAmerica, purchased MarketAmerica travel package, and recruited others to
18 do the same. The income disclosure statements with the purpose and intent of
19 promoting the MarketAmerica Enterprise's illegal scheme, all in violation of 18
20 U.S.C. § 1341.

21 **Racketeering Act Number Three**

22 169. Plaintiffs ordered, through interstate wire transmissions over the
23 internet product packages, which were promoted by the MarketAmerica Enterprise
24 as the means by which Distributors such as Yang could pay for their position and
25 get greater retail profits. MarketAmerica hosted these websites. Yang paid
26 MarketAmerica for these products using an electronic transfer of funds.
27 MarketAmerica shipped Yang these products through private commercial interstate
28 carrier. MarketAmerica coordinated through interstate wires on at least a monthly

1 basis following the order the collection and accruing of the rewards associated with
2 those purchases. Because of the promised rewards, points, commissions, and
3 opportunity to advance up the MarketAmerica Pyramid, Plaintiff Yang purchased
4 MarketAmerica Products, paid for those MarketAmerica travel packages, and
5 received those products, using instrumentalities of interstate commerce. Defendants'
6 actions violated 18 U.S.C. §§ 1341 and 1343.

7 **Racketeering Act Number Four**

8 170. Throughout April of 2009 and continuing through today,
9 MarketAmerica distributed information by interstate wire transmissions over the
10 internet, such as www.MarketAmerica.com and Shop.com. The MarketAmerica
11 websites promoted the fraudulent scheme through videos of Individual Defendants
12 containing material false representations regarding the business opportunity
13 available to Distributors, and the wealth that a distributor could get by agreeing to
14 become an MarketAmerica distributor. Plaintiffs became MarketAmerica
15 distributors and maintained their position as MarketAmerica distributors and
16 continued to order MarketAmerica products and recruit others to do the same. This
17 conduct violated 18 U.S.C. § 1343.

18 **Racketeering Act Number Five**

19 171. Throughout 2016, the members distributed information by interstate
20 wire transmissions over the internet promoting MarketAmerica as described in this
21 Complaint. These videos promoted the fraudulent pyramid scheme and contained
22 material false representations regarding the wealth that a recruit or MarketAmerica
23 distributor could achieve if that recruit became an MarketAmerica distributor and if
24 a distributor purchased MarketAmerica products. This violated 18 U.S.C. § 1343.

25 172. MarketAmerica and the Individual Defendants' representations and
26 omissions were the proximate cause of Plaintiffs, and the class, joining the
27 fraudulent scheme and purchasing the products.

28 173. To the extent proof of reliance is legally required, in engaging in the

1 aforementioned wire and mail fraud, MarketAmerica and the Individual Defendants
 2 knew that Plaintiffs and the class would reasonably rely on their representations and
 3 omissions, which would cause the Plaintiffs and the class joining the fraudulent
 4 pyramid scheme and purchasing the products.

5 174. Defendants and the Individual Defendants knew that the
 6 misrepresentations and omissions described above in promoting and executing the
 7 fraudulent scheme were material because they caused Plaintiffs and the class to join
 8 and participate in the illegal scheme.

9 175. Had Plaintiffs and the class known that MarketAmerica and the
 10 Individual Defendants were promoting an illegal scheme, they would not have
 11 joined the MarketAmerica' pyramid scheme.

12 176. MarketAmerica's and the Individual Defendants' acts of mail and wire
 13 fraud were a proximate cause of the injuries that Yang and the class suffered.
 14 Because of MarketAmerica and the Individual Defendants' pattern of unlawful
 15 conduct, Plaintiffs and the class lost hundreds of millions of dollars, if not billions of
 16 dollars.

17 177. Under 18 U.S.C. § 1964, Plaintiffs and the class are entitled to treble
 18 their damages, plus interest, costs and attorney's fees.

19 **SIXTH CLAIM FOR RELIEF**

20 **RICO 18 U.S.C. § 1962(c)**

21 (Plaintiffs on behalf of themselves and the Class Against All Defendants, including
 22 DOES 1 through 10)

23 178. Plaintiffs reallege all allegations as if fully set forth herein, and
 24 incorporate previous allegations by reference.

25 179. MarketAmerica and the Individual Defendants are associated with the
 26 MarketAmerica Enterprise. In violation of 18 U.S.C. § 1962(c), MarketAmerica
 27 and the Individual Defendants conducted and/or participated in the conduct of the
 28 affairs of the MarketAmerica Enterprise, including participation in activities in

1 furtherance of the MarketAmerica Defendants' fraudulent scheme, through the
2 pattern of racketeering activity earlier alleged.

3 180. As a direct and proximate result of MarketAmerica and the Individual
4 Defendants' violation of 18 U.S.C. § 1962(c), Plaintiffs and the class were induced
5 to, and did, become Distributors in the MarketAmerica Pyramid scheme and
6 purchased hundreds of millions of dollars, if not billions of dollars of the
7 MarketAmerica products and recruited others to do the same. Plaintiffs and the
8 class were injured by MarketAmerica's and the Individual Defendants' unlawful
9 conduct. The funds used to buy MarketAmerica products constitute property of
10 Plaintiffs and the class within the meaning of 18 U.S.C. § 1964(c).

11 181. Under 18 U.S.C. § 1964(c), Yang and the class are entitled to treble
12 their damages, plus interest, costs and attorney's fees.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(RICO 18 U.S.C. § 1962(d))**

15 (Plaintiffs on behalf of themselves and the Class Against All Defendants including
16 DOES 1 through 10)

17 182. Plaintiffs reallege all allegations as if fully set forth herein, and
18 incorporate previous allegations by reference.

19 183. MarketAmerica and the Individual Defendants agreed to work together
20 in a symbiotic relationship to carry on the illegal scheme. Under that agreement,
21 MarketAmerica, all named defendants, and those named as DOE defendants, and
22 others conspired to violate 18 U.S.C. § 1962(a) and (c), in violation of 18 U.S.C. §
23 1962(d).

24 184. As a direct and proximate result of MarketAmerica's and the Individual
25 Defendants' violation of 18 U.S.C. § 1962(d), Plaintiffs and the class were injured
26 by MarketAmerica's and the Individual Defendants' unlawful conduct. The funds
27 used to buy MarketAmerica products constitute property of Yang and the class
28 under 18 U.S.C. § 1964(c).

185. Under 18 U.S.C. § 1964(c), Plaintiffs and the class are entitled to treble their damages, plus interest, costs and attorney's fees.

EIGHTH CLAIM FOR RELIEF

(Federal Securities Fraud)

(Plaintiffs on behalf of themselves and the Class Against All Defendants including DOES 1 through 10)

186. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

187. In the alternative to Counts Five, Six, and Seven, and without prejudice to their position that Counts Five, Six and Seven are not preempted by the PSLRA, Plaintiffs in Count Eight alleges violations of the securities laws.

188. Only to the extent Defendants contend that Plaintiffs' purchases of starter kits, payment of monthly and annual fees, and purchases of MarketAmerica products constitute investments in unregistered securities (the sale of which would be a past and continuing violation of federal securities laws), and only if Defendants are successful in obtaining a dismissal for judgment against Plaintiffs' RICO claims on the grounds that the PSLRA preempts their RICO claims, Plaintiffs contend that their purchases of starter kits, payment of monthly fee, and purchases of MarketAmerica products constitute investments in securities.

189. MarketAmerica made numerous material omissions in its Policies regarding retail sales. MarketAmerica represented that retail sales were a significant part of Defendants' revenues.

190. These statements are misleading because they fail to inform Distributors that "retail sales," particularly as defined in the Policies, are not a true viable way of earning income because Distributors are extremely unlikely to make significant "retail sales" and because the only realistic way to make money in the MarketAmerica scheme is through recruiting.

191. MarketAmerica made material omissions in its Policies regarding

1 Distributors' ability to earn money. In the Policies, MarketAmerica informed its
2 Distributors that they do not even need to be good at sales, and they can still earn
3 money.

4 192. This statement is misleading because it fails to inform Distributors that
5 very few Distributors are likely to earn any profit from participating in
6 MarketAmerica, regardless of how much work they put in and regardless of what
7 part of the country they live in.

8 193. By making affirmative statements regarding retail sales and the ability
9 of Distributors to earn income, MarketAmerica undertook an affirmative obligation
10 to make the disclosures necessary to make such statements not misleading.

11 194. MarketAmerica made the then-current version of the Policies available
12 to Plaintiffs and the Class Members through MarketAmerica's website at all times.
13 MarketAmerica contractually requested Plaintiffs and the Class Members to
14 acknowledge that they had read and reviewed the current version of the Policies at
15 the time they joined MarketAmerica, to abide by the terms of the current
16 version of the Policies, and to read, understand, and adhere to the current version of
17 the Policies.

18 195. MarketAmerica made these omissions knowing that doing so was false
19 and misleading. MarketAmerica benefitted in a concrete and substantial way from
20 the operation of the pyramid scheme, the recruitment of new Distributors, and new
21 Distributors' reliance on MarketAmerica's omissions.

22 196. MarketAmerica made these omissions with the specific intent that
23 Distributors rely on them.

24 197. Plaintiffs' and the Class Members' reliance on the omissions may be
25 presumed.

26 **PRAYER FOR RELIEF**

27 The named Plaintiffs and the Plaintiffs' class and subclasses request the
28 following relief:

- 1 a. Certification of the class and subclasses;
- 2 b. A jury trial and judgment against Defendants;
- 3 c. Rescission of the agreements upon which the scheme is based, and
4 recovery of all consideration paid pursuant to the scheme, less any amounts paid or
5 consideration provided to the participant pursuant to the scheme;
- 6 d. Damages for the financial losses incurred by Plaintiff and by the class
7 and subclasses because of the MarketAmerica and the Individual Defendants'
8 conduct and for injury to their business and property;
- 9 e. Restitution and disgorgement of monies;
- 10 f. Temporary and permanent injunctive relief enjoining MarketAmerica
11 from paying its Distributors recruiting rewards that are unrelated to retail sales to
12 ultimate users and from further unfair, unlawful, fraudulent and/or deceptive acts;
- 13 g. The cost of suit including reasonable attorneys' fees under California
14 Code of Civil Procedure § 1021.5, Civil Code §1689.2, and otherwise by law;
- 15 h. For damages in an amount yet to be ascertained as allowed by law; and
- 16 i. For such other damages, relief and pre- and post-judgment interest as
17 the Court may deem just and proper.

18 [Signature Page To Follow]

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1
2 Dated: May 29, 2017

By: 

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18 CHUANJIE YANG, OLLIE LAN, AND ALL
19 THOSE SIMILARLY SITUATED
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28

DEMAND FOR JURY TRIAL

Plaintiffs Chuanjie Yang, Ollie Lan, on behalf of themselves and those similarly situated, hereby request a jury trial on all matters so triable.

Dated: May 29, 2107

By: 

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Exhibit 1

Exhibit 2

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SITUATED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CHUANJIE YANG, an individual; OLLIE
LAN aka RUONING LAN, an individual;
LIU LIU, an individual, and all those
similarly situated,

Plaintiffs,

v.

MARKET AMERICA, INC., a North
Carolina Corporation; MARKET
AMERICA WORLDWIDE, INC., a North
Carolina Corporation; JAMES HOWARD
RIDINGER, an individual; LOREN
RIDINGER, an individual; MARC
ASHLEY, an individual; and DOES 1-
100;

Defendants.

Case No. CV 17-cv-04012-GW(JEM)

**FIRST AMENDED COMPLAINT –
CLASS ACTION**

[DEMAND FOR JURY TRIAL]

1 **I. INTRODUCTION TO THE CASE**

2 1. Market America, Inc. (“MarketAmerica”) and their cohorts represented
3 to plaintiffs Chuanjie Yang, Ollie Lan, and Liu Liu (collectively, the “Plaintiffs”)
4 that Market America provides a business opportunity “unlike any seen in history
5 before” and that Plaintiffs could formulate their growth for future financial success
6 through MarketAmerica. Plaintiffs and hundreds of thousands, have joined
7 MarketAmerica and have become distributors.

8 2. MarketAmerica touts that by following a “two-year blueprint,” any
9 person can formulate, grow, and shape his or her growth for financial success.
10 According to MarketAmerica, the only way to fail under MarketAmerica’s business
11 model is to quit. Meanwhile, MarketAmerica and its confederate conspirators now
12 assert a business valuation of \$7.3 billion that they have made off the backs of
13 millions of people in their pyramid.

14 3. MarketAmerica targets Chinese-American immigrants who do not have
15 regularly available legal channels to vindicate their legal rights, and in hope of
16 selling “wonder” products to their relatives in China. Further, these connections
17 help MarketAmerica connect to billions of potential victims thousands of miles
18 away.

19 4. Plaintiffs did not make money as promised. As with the case of
20 hundreds of thousands of MarketAmerica distributors before and after them, the
21 Plaintiffs failed. Plaintiffs and those similarly situated, failed even though they were
22 committed and put in the time and effort. They failed because they were doomed
23 from the start by a MarketAmerica marketing plan that systematically rewards
24 recruiting Distributors over the sale of products.

25 5. Over 90% of MarketAmerica Distributors average net losses. No
26 persons, except Individual Defendants and secretly placed individuals into the
27 “representative” tiers of the company, makes any money.
28

6. Defendants run an illegal pyramid scheme. Defendants take money in return for the right to sell products that they do not even manufacture, and reward for recruiting other participants into the pyramid.

7. Accordingly, Plaintiffs, for themselves, all others similarly situated, and the general public, allege:

II. **TYPE OF ACTION**

8. Plaintiffs sue for themselves and for all persons who were MarketAmerica participants from 2010 until the present under California's Endless Chain Scheme Law (California's Penal Code § 327 and California Civil Code § 1689.2), California's Unfair Competition Law (Business and Professions Code §17200 et seq.), False Advertising Law (Business and Professions Code §17500), and Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* against all defendants for the operation and promotion of an inherently fraudulent endless chain scheme.

III. **PARTIES**

9. Plaintiff Chuanjie Yang ("Yang"), is and at all relevant times, has resided in the County of Los Angeles.

10. Plaintiff Ollie Lan, aka Ruoning Lan ("Lan"), is and at all relevant times, has resided in the County of Los Angeles.

11. Plaintiff Liu Liu ("Liu") is and at all relevant times, has resided in the County of Los Angeles.

12. Market America, Inc. is a North Carolina Corporation ("MarketAmerica") that operates and manages the pyramid scheme in California.

13. Market America Worldwide, Inc. is a North Carolina Corporation ("Marketing") that also operates and manages the pyramid scheme in California.

14. Defendant James Howard Ridinger aka JR Ridinger ("JR") is a natural person. JR is the founder of MarketAmerica and Marketing, Chairman, and CEO. He is at or near the top of the pyramid operated and promoted by the Defendants,

1 and he actively participates in, promotes, and profits from MarketAmerica's
2 pyramid scheme.

3 15. Defendant Loren Ridinger ("Loren") is a senior executive Vice
4 President for MarketAmerica. She is at or near the top of the pyramid operated and
5 promoted by the Defendants, and she actively participates in, promotes, and profits
6 from MarketAmerica's pyramid scheme.

7 16. Defendant Marc Ashley ("Ashley") is the son of Loren and the
8 President and Chief Operating Office of MarketAmerica. He is at or near the top of
9 the pyramid operated and promoted by the Defendants, and he actively participates
10 in, promotes, and profits from MarketAmerica's pyramid scheme.

11 17. JR, Loren, and Ashley are referred to hereinafter, as the "Individual
12 Defendants."

13 **III. JURISDICTION AND VENUE**

14 18. Jurisdiction is conferred upon this Court because Defendants do business
15 in this judicial district, they hold themselves out and market to this jurisdiction, and
16 they actually conduct significant transactions in this jurisdiction. Under Plaintiff's
17 California state law claims, more than 75% of those affected in the class (and perhaps
18 more persons) are residents of the State of California. Supplemental jurisdiction
19 exists over the RICO causes of action and Federal Securities claim, pled in the
20 alternative.

21 19. Venue is proper in this Court because a substantial part of the events or
22 omissions giving rise to Plaintiffs' claims occurred here, a substantial part of the
23 property that is the subject of this action is situated here, and Defendants are subject
24 to personal jurisdiction, in this District.

25 20. Defendant MarketAmerica is subject to the jurisdiction of this Court.
26 MarketAmerica has been engaged in continuous and systematic business in
27 California. In fact, many of MarketAmerica's representative business activities
28 originate from California.

1 21. MarketAmerica has committed tortious acts in this State.

2 22. Each of the Defendants named herein acted as a co-conspirator, single
3 enterprise, joint venture, co-conspirator, or alter ego of, or for, the other Defendants
4 with respect to the acts, omissions, violations, representations, and common course
5 of conduct alleged herein, and ratified said conduct, aided and abetted, or is other
6 liable. Defendants have agreements with each other, and other unnamed Director
7 co-conspirators and have reached agreements to market and promote the
8 MarketAmerica pyramid as alleged herein.

9 23. Defendants, along with unnamed Director co-conspirators, were part of
10 the leadership team that participated with MarketAmerica, and made decisions
11 regarding: products, services, marketing strategy, compensation plans (both public
12 and secret), incentives, contests and other matters. In addition, Defendants and
13 unnamed co-conspirators were directly and actively involved in decisions to develop
14 and amend the compensation plans.

15 24. Plaintiffs are presently unaware of the true identities and capacities of
16 fictitiously named Defendants designated as DOES 1 through 10, but will amend this
17 complaint or any subsequent pleading when their identities and capacities have been
18 ascertained according to proof. On information and belief, each and every DOE
19 defendant is in some manner responsible for the acts and conduct of the other
20 Defendants herein, and each DOE was, and is, responsible for the injuries, damages,
21 and harm incurred by Plaintiffs. Each reference in this complaint to “defendant,”
22 “defendants,” or a specifically named defendant, refers also to all of the named
23 defendants and those unknown parties sued under fictitious names.

24 25. Plaintiffs are informed and believe, and thereon allege that, at all times
25 relevant hereto, all of the defendants together were members of a single association,
26 with each member exercising control over the operations of the association. Each
27 reference in this complaint to “defendant,” “defendants,” or a specifically named
28 defendant, refers also to the above-referenced unincorporated association as a jural

1 entity and each defendant herein is sued in its additional capacity as an active and
 2 participating member thereof. Based upon the allegations set forth in this Complaint,
 3 fairness requires the association of defendants to be recognized as a legal entity, as
 4 the association has violated Plaintiff and Class Members' legal rights.

5 26. Plaintiffs are further informed and believes and thereon alleges that each
 6 and all of the acts herein alleged as to each defendant was authorized and directed by
 7 the remaining defendants, who ratified, adopted, condoned and approved said acts
 8 with full knowledge of the consequences thereof, and memorialized the authority of
 9 the agent in a writing subscribed by the principal.

10 27. Plaintiffs are informed and believe and thereon allege that each of the
 11 defendants herein agreed among each other to commit the unlawful acts (or acts by
 12 unlawful means) described in this Complaint.

13 28. The desired effect of the conspiracy was to defraud and otherwise
 14 deprive Plaintiffs and Class Members (as hereinafter defined) of their constitutionally
 15 protected rights to property, and of their rights under other laws as set forth herein.
 16 Each of the defendants herein committed an act in furtherance of the agreement.
 17 Injury was caused to the Plaintiffs and Class Members by the defendants as a
 18 consequence.

19 **IV. FACTS**

20 **A. MarketAmerica Operates A Pyramid Scheme**

21 29. MarketAmerica was founded in 1992 by a former Amway Distributor,
 22 and co-defendant, JR Ridinger. MarketAmerica has very little costs, nor production
 23 requirements because it does not directly manufacture its own products. Instead,
 24 MarketAmerica offers products from third party manufacturers, but requires
 25 distributors of MarketAmerica to pay monthly fees just for the opportunity to sell
 26 these third-party products, the touchstone of a pyramid scheme.

27 30. To sign up as a Market America distributor, an enrollee must pay a
 28 start-up fee of \$399.00 (which was even greater prior to 2013), and further, a

1 distributor must pay MarketAmerica a monthly fee of \$129.00, per month. Further,
2 an enrollee must spend between \$130-\$300 on products offered on Shop.com, per
3 month to allegedly maintain qualifications as an enrollee. MarketAmerica also
4 requires distributors to attend trainings, events and seminars, which cost between
5 \$20 and \$200.

6 31. Ridinger describes himself as a “secular economic evangelist.” JR
7 represents that to be successful with MarketAmerica, one must build two sales
8 distribution teams, bring in preferred customers, sell business, and sell tickets for
9 national events, and training seminars. Further representations are made that sales
10 requires recruiting people to build distribution teams.

11 32. MarketAmerica pays to an infinite level deep with the downline. In
12 other words, for every dollar earned by a distributor for start up-fees, all those lines
13 above the person on the pyramid receive revenues from the person being enrolled.

14 33. Rewards paid in the form of cash bonuses, where primarily earned for
15 recruitment, as opposed to merchandise sales to consumers, constitute a fraudulent
16 business model. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014).

17 **B. How MarketAmerica Perpetuates Its Pyramid Scheme**

18 34. To “build a serious business, it is based on bringing two likeminded
19 people-one on your right side, one on your left side.” *See*
20 <https://www.youtube.com/watch?v=TMSQnqK4l8A>, (last visited May 27, 2017) (at
21 6:40).

22 35. As each lower level is recruited, points and commissions are rewarded
23 to an infinite level deep, i.e. to each level of the pyramid scheme. According to
24 MarketAmerica, “people lead to more people.” (See Figure No. 1).

25 [Complaint continued on next page]
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FIGURE NO. 1

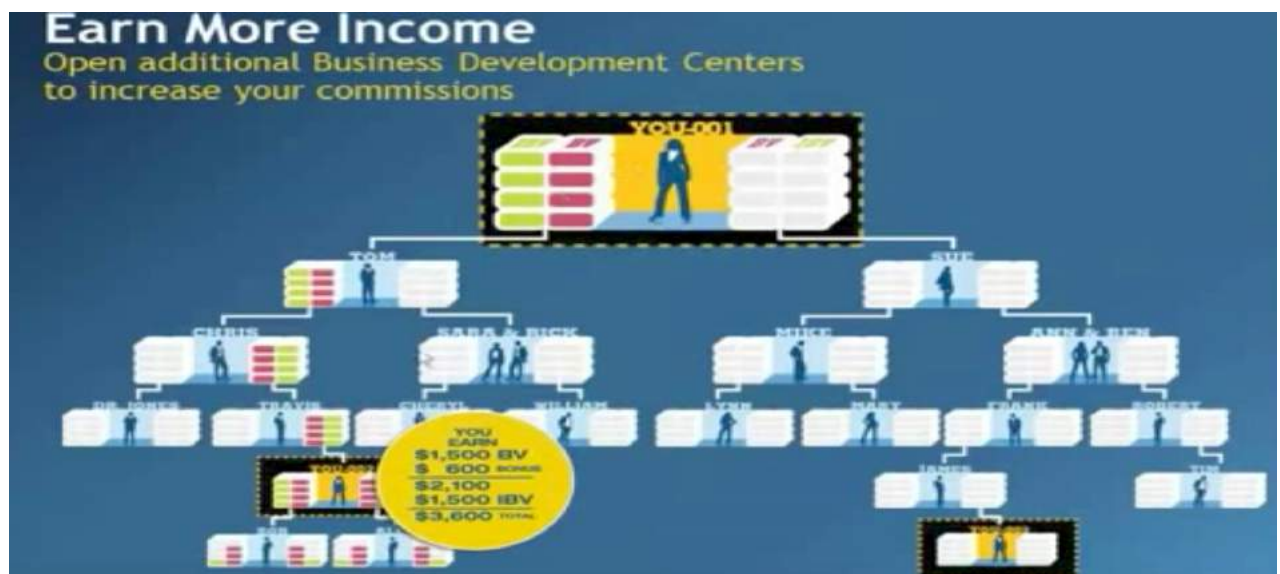


36. Every dollar made by MarketAmerica (*i.e.* throughout the entire pyramid) accrues to the benefit of those at the top of the pyramid.

37. Two commission checks are to be paid – money from BV (Business volume) Products that MarketAmerica affixes its logo to) and IBV (Incentive Business Volume) (non-MarketAmerica Products).

38. After a distributor cycles (creates one full cycle of sales above as reflected in Figure No. 1), a distributor can “re-enter” the pyramid as a downline in both pyramids. Recycling is depicted in the black squares below as follows:

FIGURE NO. 2



39. The purpose of “re-entry” is a feeble attempt to detract from the appearance of a perpetual pyramid scheme and to squeeze out those in the lower levels of the pyramid from bonuses, points, and commissions. Re-entries in MarketAmerica are represented by those in MarketAmerica to be “unlimited.”

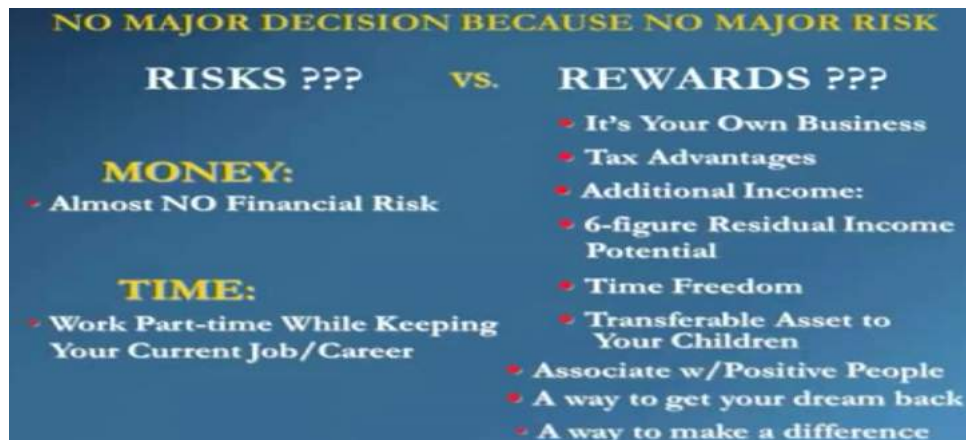
40. Finally, if one becomes a “Master Unfranchise Owner” he or she can earn even more money (see Figure No. 3 below). In short, enrollees are asked to pay a large upfront fee for the speculative chance to earn another source of income. Those on the top of the pyramid will give up some of the ill-gotten profits *if* a Distributor signs up three times. According to MarketAmerica, through this process, a distributor can earn “\$561,600.” Through MarketAmerica, a distributor can have at most, four front lines. In actuality, no true MarketAmerica distributor earns \$561,000, only those at the helm of the scheme, and more than 90% all enrollees earn nothing.

FIGURE NO. 3



41. MarketAmerica claims to its victims, “don’t overthink it. This is a proven system.” According to representations and advertisements, MarketAmerica has taken “all the risk away.”

FIGURE NO. 4



42. MarketAmerica represents that this business opportunity can be “willed or transferable” to an distributor’s children, you “get to dream big,” and get to “make a difference in the world” by being a part of this business.

C. Members Receive Benefits Only Through The Performance Of Those Downline To Them

43. As MarketAmerica’s sale presentation states, income is made only from the recruit of additional sales representatives because Market America has to pay wholesale prices to those companies that actually manufacture its products.

44. Some of the products offered by MarketAmerica are unhealthy and toxic, and after Plaintiff Lan’s mother took MarketAmerica’s products, she suffered health issues. MarketAmerica has been sued under Proposition 65 in a class action because certain of its products allegedly contained lead. *Environmental Research Center v. Market America, Inc.*, 30-2013-00650458 (Orange Ct. Sup. Ct, May 20, 2012).

D. Market America Encourages Inventory Loading

45. MarketAmerica encourages Distributors to recruit and to inventory load through its wholesale commissions.

46. The prospect of wholesale commissions encourages recruiting: the more recruits a Distributor has, the more potential there is for a wholesale commission. The prospect of wholesale commissions also encourages Distributors

1 to purchase product they do not otherwise need or want to increase their points so
2 that they can be eligible for greater discounts and thus, greater wholesale
3 commissions.

4 47. There are very few retail purchases made at Distributors' sites. These
5 are MarketAmerica webpages that allow retail customers to order directly from
6 MarketAmerica and attribute the purchase to a particular distributor (much like a
7 customer informing the cashier at a department store which clerk helped him find
8 the sweater he is purchasing). The customer does not receive a discount for
9 purchasing through a particular Distributor's Microsite, so the customer has little
10 incentive to order through the Microsite. As for the Distributors, they will want to
11 make retail sales directly to retail customers so they can offload product that they
12 have already purchased from MarketAmerica. In addition, for reasons described
13 herein, few profitable retail sales are made at all, via the sites or otherwise. Thus,
14 retail sales through a Distributor's site is not a reliable source of points.

15 48. The only reliable source of points for the majority of Distributors is
16 their own purchases. Purchases for normal consumption will be insufficient to meet
17 the thresholds required to qualify for bigger discounts. Thus, MarketAmerica's
18 wholesale commissions financially incentivize the Distributors to inventory load to
19 make purchases; not for the purpose of fulfilling retail demand, and not to satisfy
20 their normal desire for nutritional supplements and health products, but rather so
21 that they can increase their points, qualify for greater discounts, and qualify for
22 wholesale commissions. Moreover, as discussed above, every form of
23 compensation paid by MarketAmerica incentivizes recruiting - bringing more
24 Distributors into the scheme. In fact, Wholesale Commissions, Overrides, and
25 Leadership Bonuses are payable only if a Distributor has recruited new Distributors.
26 Thus, just like a classic pyramid scheme, the MarketAmerica scheme requires
27 participants to put money into the scheme and rewards participants who bring in
28 new participants.

E. Distributors Are Unable To Sell MarketAmerica Products For A Profit

49. Distributors are unable to consistently sell MarketAmerica products for a profit for many reasons. First, the products are overpriced. Interchangeable products are available online or in brick-and-mortar stores for amounts far less than MarketAmerica's suggested retail price, and even lower than its wholesale prices.

50. Second, MarketAmerica's products themselves are available online for the wholesale price or less. That these products are sold at or below the Advisor price makes it difficult for Distributors to sell the products for a profit.

MarketAmerica may have taken action to reduce resales, but the fact remains that MarketAmerica products are available below the discount prices. Moreover, many of these sales are likely made by current or former Distributors desperately trying to offload excess product at whatever price they can get, which further supports the propositions that Distributors Inventory Load and that the MarketAmerica products are overpriced.

51. Third, MarketAmerica prohibits Distributors from selling the products in the only forum for a where Distributors could reasonably expect to sell enough product to make a meaningful profit: the internet. Some examples of these prohibited websites include, but are not limited to: eBay, Amazon or Craigslist. In addition, MarketAmerica forbids its Distributors from selling MarketAmerica products at almost all brick-and-mortar establishments. MarketAmerica seeks to limit the Distributors to one-on-one situations in private locations (such as the Distributor's or a friend's home), but achieving significant, profitable retail sales by this method is extremely difficult.

52. Plaintiffs do not contend that Distributors make no retail sales at all. But Plaintiffs do allege that relatively little of the revenues received by Distributors—including both money paid them by MarketAmerica and proceeds from retail sales—comes from retail sales, and the vast majority comes from

1 Distributors' payments to MarketAmerica. Thus, the Distributors are primarily
2 feeding off each other.

3 53. MarketAmerica also makes false and/or inadequate income disclosures
4 in that in many instances, it does not disclose income of those who are distributors,
5 or provides statements of income that are false, and/or misleading, that affirmatively
6 represent a profitable business opportunity, when there is no profit to be made, and
7 nearly all participants in fact, lose money.

8 54. Because MarketAmerica pays the executives at the top of the pyramid
9 exorbitant incomes and because little non-Distributor money comes into the scheme
10 to pay Distributors, the Distributors at the bottom of the pyramid must lose money.
11 These losses are borne out by MarketAmerica's own financial disclosures and the
12 experiences of the Plaintiffs and multiple other Distributors.

13 **F. The Individual Defendants and Market America Promote the** 14 **Pyramid Scheme**

15 55. The Individual Defendants are persons at the top of MarketAmerica's
16 pyramid. All of the Individual Defendants achieved ranks of top executive. They are
17 in the top 1% of Distributors who make the most lucrative bonuses. They actively
18 participate in the MarketAmerica pyramid scheme, and they profit from the
19 compensation plan at the expense of the vast majority of Distributors.

20 56. MarketAmerica and the Individual Defendants promote the pyramid
21 scheme and make misleading claims of financial success.

22 57. In coordination with MarketAmerica, the Individual Defendants have
23 flooded the internet with promotional materials designed to lure in new Distributors.
24 MarketAmerica and Individual Defendants promote the scheme as a lawful program
25 that, with sufficient hard work, virtually guarantees financial success. MarketAmerica
26 and the Individual Defendants promote Market America as a reliable source of
27 significant income.
28

58. To sell the financial- success promise, MarketAmerica and the Individual Defendants flaunt the wealth of the highest-ranked Distributors and those few insiders at the top of the pyramid, as examples of the riches that await new participants, if only they will work hard enough (i.e., tirelessly recruit new Distributors).

59. All of the Individual Defendants have produced videos and made statements via the internet knowingly promoting MarketAmerica's pyramid scheme and touting the financial rewards supposedly available to participants. Each of these statements furthered the pyramid scheme by encouraging persons to become Distributors and by encouraging Distributors to remain Distributors and pursue the MarketAmerica business opportunity.

60. The similarity of the statements made by the Individual Defendants indicates a collusive effort to promote the MarketAmerica scheme. The following paragraphs set forth just a small subset of publicly broadcast statements made by the Individual Defendants to promote the MarketAmerica "business opportunity."

61. Defendant JR Ridinger ("JR"). Defendant JR is one of the most prolific MarketAmerica promoters. Scores of videos on YouTube and other public internet platforms feature JR promoting, touting, and explaining the MarketAmerica business opportunity.

FIG. NO. 5



62. As seen above, JR tries to make his introduction to victims appear like a rock and roll concert with visual spectacles including pyrotechnics, laser lights, rock music, and jumbo screens. <https://www.youtube.com/watch?v=pZn5xjKpDns>.

63. JR represents: “[h]ow do we build a business, we have fun and we hiss a lot.” “We hiss in a lot of pots.” “For those that understand no explanation is necessary.” “We can sell anything.”

64. Further, JR represents “[i]t follows wherever people connect to maximize to infinity.” “One person doesn’t do it, it creates swiss cheese below. In reality if one person doesn’t do it, you have to get three in under them, and three in under them.” “It always maximizes profit.” “We are executive directors in one year. Some Chinese have done it faster. [Except unlike them] we buy tickets.”

FIG NO. 6



FIG. NO. 7



65. Defendant Loren Ridinger (“Loren”). Loren represents: “[w]e build people with teams.” “When you buy, you can buy from yourself.” “If you can’t buy from yourself...[convert spending to earning] why are you here?” Loren further represents that distributors, “[n]eed to buy a ticket here [for the next event MarketAmerica is having].” “If you don’t buy it here, *you are not coming [to the next event].*” Loren demands that distributors “build from event to event,” “build an empire, people power.” Among other things, Loren commands to her victims that through the MarketAmerica business opportunity, one can “[b]e a lion for a day rather than being a slave for thousands of years.” “We build people power,” and later she claims MarketAmerica requires an - “empire of people.”

FIGURE NO. 8



66. Defendant Marc Ashley. Defendant Marc Ashley (“Ashley”) is the COO of MarketAmerica and regularly promotes the recruiting scheme of MarketAmerica at events by discussing the recruitment scam of MarketAmerica.

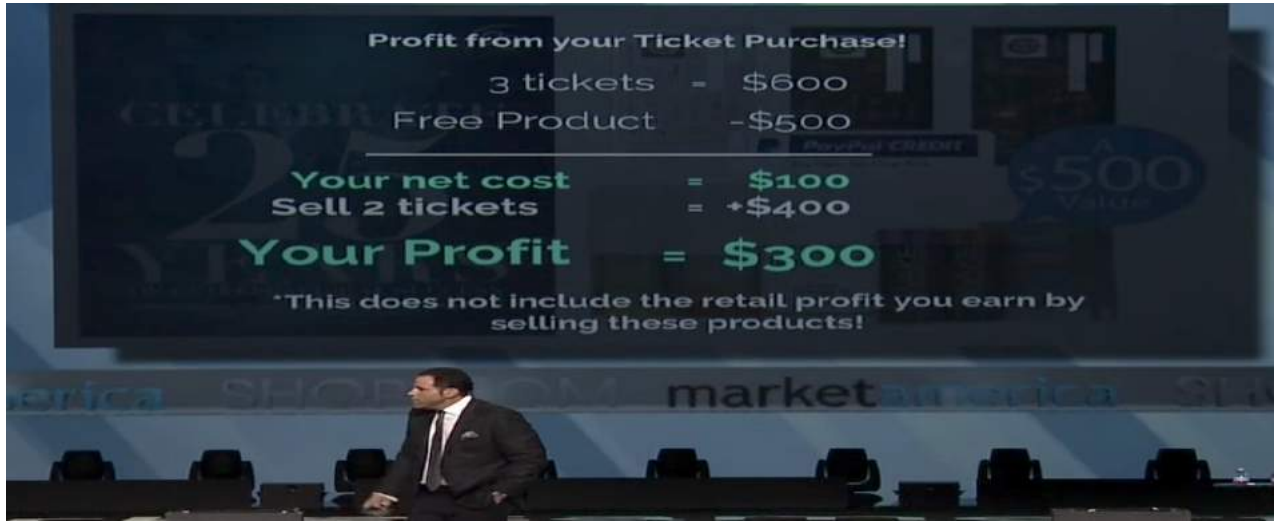
FIGURE NO. 9



FIGURE NO. 10



FIGURE NO. 11



67. Carl Eklund, an executive of MarketAmerica confirms in various seminar materials that the MarketAmerica business has “not changed” because of the shopping annuity, the shopping annuity just makes the business easier.

G. Plaintiffs Are Victims Of The Pyramid Scheme

68. Yang became an MarketAmerica distributor in 2010 through 2016 by making purchases and buying the starter pack. Plaintiff paid the monthly membership for years, attended multiple seminars, and in total paid MarketAmerica approximately \$35,000 towards this opportunity. Yang also expended significant amounts towards travel, lodging, and accommodations. Plaintiff Yang was deceived by MarketAmerica’s misleading opportunity believing, the opportunity was a legitimate way to earn money (even though that representation by Market and the

Individual Defendants was false), and Plaintiff Yang did in fact lose money as a result of Defendants' unfair, unlawful, and fraudulent business practice. The endless chain account to which Yang is a party, has not been closed by Market America at any time, and his claim is based on among other writings, an open account stated for monies owed and spent as reflected in the books and records, as reflected in invoices, invoices for yearly membership, bills, tickets stubs, and receipts. Through this action, Plaintiff Yang is seeking equitable/ injunctive relief in that he seeks rescission of any documents forming his participation in the endless chain which include invoices and receipts, payment on accounts stated, and the return of such amounts he was paid by virtue of being a participant in the Market America pyramid scheme. Market America continues its same business practices to this day, and is likely to continue its business practices into the future. Market America continues to market its business practices and distributorship opportunity to all 50 states. Yang did not sign the distributorship agreement in the form referred to in Figure No. 12 and did not enroll with Market America electronically, but instead signed the form presented by his upline.

69. Ollie Lan aka Ruoning Lan, is and at all relevant times, resides in the County of Los Angeles. Lan became a MarketAmerica distributor in December of 2015 through present. Lan paid monthly distributor fees for three months. Plaintiff Lan was deceived by MarketAmerica's misleading opportunity believing the opportunity was a legitimate way to earn money (even though that representation was false), and Plaintiff Lan did in fact lose money as a result of Defendants' unfair, unlawful, and fraudulent business practice. Plaintiff Lan lost approximately \$7,000 as a result of Defendants' pyramid scheme. The endless chain account to which Lan is a party, has not been closed by market America at any time, and his claim is based on among other writings, an open account stated for monies owed and spent as reflected in the books and records, as reflected in invoices, invoices for yearly membership, bills, tickets stubs, and receipts. Through this action, Plaintiff Lan is

1 seeking equitable/ injunctive relief in that he seeks rescission of any documents
 2 forming his participation in the endless chain which include invoices and receipts,
 3 payment on accounts stated, and the return of such amounts he was paid by virtue of
 4 being a participant in the Market America pyramid scheme. Market America
 5 continues its same business practices to this day, and is likely to continue its
 6 business practices into the future. Market America continues to market its business
 7 practices and distributorship opportunity to all 50 states.

8 70. Plaintiff Liu Liu, is and at all relevant times, resides in the County of
 9 Los Angeles. Liu became a MarketAmerica distributor in 2016 through present.
 10 Plaintiff Liu was deceived by MarketAmerica's misleading opportunity believing
 11 the opportunity was a legitimate way to earn money (even though that representation
 12 was false), and Plaintiff Liu did in fact lose money as a result of Defendants' unfair,
 13 unlawful, and fraudulent business practice. Plaintiff Liu lost approximately \$10,000
 14 as a result of Defendants' pyramid scheme. The endless chain account to which Lan
 15 is a party, has not been closed by market America at any time, and his claim is based
 16 on among other writings, an open account stated for monies owed and spent as
 17 reflected in the books and records, as reflected in invoices, invoices for yearly
 18 membership, bills, tickets stubs, and receipts. Through this action, Plaintiff Liu is
 19 seeking equitable/ injunctive relief in that he seeks rescission of any documents
 20 forming his participation in the endless chain which include invoices and receipts,
 21 payment on accounts stated, and the return of such amounts he was paid by virtue of
 22 being a participant in the Market America pyramid scheme. Market America
 23 continues its same business practices to this day, and is likely to continue its
 24 business practices into the future. Market America continues to market its business
 25 practices and distributorship opportunity to all 50 states.

26 71. Plaintiffs Lan and Liu did not make any retail sales whatsoever.

27 **H. Independent Distributor Application And Agreement**

28

73. At some times during Market America's history, it has requested various class members to sign a one page document labeled, "Independent Distributor Application and Agreement" (the "Agreement").

[illegible]

1 that they agree to any *conditions*. No term of the Agreement provides for arbitration,
 2 so no class member is bound by arbitration.

3 75. At the bottom of the form and *below* the signature box (See Figure No.
 4 12 above), next to a box labeled “INTERNAL USE ONLY,” the Agreement states
 5 “SEE REVERSE SIDE FOR TERMS AND CONDITIONS OF THIS
 6 AGREEMENT.” (emphasis added).

7 76. The “conditions” on the reverse side include an arbitration provision,
 8 which provides as follows:

9
 10 29. Arbitration. Any controversy or claim arising out of or relating to this
 11 Agreement, or the breach thereof, shall ultimately be settled by arbitration
 12 administered by the American Arbitration Association in accordance with its
 13 Commercial Arbitration Rules and judgment on the award rendered by the
 14 arbitrators may be entered in a court of competent jurisdiction. You understand
 15 that this arbitration provision means you are giving up the right to have any
 16 dispute you have regarding this Agreement heard by a jury and determined in a
 17 court of law. The arbitration shall be heard by one arbitrator, and it shall take
 18 place in Greensboro, North Carolina. Either party may seek emergency or
 19 provisional relief in the General Court of Justice, Guilford County, North
 20 Carolina, prior to invoking the arbitration remedy.

21 (Agreement, ¶29).

22 77. The arbitration provision is unenforceable because no class members
 23 were required to assent to the arbitration conditions by the terms of the Agreement
 24 itself, and the signature line block confirms only the “terms” of the Agreement need
 25 be assented to. In the alternative, this is highly misleading.

26 78. The arbitration policy also includes the following provision:

27 Distributor Grievances. You agree to submit any complaint, grievance, or claim
 28 against another Distributor or MA in accordance with the Grievance Procedure
 set forth in the Career Manual. You agree not to seek arbitration, take legal
 action except in accordance with the Grievance Procedure, or contact any
 regulatory agency regarding your MA Distributorship until all steps of the
 Grievance Procedure have been completed. If you breach this covenant, you may

1 be liable to MA for damages and legal costs, including reasonable attorney's
2 fees.

3 (Agreement, ¶20).

4 79. Buried in the Career Manual, MA commands: "The Distributor agrees
5 to submit any complaint, grievance or claim against a Distributor or the company to
6 the Appeals Board and Dispute Resolution Board for settlement prior to contacting
7 any regulatory agency or taking any legal action." (Career Manual pp. 42).

8 80. The complaint must cite "policies and procedures affected," and
9 provide all evidence that may not be available to a distributor. (*Id.*) Any such
10 complaint will routinely result in a denial by MA because the MA Appeals Board is
11 comprised of officers of MA (and their cronies) who have a financial interest in
12 denying claims. If a distributor is unsatisfied with the "written response" from the
13 MA Appeals Board, the Dispute Resolution Board (DRB) is the "final appeal
14 process regarding company rulings or decisions concerning policies, procedures,
15 rules and regulations. The DRB only reviews facts and enforces company policies
16 and procedures. The DRB does not set policy, change policy, or make exceptions to
17 rules and regulations. It functions to interpret policies, procedures, rules and
18 regulations where no precedent exists or where unique mitigating circumstances are
19 encountered." Career Manual, Ch. 14, § 8(B).

20 81. To invoke the DRB, a distributor must complete and submit a DRB
21 Submission form, all documents, all evidence, and a \$50.00 filing fee which is non-
22 refundable. If the Distributor disagrees with the decision of the DRB, the
23 Distributor's only recourse is to request arbitration within 90 days of the date of the
24 DRB decision letter. (*Id.*) (emphasis added). Distributors are further commanded not
25 to take any action through the Career Manual: "Note: You should always consult
26 with your upline leadership before submitting an appeal to make sure: (1) that the
27 situation merits an appeal, and (2) that the situation cannot be resolved by MA
28 without having to submit an appeal."

1 82. The Career Manual also unconscionably expands on MA's right to
2 amend the DA as follows: "[t]he Company expressly reserves the right to alter or
3 amend Distributor's cost of products, policies, procedures, rules, regulations... Upon
4 notification by mailing ... such amendments are automatically incorporated as part
5 of the Independent Distributor Application and Agreement between the company
6 and the Distributor." (Career Manual, pp. 51).

7 83. There is an unconscionable 90-day statute of limitation to bring claims
8 in the Career Manual. (Career Manual, pp. 51-52).

9 84. The internal reconciliation procedure and two-tiered Kangaroo Court
10 administrative review proceeding are a sham, and undeniably demonstrate
11 substantively unconscionable because the arbiters are Market America's officers and
12 its cronies who cannot adjudicate any claims for rescission/monetary damages and
13 thus there is no legal venue.

14 85. The arbitration policy is also unconscionable because it constitutes a
15 chilling provision, that permits Market America to sue a distributor for contacting a
16 regulatory body like the FTC, the California Attorney General, and from
17 commencing arbitration without first going through the sham internal reconciliation
18 process, and the sham two-tiered review process.

19 86. Market America has claimed in the course of this litigation that it is not
20 bound by ¶20 of the DA and the Career Manual, which is made part of the DA by
21 the express terms of the DA itself. Defendants' position, actions, and conduct,
22 constitutes waiver of its right to assert arbitration whatsoever, as Defendants are
23 taking the position in this litigation that certain terms are not enforceable. Based on
24 the doctrine of waiver, no arbitration can be enforced.

25 87. In the alternative, the arbitration provision is unconscionable because
26 *inter alia*, it permits MarketAmerica the unilateral right to modify the conditions of
27 the arbitration policy, the rules of Commercial Arbitration for AAA do not provide
28 for prevailing party fees and class members would have to pay the cost and fees of

1 arbitration despite their entitlement to costs of suit and fees should they be the
 2 prevailing party in this action, the pre-litigation requirements of MarketAmerica prior
 3 to bringing action are unconscionable, and for other reasons to be asserted to the
 4 extent motion practice is initiated.

5 88. In the alternative, the arbitration provision is unenforceable as a matter
 6 of law and as a matter of fact on other grounds.

7 89. In the alternative, the arbitration provision is unenforceable related to the
 8 injunctive relief requested in this Complaint, based on recent California Supreme
 9 Court authority.

10 90. To the extent “[t]he arbitration shall be heard by one arbitrator, and it
 11 shall take place in Greensboro, North Carolina” is considered a “forum selection
 12 clause”, the forum selection clause should be analyzed under Federal Law, and such
 13 clause is unenforceable because independently, and in the alternative, (1) it was the
 14 product of fraud and overreaching, (2) Plaintiffs would effectively be deprived of
 15 their day in court if this clause was enforced, and (3) enforcement of this provision
 16 would contravene a strong public policy of the forum in which the suit is brought
 17 (particularly in light of the legislative history of the Endless Chain law). For each of
 18 these reasons, and incorporating ¶¶ 72-88, this provision cannot be enforced to
 19 require transfer.

20 V. CLASS ACTION ALLEGATIONS

21 90. Plaintiffs seek to represent a nationwide class defined as follows:

22 91. Plaintiffs bring this action as a class action under Federal Rule of Civil
 23 Procedure 23.

24 92. Plaintiffs seek to certify a class pursuant to Fed. R. Civ. Proc. 23(a),
 25 23(b), 23(c)(4), and 23(c)(5), if necessary.

26 93. Plaintiffs seek relief on behalf of themselves and the following class:
 27 persons who paid start-up fees, monthly fees, annual fees, seminar ticket fees, any
 28 other fees imposed by Market America, and/or purchased products from

1 MarketAmerica between March 9, 2010, to the present date, who lost money from
2 their participation in the MarketAmerica scheme.

3 94. Subject to confirmation, clarification and/or modification based on
4 discovery to be conducted in this action, Plaintiffs also seek to represent a sub-class
5 in California, defined as follows: persons residing in California who paid start-up
6 fees, monthly fees, annual fees, seminar ticket fees, any other fees imposed by Market
7 America, and/or purchased products from MarketAmerica between March 9, 2010, to
8 the present date, who lost money from their participation in the MarketAmerica
9 scheme.

10 95. Subject to confirmation, clarification and/or modification based on
11 discovery to be conducted in this action, Plaintiff also seeks to represent a sub-class
12 of all worldwide participants of MarketAmerica, defined as follows: persons
13 residing anywhere in the World who paid start-up fees, monthly fees, annual fees,
14 seminar ticket fees, any other fees imposed by Market America, and/or purchased
15 products from MarketAmerica between March 9, 2010, to the present date, who lost
16 money from their participation in the MarketAmerica scheme.

17 96. Pursuant to the previous paragraph of this complaint, the damage to any
18 person living anywhere else other than the United States involved a domestic injury
19 to business or property because all contracts of independent business owners were
20 negotiated, executed, and stored on a server in the United States owned by
21 MarketAmerica, and are available on the worldwide web, involved a significant
22 connection to domestic commerce in that the labeling, products, and other parts of
23 the manufacturing and sales and marketing process were conducted from the United
24 States, and for other reasons to be provided according to proof, and after the
25 opportunity for discovery.

26 97. Excluded from the class are the Defendants, family members, this
27 Court, and any "Director" of MarketAmerica.
28

1 98. Plaintiffs seek to pursue a private attorney general action for injunctive
2 relief for themselves and all members of the class, and they satisfy the standing and
3 class action requirements.

4 99. While the exact number of members in the Class and Subclasses are
5 unknown to Plaintiffs at this time, and can only be determined by appropriate
6 discovery, membership in the class and subclasses is ascertainable based upon the
7 records maintained by Defendant. It is estimated that the members of the Class are
8 greater than 250,000, nationwide.

9 100. Therefore, the Class and Subclasses are so numerous that individual
10 joinder of all Class and Subclass members is impracticable.

11 101. There are questions of law and/or fact common to the class and
12 subclasses, including but not limited to: (a) Whether the arbitration policy is
13 enforceable; (b) Whether MarketAmerica is operating an endless chain; (c) Whether
14 Distributors paid money to MarketAmerica for (1) the right to sell a product and (2)
15 the right to receive, in return for recruiting others, rewards which were unrelated to
16 the sale of the product to retail consumers; (d) Whether MarketAmerica's rules
17 apply to Section 327 claims; (e) If the MarketAmerica rules do apply, are
18 MarketAmerica's rules effective; (f) If the MarketAmerica rules do apply, and
19 MarketAmerica's rules are effective, did MarketAmerica enforce those rules; (g)
20 Whether MarketAmerica or the Individual Defendants omitted to inform the
21 Plaintiffs and the plaintiff class that they were entering into an illegal scheme where
22 an overwhelming number of participants lose money; (h) Whether MarketAmerica's
23 statements of compensation during the Class Period were deceptive and misleading;
24 (i) Whether MarketAmerica's conduct constitutes an unlawful, unfair and/or
25 deceptive trade practice under California state law; (j) Whether MarketAmerica's
26 conduct constitutes unfair competition under California state law; and (k) Whether
27 MarketAmerica's conduct constitutes false advertising under California state law.
28

102. These and other questions of law and/or fact are common to the class and subclasses and predominate over any question affecting only individual class members.

103. Plaintiffs' claims are typical of the claims of the class and subclasses in that Plaintiffs were Distributors for Defendant MarketAmerica and lost money because of the illegal scheme.

104. Plaintiffs will fairly and adequately represent the interests of the class and subclasses. Plaintiffs' claims are typical of those of the class and subclasses. Plaintiffs' interests are fully aligned with those of the class and subclasses. And Plaintiffs have retained counsel experienced and skilled in complex class action litigation.

105. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged, because such treatment will allow many similarly-situated persons to pursue their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender.

106. Plaintiffs know of no difficulty likely to be encountered in the management that would preclude its maintenance as a class action.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Judgment Declaring the Arbitration Provision Unenforceable

(Plaintiffs on Behalf of Themselves And Those Similarly Situated, Against All Defendants, including DOES 1 through 10)

107. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

108. Because the MarketAmerica Agreement itself does not require any class member to assent, by signature, to the "conditions," the arbitration provision is unenforceable related to the claims in this action.

109. MarketAmerica's "conditions" buried at the bottom of the form, below the signature block and next to a box "for internal use only" include an arbitration provision. The conditions grant MarketAmerica the power to unilaterally modify the terms of the Agreement, including the arbitration provision, at any time and without prior notice, thereby rendering the arbitration provision illusory, lacking consideration, and therefore unenforceable.

110. The arbitration provision is alternatively, unenforceable as a matter of fact, and law.

111. For these reasons, and those legal reasons to be stated in connection with any motion practice initiated by the Defendants, the Court should declare that the arbitration provision is illusory, lacks consideration, and unenforceable, and that the Plaintiffs' claims and the Classes' claims are properly before this Court.

SECOND CLAIM FOR RELIEF

ENDLESS CHAIN SCHEME; California Penal Code § 327 and Section 1689.2 of the California Civil Code

(Plaintiffs on behalf of themselves and the Class, Against All Defendants including DOES 1 through 10)

97. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

98. Section 1689.2 of the California Civil Code provides: "[a] participant in an endless chain scheme, as defined in Section 327 of the Penal Code, may rescind the contract upon which the scheme is based, and may recover all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme."

99. The Defendants are operating an endless chain scheme under Section 327 of the Penal Code because they have contrived, prepared, set up, and proposed an endless chain.

**Unfair and Deceptive Practices Claims Under Cal. Bus, & Prof. Code § 17200,
*et seq.***

(Plaintiffs on behalf of themselves and the Class Against All Defendants including
DOES 1 through 10)

106. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

107. All claims brought under this Third Cause of action that refer or relate to the unlawful, fraudulent or unfair “endless chain” of the Defendants are brought on behalf of Plaintiffs and the Class.

108. All claims brought under this Third Cause of Action that refer or relate to the unlawful, fraudulent or unfair the statements, the touted MarketAmerica “business opportunity” are brought on behalf of Plaintiffs and the Class.

109. MarketAmerica has engaged in constant and continuous unlawful, fraudulent and unfair business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, *et seq.* The acts or practices alleged constitute a pattern of behavior, pursued as a wrongful business practice that has victimized and continues to victimize thousands of consumers for which Plaintiffs’ seek to enjoin from further operation. The MarketAmerica Sales and Marketing Plan Is Unlawful.

110. Under California Business and Professions Code § 17200, an “unlawful” business practice is one that violates California law.

111. MarketAmerica’s business practices are unlawful under § 17200 because they constitute an illegal “endless chain” as defined under, and prohibited by, California Penal Code § 327.

112. MarketAmerica utilizes its illegal “endless chain” with the intent, directly or indirectly, to dispose of property in MarketAmerica’s products and to convince Distributors to recruit others to do the same.

1 113. MarketAmerica’s business practices are unlawful pursuant to §17200
2 because they violate §17500 *et seq.*, as alleged in the Third Cause of Action.

3 114. Under California Business and Professions Code § 17200, a
4 “fraudulent” business practice is one that is likely to deceive the public.

5 115. MarketAmerica’s business practices are fraudulent in two separately
6 actionable ways: (1) MarketAmerica’s business constitutes an illegal and deceptive
7 “endless chain;” (2) the touted, yet non-existent, MarketAmerica “business
8 opportunity” is for everyone, including but not limited to MarketAmerica’s massive
9 advertising campaign and the misleading statements of compensation.

10 116. First, as detailed herein, Defendants promoted participation in the
11 MarketAmerica endless chain, which has a compensation program based on
12 payments to participants for the purchase of product by participants, not the retail
13 sale of products or services.

14 117. MarketAmerica has made numerous misleading representations about
15 the business opportunity of MarketAmerica and the income that a recruit or a
16 distributor can realize by becoming a distributor and participating in the scheme.

17 118. MarketAmerica knew, or should have known, that the representations
18 about the business opportunity of MarketAmerica were misleading in nature.

19 119. As a direct result of MarketAmerica’s fraudulent representations and
20 omissions regarding the MarketAmerica endless chain described herein,
21 MarketAmerica wrongly acquired money from Plaintiff and the members of the
22 classes.

23 120. Second, MarketAmerica touted, in numerous different ways as part of a
24 massive advertising campaign, a “business opportunity,” which MarketAmerica also
25 repeatedly and in many ways represented, among other things, as being “for
26 everyone” and allowing “full time” or “part time” opportunities.

1 121. The massive advertising campaign included among other things, the
2 website, emails, websites, presentations by MarketAmerica, training, word of mouth
3 among Distributors, and events.

4 122. As part of this campaign and a further inducement to potential
5 Distributors, MarketAmerica made and disseminated statements of compensation
6 that further misled the public, among other things: (1) by using cryptic and technical
7 terms known to MarketAmerica but not to the general public or to those exploring
8 the claimed “business opportunity,” (2) by highlighting the successful persons, i.e.,
9 those that received compensation from MarketAmerica, and the average gross
10 compensation paid by MarketAmerica to those winners, (3) by failing to disclose the
11 actual number of successful persons as compared to the number of Distributors who
12 received no compensation from MarketAmerica (i.e., the “losers”), and (4) by
13 downplaying and omitting the risks and costs involved in starting an MarketAmerica
14 Distributorship and succeeding in such a Distributorship.

15 123. In reality, the touted “business opportunity” was only for a select few,
16 and those that were recruited specially. And these numbers did not include expenses
17 incurred by distributors in the operation or promotion of their businesses, meaning
18 there were likely more net losers who made no profit at all.

19 124. MarketAmerica knew, or should have known, that the selective
20 information presented to distributors in the compensation and its massive advertng
21 campaign during that time frame touting its purported “business opportunity” was
22 likely to mislead the public and did in fact mislead the public into believing that
23 there was a legitimate “business opportunity” in which Distributors, or a large
24 portion of them, could make money in either a full or part time capacity. In fact,
25 however, there was no such “business opportunity,” except for a very select few.

26 125. As a direct result of MarketAmerica’ fraudulent representations and
27 omissions regarding the Statement and the massive advertng campaign during that
28 time frame and thereafter touting MarketAmerica’s purported “business

1 opportunity” described herein, MarketAmerica wrongly acquired money from
2 Plaintiffs and the members of the classes.

3 126. The named Plaintiffs have standing to bring these § 17200 claims under
4 the fraudulent prong, and can demonstrate actual reliance on the alleged fraudulent
5 conduct.

6 127. For instance, Plaintiffs have been in receipt of misleading and false
7 financial statements and marketing materials/seminar papers, which promoted the
8 MarketAmerica’ scheme and claimed “business opportunity” and contained material
9 false representations regarding the success Distributors could achieve through
10 MarketAmerica by purchasing products and recruiting others to do the same.

11 128. There were other representations made to Distributors as part of the
12 massive advertising campaign regarding the claimed “business opportunity,” on
13 which Plaintiff or some of the Class Members, reasonably believed the
14 representations they could succeed in the “business opportunity,” did not return the
15 refund, purchased MarketAmerica products and did not immediately return them,
16 signed up as MarketAmerica Distributors, and attempted to and recruited others to
17 do the same. These other representations include, but are not limited to the
18 following: (a) emails from MarketAmerica that promoted MarketAmerica and
19 contained material false representations regarding the success that a distributor
20 could achieve through MarketAmerica by purchasing products and recruiting others
21 to do the same; (b) websites, such as www.shop.com and marketamerica.com, which
22 promoted the fraudulent scheme through videos of Individual Defendants containing
23 material false representations regarding the “business opportunity” available to
24 Distributors and the wealth that a distributor could get by agreeing to become an
25 MarketAmerica distributor; (c) Presentations by MarketAmerica Distributors which
26 contained material false representations regarding the “business opportunity” and
27 the success that a distributor could get through MarketAmerica by purchasing
28 products and recruiting others to do the same; (d) Presentations by MarketAmerica,

1 including the presentations described in this complaint, which contained material
2 false representations regarding the “business opportunity” and the success that a
3 distributor could get through MarketAmerica by purchasing products and recruiting
4 others to do the same; (e) Training and events where MarketAmerica Distributors
5 made material false representations regarding the “business opportunity” and the
6 success that a distributor could get through MarketAmerica by purchasing products
7 and recruiting others to do the same.

8 129. To the extent proof of reliance is required of Plaintiffs, MarketAmerica
9 and the Individual Defendants knew that Plaintiffs and the class would reasonably
10 rely on their representations and omissions, which would cause the Plaintiffs and the
11 class joining the fraudulent endless chain scheme and purchasing the products, and
12 Plaintiffs did in fact reasonably rely upon such representations and omissions.

13 130. Indeed, had Plaintiffs and the class known that MarketAmerica and its
14 Individual Defendants were promoting an endless chain, they would not have
15 become MarketAmerica Distributors in the first place and, if learned after becoming
16 a distributor, they would not have purchased MarketAmerica products thereafter.

17 131. Had Plaintiffs and the class known that MarketAmerica was promoting
18 a “business opportunity” that did not exist except for a select few, they would not
19 have become MarketAmerica Distributors in the first place and, if learned after
20 becoming a distributor, they would not have purchased MarketAmerica products
21 thereafter.

22 132. Finally, the fraudulent acts, representations and omissions described
23 herein were material not only to Plaintiffs and the class (as described in this
24 complaint), but also to reasonable persons.

25 133. Under California Business and Professions Code § 17200, a business
26 practice is “unfair” if it violates established public policy or if it is immoral,
27 unethical, oppressive or unscrupulous and causes injury which outweighs its
28 benefits.

1 140. All claims brought under this Fourth Cause of Action that refer or
2 relate to the false, untrue, fraudulent or misleading statements of income are brought
3 on behalf of Plaintiffs.

4 141. All claims brought under this Fourth Claim for Relief that refer or
5 relate to the false, untrue, fraudulent or misleading statements of income are brought
6 on behalf of Plaintiffs and the Class.

7 142. Defendants' business acts, false advertisements and materially
8 misleading omissions constitute false advertising, in violation of the California
9 Business and Professions Code § 17500, *et seq.*

10 143. Defendants engaged in false, unfair and misleading business practices,
11 consisting of false advertising and materially misleading omissions regarding the
12 purported "business opportunity," likely to deceive the public and include, but are
13 not limited to, the items set forth above. MarketAmerica knew, or should have
14 known, that the representations about the business opportunity of MarketAmerica
15 were misleading in nature.

16 144. Because of Defendants' untrue and/or misleading representations,
17 Defendants wrongfully acquired money from Plaintiff and the class members to
18 which they were not entitled. The Court should order Defendants to disgorge, for the
19 benefit of Plaintiff and all other MarketAmerica Distributors in the class who signed
20 an agreement with MarketAmerica governed by California law their profits and
21 compensation and/or make restitution to Plaintiff and the Class.

22 145. Under California Business and Professions Code Section 17535,
23 Plaintiffs and the class seek a judicial order directing Defendants to cease and desist
24 all false advertising related to the Defendants' illegal endless chain scheme, and
25 such other injunctive relief as the Court finds just and appropriate.

26 146. Because of Defendants' untrue and/or misleading representations,
27 Defendants wrongfully acquired money from Plaintiff and the class members to
28 which they were not entitled. The Court should order Defendants to disgorge, for the

1 benefit of Plaintiff and all other MarketAmerica Distributors in the class who signed
 2 a Distributor Agreement with MarketAmerica their profits and compensation and/or
 3 make restitution to Plaintiff and the class.

4 147. Under California Business and Professions Code Section 17535,
 5 Plaintiff and the class seek a judicial order directing Defendants to cease and desist
 6 from all false advertising related to the Defendants' illegal scheme, and such other
 7 injunctive relief as the Court finds just and appropriate.

8 ///

9 ///

10 **FIFTH CLAIM FOR RELIEF**

11 **(RICO 18 U.S.C. § 1962(a))**

12 (Plaintiffs on behalf of themselves and the Class Against All Defendants including
 13 DOES 1 through 10)

14 148. Plaintiff realleges all allegations as if fully set forth herein, and
 15 incorporate previous allegations by reference.

16 149. MarketAmerica, the Individual Defendants, and those in conspiracy,
 17 willfully and intentionally violated and continue to violate RICO and California law
 18 with the goal of obtaining money, directly and indirectly, through a pattern of
 19 racketeering activities in violation of the mail and wire fraud statutes, 18 U.S.C. §§
 20 1341 and 1343, 18 U.S.C. § 1962(a), and California Penal Code § 327.

21 149. Each of the Defendants are engaged in activities of federal interstate
 22 and foreign commerce and are entities capable of holding a legal or beneficial
 23 interest in property. All Defendants are "persons," as that term is defined by 18
 24 U.S.C. § 1961(3).

25 150. The Defendants (with the individual defendants) together make up the
 26 "MarketAmerica Enterprise" as an association of entities and individuals associated
 27 in fact to operate an illegal pyramid scheme. The MarketAmerica Enterprise is not a
 28 legal entity within the meaning of "enterprise" as defined in 18 U.S.C. § 1961(4).

1 The Defendants have been members of the MarketAmerica Enterprise from at least
 2 1992, and continuing until the present. MarketAmerica and the Individual
 3 Defendants are separate entities from the MarketAmerica Enterprise and play
 4 separate and distinct roles in the operation of the MarketAmerica Enterprise.

- 5 a. MarketAmerica is creator, architect, and beneficiary of the
 6 MarketAmerica Pyramid. Through interstate wire and mails, it
 7 coordinates the MarketAmerica Enterprise, a worldwide scheme. It also
 8 pays and awards the commissions, bonuses, and other incentives to the
 9 Defendants and others through online.
- 10 b. All members of the pyramid scheme (whether located in the U.S. or
 11 abroad) were signed up electronically in the United States.
- 12 c. MarketAmerica employs the Defendants to coordinate operations of the
 13 MarketAmerica Pyramid in the countries in which MarketAmerica
 14 operates, including determining and coordinating points, bonuses, and
 15 other incentives.
- 16 d. MarketAmerica employs the other defendants as its operational arm of
 17 the MarketAmerica Enterprise to conduct racketeering activities in the
 18 U.S.
- 19 e. MarketAmerica employs the remainder of the Defendants to induce
 20 new recruits into the MarketAmerica' Pyramid, to induce Distributors
 21 to purchase MarketAmerica' product, and to induce Distributors to
 22 recruit additional Distributors into the MarketAmerica Pyramid. The
 23 Remaining Defendants also have an agreement with MarketAmerica
 24 mandating that MarketAmerica will not reform its fraudulent marketing
 25 plan without their consent.

26 151. From at least April 2009 and continuing until the present, within the
 27 County of Los Angeles, and elsewhere, MarketAmerica in association with the other
 28 defendants, did knowingly, willfully and unlawfully conduct and participate,

1 directly and indirectly, in the conduct of the affairs of the MarketAmerica Enterprise
2 through a pattern of racketeering activity.

3 152. From at least April 2009 and continuing until the present,
4 MarketAmerica with each other and the remaining defendants, executed a *per se*
5 scheme to defraud through a pattern of racketeering made up of distinct acts of mail
6 and wire fraud under 18 U.S.C. §§ 1341 and 1343. The MarketAmerica Enterprise
7 engaged in and affected interstate and foreign trade. The MarketAmerica Enterprise
8 transacts business through the instrumentalities of interstate commerce such as
9 telephones, facsimile machines, the internet, email, and the United States mail and
10 interstate commercial carrier to communicate in furtherance of the activities of the
11 MarketAmerica Enterprise.

12 153. The MarketAmerica Enterprise advertises, markets, and sells products
13 and services throughout the United States. The operation of the enterprise continued
14 over several years, including activities in every state, and has affected and damaged,
15 and continues to affect and damage, commercial activity.

16 154. To further the goals of the MarketAmerica Enterprise, which were to
17 (1) earn money through fraudulent means, (2) entice individuals to become
18 MarketAmerica Distributors, (3) entice individuals to purchase products from
19 MarketAmerica, (4) entice individuals to recruit others to become MarketAmerica
20 Distributors and profit off those recruits' purchases of MarketAmerica' products, (5)
21 reap large profits for themselves based on false representations, MarketAmerica and
22 the remaining defendants engaged in various forms of illegal activity, including (a)
23 mail fraud, (b) wire fraud, and (c) conspiracy.

24 155. The pattern of racketeering activity alleged is distinct from the
25 MarketAmerica Enterprise. Each act of racketeering activity is distinct from the
26 MarketAmerica Enterprise in that each is a separate offense committed by an entity
27 or individual while the MarketAmerica Enterprise is an association of entities and
28 individuals. The MarketAmerica Enterprise has an ongoing structure and/or

1 organization supported by personnel and/or associates with continuing functions or
2 duties.

3 156. The racketeering acts set out above and below, and others, all had the
4 same pattern and similar purpose of defrauding Plaintiff and the class for the benefit
5 of the MarketAmerica Enterprise and its members. Each racketeering act was
6 related, had a similar purpose, involved the same or similar participants and methods
7 of commission and had similar results affecting Plaintiff and the class. The
8 racketeering acts of mail and wire fraud were also related to each other in that they
9 were part of the MarketAmerica Enterprises' goal to fraudulently induce Plaintiff
10 and the Class to join the illegal scheme, purchase products, and recruit others to join
11 the scheme.

12 157. MarketAmerica and other Defendants' wrongful conduct has been and
13 remains part of MarketAmerica Enterprises' ongoing way of doing business and
14 constitutes a continuing threat to the property of Plaintiff and the class. Without the
15 repeated acts of mail and wire fraud, the MarketAmerica Enterprise's fraudulent
16 scheme would not have succeeded.

17 158. Revenue gained from the pattern of racketeering activity, which
18 constitutes a significant portion of the total income of MarketAmerica and the
19 Individual Defendants, was reinvested in the operations of the MarketAmerica
20 Enterprise for the following purposes: (a) to expand the operations of the
21 MarketAmerica Enterprise through additional false and misleading advertising and
22 promotional materials aimed at recruiting new Distributors; (b) to facilitate the
23 execution of the illegal scheme; and (c) to convince current Distributors to recruit
24 new Distributors, and purchase MarketAmerica's products.

25 159. Plaintiffs and the class were injured by the reinvestment of the
26 racketeering income into the MarketAmerica Enterprise because they invested
27 billions of dollars of their own money through their purchasing of products,
28 promotional materials, and MarketAmerica products, all of which were packaged

1 and shipped at inflated charges.

2 160. In connection with promoting and executing their illegal scheme,
3 members of the MarketAmerica's Enterprise knowingly and recklessly placed and
4 caused to be placed in the United States mail or by interstate commercial carrier, or
5 took or received therefrom, matters or things to be sent to or delivered by the United
6 States mail or by interstate commercial carrier comprising, among other things
7 product, invoices, letters, promotional materials, brochures, products and checks to
8 Plaintiff and the class and received communications between and among themselves
9 through the United States mail, in all fifty states and the District of Columbia. It was
10 reasonably foreseeable that these mailings or receipts would take place in
11 furtherance of the fraudulent scheme.

12 161. In connection with promoting and executing their illegal scheme,
13 members of the MarketAmerica's Enterprise engaged in wire fraud, in violation of
14 18 U.S.C. § 1343, by, among other things, knowingly and recklessly transmitting or
15 causing to be transmitted with wire communications, in interstate and foreign trade,
16 materials promoting the illegal MarketAmerica Pyramid on internet web sites, radio,
17 satellite radio, television, email, facsimile, telephone, and text messages, including
18 promotional materials, registration information, product information, and invoices.
19 MarketAmerica and Individual Defendants maintain websites on the internet where
20 the enterprise was perpetrated.

21 162. MarketAmerica's Distributors can and do buy products and are given
22 inducements to continue working as Distributors within the MarketAmerica
23 Pyramid. MarketAmerica maintains various websites that host promotional videos
24 featuring the Individual Defendants promoting the unlawful scheme and other
25 marketing materials featuring the Individual Defendants promoting the illegal
26 scheme. MarketAmerica sent and received these interstate wire communications to
27 and from all fifty states and the District of Columbia.

28 163. Each Defendant has promoted the MarketAmerica Pyramid and

1 MarketAmerica Enterprise. Each use of the mail or wire by Defendants and the
 2 Individual Defendants done in furtherance of the MarketAmerica pyramid is an act
 3 of racketeering.

4 164. The pattern of racketeering activity through which the affairs of the
 5 MarketAmerica Enterprise were conducted and in which MarketAmerica and the
 6 Individual Defendants participated consisted of the following:

7 **Racketeering Act Number One**

8 165. Plaintiffs received, through private commercial interstate carrier and
 9 the internet portal maintained by MarketAmerica, certain application materials,
 10 which promoted the MarketAmerica Enterprise and contained material false
 11 representations regarding the success Distributors could achieve through
 12 MarketAmerica by purchasing products and recruiting others to do the same.

13 166. Because of her receipt of these materials, Plaintiffs signed up with
 14 MarketAmerica purchased MarketAmerica products, and recruited others to do the
 15 same. The materials and package items were sent to Plaintiffs with the purpose and
 16 intent of promoting the MarketAmerica Enterprise's illegal scheme, all in violation
 17 of 18 U.S.C. § 1341.

18 **Racketeering Act Number Two**

19 167. Plaintiffs received, through private commercial interstate carrier, and
 20 the internet portal maintained by the Defendants, income disclosures, which
 21 promoted the MarketAmerica Enterprise and the MarketAmerica pyramid through
 22 the sales and marketing plan, and which contained material false representations
 23 regarding the success that Distributors could achieve through MarketAmerica by
 24 purchasing product packages and recruiting others to do the same.

25 168. Because of their receipt of the representations, Plaintiffs signed up with
 26 MarketAmerica, purchased MarketAmerica product packages, and recruited others
 27 to do the same. The income disclosure statements with the purpose and intent of
 28 promoting the MarketAmerica Enterprise's illegal scheme, all in violation of 18

1 U.S.C. § 1341.

2 **Racketeering Act Number Three**

3 169. Plaintiffs ordered, through interstate wire transmissions over the
 4 internet product packages, which were promoted by the MarketAmerica Enterprise
 5 as the means by which Distributors such as Yang could pay for their position and
 6 get greater retail profits. MarketAmerica hosted these websites. Yang paid
 7 MarketAmerica for these products using an electronic transfer of funds.
 8 MarketAmerica shipped Yang these products through private commercial interstate
 9 carrier. MarketAmerica coordinated through interstate wires on at least a monthly
 10 basis following the order the collection and accruing of the rewards associated with
 11 those purchases. Because of the promised rewards, points, commissions, and
 12 opportunity to advance up the MarketAmerica Pyramid, Plaintiff Yang purchased
 13 MarketAmerica Products, paid for those MarketAmerica product packages, and
 14 received those products, using instrumentalities of interstate commerce. Defendants'
 15 actions violated 18 U.S.C. §§ 1341 and 1343.

16 **Racketeering Act Number Four**

17 170. Throughout April of 2009 and continuing through today,
 18 MarketAmerica distributed information by interstate wire transmissions over the
 19 internet, such as www.MarketAmerica.com and Shop.com. The MarketAmerica
 20 websites promoted the fraudulent scheme through videos of Individual Defendants
 21 containing material false representations regarding the business opportunity
 22 available to Distributors, and the wealth that a distributor could get by agreeing to
 23 become an MarketAmerica distributor. Plaintiffs became MarketAmerica
 24 distributors and maintained their position as MarketAmerica distributors and
 25 continued to order MarketAmerica products and recruit others to do the same. This
 26 conduct violated 18 U.S.C. § 1343.

27 **Racketeering Act Number Five**

28 171. Throughout 2016, the members distributed information by interstate

1 wire transmissions over the internet promoting MarketAmerica as described in this
2 Complaint. These videos promoted the fraudulent pyramid scheme and contained
3 material false representations regarding the wealth that a recruit or MarketAmerica
4 distributor could achieve if that recruit became an MarketAmerica distributor and if
5 a distributor purchased MarketAmerica products. This violated 18 U.S.C. § 1343.

6 172. MarketAmerica and the Individual Defendants' representations and
7 omissions were the proximate cause of Plaintiffs, and the class, joining the
8 fraudulent scheme and purchasing the products.

9 173. To the extent proof of reliance is legally required, in engaging in the
10 aforementioned wire and mail fraud, MarketAmerica and the Individual Defendants
11 knew that Plaintiffs and the class would reasonably rely on their representations and
12 omissions, which would cause the Plaintiffs and the class joining the fraudulent
13 pyramid scheme and purchasing the products.

14 174. Defendants and the Individual Defendants knew that the
15 misrepresentations and omissions described above in promoting and executing the
16 fraudulent scheme were material because they caused Plaintiffs and the class to join
17 and participate in the illegal scheme.

18 175. Had Plaintiffs and the class known that MarketAmerica and the
19 Individual Defendants were promoting an illegal scheme, they would not have
20 joined the MarketAmerica' pyramid scheme.

21 176. MarketAmerica's and the Individual Defendants' acts of mail and wire
22 fraud were a proximate cause of the injuries that Yang and the class suffered.
23 Because of MarketAmerica and the Individual Defendants' pattern of unlawful
24 conduct, Plaintiffs and the class lost hundreds of millions of dollars, if not billions of
25 dollars.

26 177. Under 18 U.S.C. § 1964, Plaintiffs and the class are entitled to treble
27 their damages, plus interest, costs and attorney's fees.
28

1 **SIXTH CLAIM FOR RELIEF**

2 **RICO 18 U.S.C. § 1962(c)**

3 (Plaintiffs on behalf of themselves and the Class Against All Defendants, including
4 DOES 1 through 10)

5 178. Plaintiffs reallege all allegations as if fully set forth herein, and
6 incorporate previous allegations by reference.

7 179. MarketAmerica and the Individual Defendants are associated with the
8 MarketAmerica Enterprise. In violation of 18 U.S.C. § 1962(c), MarketAmerica
9 and the Individual Defendants conducted and/or participated in the conduct of the
10 affairs of the MarketAmerica Enterprise, including participation in activities in
11 furtherance of the MarketAmerica Defendants' fraudulent scheme, through the
12 pattern of racketeering activity earlier alleged.

13 180. As a direct and proximate result of MarketAmerica and the Individual
14 Defendants' violation of 18 U.S.C. § 1962(c), Plaintiffs and the class were induced
15 to, and did, become Distributors in the MarketAmerica Pyramid scheme and
16 purchased hundreds of millions of dollars, if not billions of dollars of the
17 MarketAmerica products and recruited others to do the same. Plaintiffs and the
18 class were injured by MarketAmerica's and the Individual Defendants' unlawful
19 conduct. The funds used to buy MarketAmerica products constitute property of
20 Plaintiffs and the class within the meaning of 18 U.S.C. § 1964(c).

21 181. Under 18 U.S.C. § 1964(c), Yang and the class are entitled to treble
22 their damages, plus interest, costs and attorney's fees.

23 **SEVENTH CLAIM FOR RELIEF**

24 **(RICO 18 U.S.C. § 1962(d))**

25 (Plaintiffs on behalf of themselves and the Class Against All Defendants including
26 DOES 1 through 10)

27 182. Plaintiffs reallege all allegations as if fully set forth herein, and
28 incorporate previous allegations by reference.

183. MarketAmerica and the Individual Defendants agreed to work together in a symbiotic relationship to carry on the illegal scheme. Under that agreement, MarketAmerica, all named defendants, and those named as DOE defendants, and others conspired to violate 18 U.S.C. § 1962(a) and (c), in violation of 18 U.S.C. § 1962(d).

184. As a direct and proximate result of MarketAmerica's and the Individual Defendants' violation of 18 U.S.C. § 1962(d), Plaintiffs and the class were injured by MarketAmerica's and the Individual Defendants' unlawful conduct. The funds used to buy MarketAmerica products constitute property of Yang and the class under 18 U.S.C. § 1964(c).

185. Under 18 U.S.C. § 1964(c), Plaintiffs and the class are entitled to treble their damages, plus interest, costs and attorney's fees.

EIGHTH CLAIM FOR RELIEF

(Federal Securities Fraud)

(Plaintiffs on behalf of themselves and the Class Against All Defendants including DOES 1 through 10)

186. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

187. In the alternative to Counts Five, Six, and Seven, and without prejudice to their position that Counts Five, Six and Seven are not preempted by the PSLRA, Plaintiffs in Count Eight alleges violations of the securities laws.

188. Only to the extent Defendants contend that Plaintiffs' purchases of starter kits, payment of monthly and annual fees, and purchases of MarketAmerica products constitute investments in unregistered securities (the sale of which would be a past and continuing violation of federal securities laws), and only if Defendants are successful in obtaining a dismissal for judgment against Plaintiffs' RICO claims on the grounds that the PSLRA preempts their RICO claims, Plaintiffs contend that their purchases of starter kits, payment of monthly fee, and purchases of

1 MarketAmerica products constitute investments in securities.

2 189. MarketAmerica made numerous material omissions in its Policies
3 regarding retail sales. MarketAmerica represented that retail sales were a significant
4 part of Defendants' revenues.

5 190. These statements are misleading because they fail to inform
6 Distributors that "retail sales," particularly as defined in the Policies, are not a true
7 viable way of earning income because Distributors are extremely unlikely to make
8 significant "retail sales" and because the only realistic way to make money in the
9 MarketAmerica scheme is through recruiting.

10 191. MarketAmerica made material omissions in its Policies regarding
11 Distributors' ability to earn money. In the Policies, MarketAmerica informed its
12 Distributors that they do not even need to be good at sales, and they can still earn
13 money.

14 192. This statement is misleading because it fails to inform Distributors that
15 very few Distributors are likely to earn any profit from participating in
16 MarketAmerica, regardless of how much work they put in and regardless of what
17 part of the country they live in.

18 193. By making affirmative statements regarding retail sales and the ability
19 of Distributors to earn income, MarketAmerica undertook an affirmative obligation
20 to make the disclosures necessary to make such statements not misleading.

21 194. MarketAmerica made the then-current version of the Policies available
22 to Plaintiffs and the Class Members through MarketAmerica's website at all times.
23 MarketAmerica contractually requested Plaintiffs and the Class Members to
24 acknowledge that they had read and reviewed the current version of the Policies at
25 the time they joined MarketAmerica, to abide by the terms of the current
26 version of the Policies, and to read, understand, and adhere to the current version of
27 the Policies.

28 195. MarketAmerica made these omissions knowing that doing so was false

1 and misleading. MarketAmerica benefitted in a concrete and substantial way from
 2 the operation of the pyramid scheme, the recruitment of new Distributors, and new
 3 Distributors' reliance on MarketAmerica's omissions.

4 196. MarketAmerica made these omissions with the specific intent that
 5 Distributors rely on them.

6 197. Plaintiffs' and the Class Members' reliance on the omissions may be
 7 presumed.

8 **PRAYER FOR RELIEF**

9 The named Plaintiffs and the Plaintiffs' class and subclasses request the
 10 following relief:

- 11 a. Certification of the class and subclasses;
- 12 b. A jury trial and judgment against Defendants;
- 13 c. Rescission of the agreements, accounts stated, invoices, receipts, ticket
 14 stubs, bills, and any other writings upon which the scheme is based, and recovery of
 15 all consideration paid pursuant to the scheme, less any amounts paid or
 16 consideration provided to the participant pursuant to the scheme;
- 17 d. Damages for the financial losses incurred by Plaintiff and by the class
 18 and subclasses because of the MarketAmerica and the Individual Defendants'
 19 conduct and for injury to their business and property;
- 20 e. Restitution and disgorgement of monies;
- 21 f. Temporary and permanent injunctive relief enjoining MarketAmerica
 22 from paying its Distributors recruiting rewards that are unrelated to retail sales to
 23 ultimate users and from further unfair, unlawful, fraudulent and/or deceptive acts;
- 24 g. The cost of suit including reasonable attorneys' fees under California
 25 Code of Civil Procedure § 1021.5, Civil Code §1689.2, and otherwise by law;
- 26 h. For damages in an amount yet to be ascertained as allowed by law; and
- 27 i. For such other damages, relief and pre- and post-judgment interest as
 28 the Court may deem just and proper.

1
2 Dated: July 20, 2017

By: 

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14 CHUANJIE YANG, OLLIE LAN, LIU LIU, AND
15 ALL THOSE SIMILARLY SITUATED
16
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19
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27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs Chuanjie Yang, Ollie Lan, and Liu Liu on behalf of themselves, and
3 those similarly situated, hereby request a jury trial on all matters so triable.

4
5 Dated: July 20, 2107

By:  _____

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18 **ALL THOSE SIMILARLY SITUATED**

PROOF OF SERVICE

I, the undersigned, declare: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210.

On July 20, 2017, I served the foregoing document as follows:

FIRST AMENDED COMPLAINT – CLASS ACTION

☒ [X] by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such electronic filing to counsel of record for all parties by operation of the Court's CM/ECF System.

☐ [] by U.S. Mail in the ordinary course of business to the non-CM/ECF participants indicated on the attached Manual Notice List. I am readily familiar with the Firm's practice for the collection and processing of correspondence for mailing with the Postal Service and that the correspondence would be deposited with same that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct. Executed on July 20, 2017, at Beverly Hills, California.



NATALY GRANDE

Exhibit 3

Name of Distributor Paying for Application:

Paying Distributor ID No.:

Please complete in BLOCK LETTERS

Independent Distributor Information

If you are married you must include your spouse's information on this form. Married individuals are treated as a single Distributorship.
Check all that apply. ☐ Individual ☐ Spouse ☐ Business Organization (Proof documents required)

Primary Distributor Social Security Number	Market America Distributor ID Number (if applicable)	Preferred Customer ID Number (if applicable)
<div></div>	<div></div>	<div></div>

Name of Primary Distributor	
Last Name	First Name
<div></div>	<div></div>

Primary Distributor's Date of Birth	<input type="checkbox"/> Male
Month/ Day/ Year/	<input type="checkbox"/> Female

Federal Tax ID Number* (if applicable)	Name of Business Organization* (if applicable)
<div></div>	<div></div>

*If using business entity you must provide copies of your articles of incorporation and a list of all principals and their SSNs

Home Phone ()	Business Phone ()	Fax ()	Mobile Phone ()
----------------	--------------------	---------	------------------

E-mail Address:
<div></div>

Secondary Distributor Social Security Number
<div></div>

Name of Secondary Distributor	
Last Name	First Name
<div></div>	<div></div>

Primary Distributor's Home/Mailing Address

Street Address		
City	State	Zip Code

Primary Distributor's Shipping Address

Street Address (Post Office Boxes are only acceptable for shipping if within Market America's USPS delivery area)		
City	State	Zip Code

Sponsor Information

Name of Sponsor	Sponsor Distributor ID Number
<div></div>	<div></div>

Placement Information

Link-to Distributor or Business Organization Name	Link-to Distributor ID	BDC Ext. No.	Check One
<div></div>	<div></div>	<div></div>	<input type="checkbox"/> Left <input type="checkbox"/> Right

Entry Classification (Check One)

<input type="checkbox"/> Sales Representative (no fee required)	<input type="checkbox"/> Converting Sales Representative to Distributor (current subscription fee required)
<input type="checkbox"/> Sales Representative Late Renewal (no fee required)	<input type="checkbox"/> Distributor, Late Renewal (current subscription fee required). Please send the appropriate payment.
<input type="checkbox"/> Distributor, Single Business Development Center Entry (current subscription fee required)	If using UFMS Credit Card on file Please provide as follows:
<input type="checkbox"/> Distributor, Master UnFranchise® Owner (Supervisory Entry). Current subscription fee required (A 300 BV minimum order must accompany this application)	Last four digits: _____ Exp. Date(mm/yy): ____/____

CHECK-WRITING PRIVILEGES

Distributor agrees (1) to comply with the rules of Market America, as may be amended from time to time, including rules requiring payment of applicable reinstatement or other charges, (2) to notify Market America of any change in address or personal bank accounts, and (3) to surrender this check-writing privilege upon demand by Market America.

Name (as it appears on credit card)	
<div></div>	
As evidenced by my signature below, I authorize Market America, Inc. to charge my credit card for any insufficient funds (check or bank draft) and service charges that are outstanding for over 30 days.	
<input type="checkbox"/> Visa	Credit Card Account No.
<input type="checkbox"/> MasterCard	<div></div>
Security Code: _____ Exp. Date(mm/yy): ____/____	

Under penalty of perjury, I certify that the Social Security Number(s) and/or Federal Tax ID Number shown on this form are correct.

I, the buyer, may cancel this transaction at any time prior to midnight of the tenth business day after the date of the transaction.

I agree to the above indicated information and I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO THE TERMS SET FORTH IN THIS AGREEMENT, AS EVIDENCED BY MY SIGNATURE BELOW.

Primary Applicant's Signature:_____	Date: _____
-------------------------------------	-------------

Secondary Applicant's Signature (if applicable): _____	Date: _____
--	-------------

Sponsor's Signature: _____	Date: _____
----------------------------	-------------

All applicants must sign this agreement. If the applicant is a Company, the Primary Distributor must sign the application. **ENCLOSE PAYMENT PAYABLE TO MARKET AMERICA IF APPLICABLE.**

All U.S. Mail to: P.O. Box 35364, Greensboro, NC 27425

Special Air Deliveries to: 1302 Pleasant Ridge Rd., Greensboro, NC 27409

SEE REVERSE SIDE FOR TERMS AND
CONDITIONS OF THIS AGREEMENT

INTERNAL USE ONLY | Processor Initials: _____

MARKET AMERICA TERMS AND CONDITIONS

You hereby apply to become an Independent Distributor or Sales Representative for Market America. You understand and agree that:

1. Legal Capacity. If you are an individual, you are of legal age to enter into legally binding contracts in the jurisdiction in which you enter into this Agreement. If you are a business entity, you are in good standing in the jurisdiction in which you were created, and in all jurisdictions in which you operate. Also, if you are a business entity, the person signing this Agreement on your behalf has the authority to do so.
2. Acceptance; Right to Sell Products. You shall become an Independent Distributor or Sales Representative upon acceptance of this Agreement by Market America. Market America shall accept this Agreement unless it notifies you of rejection within 15 days of its receipt. You shall have the right to sell the products offered by Market America in accordance with the policies and procedures in the Market America *Career Manual*, which may be amended from time to time.
3. Policies and Procedures. You certify that you have received a copy of the *Career Manual* from your Sponsor, upline Coordinator, or another source. Also, you have reviewed Part 2 of the *Career Manual* prior to entering into this Agreement. You have carefully reviewed the Management Performance Compensation Plan (MPCP) and the policies and procedures as set forth in Part 2 of the *Career Manual*, and you acknowledge that they are incorporated as part of this Agreement in their present form and as modified from time to time by Market America.
4. Modification. Market America, at its discretion, may amend the MPCP, the policies and procedures in Part 2 of the *Career Manual*, and terms of this Agreement, and shall notify you of any such amendments in the *Powerline* magazine or other official Company publications or communications.
5. Sales Representative Option. If you have elected to become a Sales Representative, you have marked the appropriate box on this Agreement. There is no fee or requirement to become a Sales Representative. As a Sales Representative, you may purchase products at Distributor cost and retail them, but you may not participate in the MPCP or earn commissions or bonuses. You understand that unless you submit the current Subscription Fee for Distributors and renew this Agreement annually, you will not receive newsletters, services, or communications from the Company, but you will receive any applicable amendments to this Agreement as described in Section 4.
6. Distributor Option: Subscription Kit. If you have elected to become an Independent Distributor and participate in the MPCP, you agree to pay the current Subscription Fee with this Agreement. You agree that the MPCP has specific reporting and time-sensitive qualification requirements as set forth in the *Career Manual*. Failure to comply with these requirements may affect your commissions, and Market America cannot make exceptions to the requirements. The Subscription Fee covers set-up costs for your Distributorship, a *Career Manual*, initial materials, and a subscription to newsletters, mailings, and other services. Start-up materials and subscription services are sold at “Company cost,” and Distributors do not receive volume credit or commissions on them. The Subscription Fee is not a service or franchise fee, but rather is strictly to offset costs incurred by the Company for educational and business materials necessary to operate a Distributorship. No purchase is necessary to become a Market America Distributor other than the purchase of a Subscription Kit.
7. Term; Renewal. The term of this Agreement is one year. If you wish to continue as a Distributor, you must apply to renew this Agreement and submit the current renewal fee each year. The amount of this fee is subject to change upon written notice in Company publications. You have the right not to seek annual renewal of this Agreement, and Market America has the right to accept or reject your renewal at its discretion. Any renewal not rejected within 15 days of receipt by Market America, or by January 15 of the renewal year, whichever is later, shall be deemed accepted.
8. Termination. Either party may terminate this Agreement for any reason and at any time upon thirty (30) days written notice to the other party. However, Market America may terminate this Agreement with less than 30 days written notice for serious violations of the policies and procedures, in accordance with the Corrective Action Procedure described in the *Career Manual*. The Subscription Fee is fully refundable for a period of 30 days, from the date of this Agreement upon the return of the Subscription Kit in good condition and written termination of this Agreement by you. The cost of the *Career Manual* and initial materials in good condition is \$39.00, and this is refundable for a period of 90 days from the date of this Agreement, upon return of the Manual and materials in good condition and written termination of this Agreement. The balance of the Subscription Fee is not refundable after 30 days, and no refunds are granted after 90 days. For products and materials other than the Subscription Kit, Market America shall refund 90 percent of the Distributor cost of all resalable products and materials purchased during the one-year period prior to termination. In applying for a refund, you must follow the provisions contained in the *Career Manual*.
9. Independent Contractor Status. Upon acceptance of this Agreement by Market America, you will be an independent contractor responsible for your own business. This Agreement is not intended and shall not be construed to create a relationship of employer-employee, agency, partnership or joint venture between you and Market America, or between you and your sponsor. This Agreement does not constitute the sale of a franchise or a distributorship, and no fees have been or will be required from you for the right to distribute Market America’s products pursuant to this Agreement. As an independent contractor, you must:
- (A) Abide by any federal, state, county and local laws, rules and regulations pertaining to this Agreement and/or the acquisition, receipt, holding, selling, distributing or advertising of Market America products.

(B) At your expense, make, execute or file all reports and obtain all licenses as are required by law or public authority with respect to this Agreement and/or the receipt, holding, selling, distributing or advertising of Market America products.
10. Not an Employee. You are not considered an employee of Market America under any federal, state or local laws, including but not limited to the Federal Unemployment Tax, Workers’ Compensation, income tax withholding, or any other federal, state or local laws. It is your responsibility to pay self-employment, federal, state and local income taxes as required by law.
11. Retail Sales. The MPCP is built on retail sales to the end consumer. You may purchase products for your personal or family use, but Market America does not pay commissions on these purchases. You understand that in order to sponsor another Distributor under the MPCP, you must sell \$200 in retail value of products within 30 days of sponsorship and submit receipts to the company with a retail sales report (Form 1000), or you shall lose sponsorship rights. You must also sell \$200 in retail value of products to end users and submit a Form 1000 prior to receiving any commissions under the MPCP or qualifying to be a Coordinator.
12. Trademarks; Advertising. You may not use the Market America trade name or product trademarks except in the advertising material or literature produced or provided to you by Market America, or as otherwise authorized by Market America in writing. Prior written approval from Market America is required to advertise Market America products, or to use or produce any literature other than Market America-produced literature, relating to Market America, its products, or the MPCP.
13. Sale of nutraMetrix® Product Line. Only Nutraceutical Anti-Aging Consultants (NAACs) are eligible to purchase or distribute nutraMetrix Advanced Nutraceutical branded products. NAACs may only distribute the nutraMetrix products to licensed health professionals. NAACs are also permitted to purchase the nutraMetrix products for personal consumption.
14. Public Presentations of the MPCP. Only Distributors who have achieved a Pin Level of Certified Executive Coordinator or higher are permitted to make public presentations of the MPCP or the UnFranchise® System.
15. Management Responsibilities; Other Agreements. You must manage all of the Distributors in your sales organization, regardless of whether their sales volume contributes to your commissions. You must maintain ongoing contact, communication, and management supervision with their sales organizations. Examples of such supervision may include, but are not limited to: personal meetings, telephone contacts, voice mail, e-mail, newsletters, written correspondence, personal training sessions, and accompanying them to Company meetings and training programs. You must provide evidence to the Company, at its request, of ongoing fulfillment of management responsibilities. You understand that you must sign additional agreements in order to advance in management levels in the MPCP or to assume a training and leadership position in the National Meeting, Training, and Seminar System. Upon meeting the qualifications to become a Coordinator, you must submit an Executive Coordinator Application and Qualification Agreement (Form 1001) and an Executive Coordinator Acknowledgment and Agreement (Form 925) within 28 days of qualifying at the Coordinator level (i.e. earning your first commission).
16. One Distributor per Household. Prior written approval from Market America is required to have more than one Distributor in a single household. A Distributor will not receive personal sponsorship activation credit for an approved Distributor in the same household.
17. Cross-Group Sponsoring. Sponsoring any Market America Distributor, directly or indirectly, into another line of sponsorship, within the Market America MPCP or in any other Internet One-To-One Marketing Company marketing plan, is strictly prohibited. For purposes of this Agreement, an “Internet One-To-One Marketing Company” shall be defined as (i) the business of Internet marketing, or direct sales, multi-level marketing, or network marketing, of consumer products or services through

- a network of independent distributors who can earn money by purchasing consumer products at wholesale prices and reselling them at retail prices and by building sales organizations of other independent distributors from which they may earn commissions from training and managing those sales organizations or (ii) the business of mass customization and Internet marketing of consumer products or services by identifying preferences of an enterprise’s customer base through data mining and similar techniques and sourcing production and distribution to consumers.
18. Right to Setoff. If you or anyone in your line of sponsorship is in default on payment for Market America products or services, Market America may setoff/deduct the balance due from any commission or other compensation owed to you by Market America, or against any credit on your account. Default on payments due for purchases from Market America is grounds for termination of this Agreement.
19. Prior Disciplinary Action. You represent that you have never been the subject of disciplinary action as a distributor for any other Internet One-To-One Marketing Company (as defined in Section 17 above). If you have been the subject of a disciplinary action, you must send an explanation of the facts and resolution of that action to Market America’s Corporate Office (attn: Legal Department) prior to submitting this Agreement.
20. Distributor Grievances. You agree to submit any complaint, grievance, or claim against another Distributor or Market America in accordance with the Grievance Procedure set forth in the *Career Manual*. You agree not to seek arbitration, take legal action except in accordance with the Grievance Procedure, or contact any regulatory agency regarding your Market America Distributorship until all steps of the Grievance Procedure have been completed. If you breach this covenant, you may be liable to Market America for damages and legal costs, including reasonable attorney’s fees.
21. Proprietary and Trade Secret Information. You acknowledge that certain information and material which may be provided to you while you are a Distributor, including, but not limited to, Distributor lists, Distributor contact information, Distributor financial data, other Distributor personal information (including information related to Distributors in your sales organization), sales organization linkage information (“genealogy reports”), the National Meeting, Training, and Seminar System, Market America’s voice mail system, and other matters not made available to the general public and which have been made available to you only because you are a Distributor, are proprietary and constitute trade secrets of Market America. You agree not to use or disclose such information and material to anyone except for the purpose of promoting and developing your Market America business. You further agree not to use or disclose such information and material for the purpose of developing or promoting your business as a distributor for any other Internet One-To-One Marketing Company (as defined in Section 17 above).
22. Protection of Market America Sales Force. You recognize that Market America has invested substantial effort and money in training, building, supporting and maintaining its sales force and that protecting the Market America sales force from unfair competition is important to both Market America and the other Distributors in its sales force. You agree that the restrictions contained in this Agreement are a fair and reasonable way to help protect the Market America sales force from unfair competition. You agree that violations of the restrictions contained in this Agreement will cause irreparable injury to Market America and that Market America is entitled to seek preliminary and permanent injunctive relief to remedy such violations.
23. Non-Competition. While you are a Market America Distributor, you agree to the following limited restrictions:
- (A) You will not solicit, directly or indirectly, any Market America Distributor, whether or not personally sponsored by you, into any other Internet One-To-One Marketing Company (as defined in Section 17 above). Examples of indirect solicitation include, but are not limited to, request to review the products or marketing plan, discussing good experiences with the company, and putting a Market America Distributor in contact with a third party who solicits that Distributor.

(B) You will not sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above), to any Market America Distributor except those who are personally sponsored by you.

(C) You will not induce any Market America Distributor, including those personally sponsored by you, to sell the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above).

(D) You will not, directly or indirectly, solicit any Market America Distributor to leave or reduce his or her activity with Market America.

(E) You will not market the products of any other Internet One-To-One Marketing Company (as defined in Section 17 above) to your retail customers at the same time as you market Market America products to the same customers. The purpose of this provision is to avoid any confusion between Market America’s products and the products of the other Internet One-To-One Marketing Company (as defined in Section 17 above).

(F) You will not commingle the business of any other Internet One-To-One Marketing Company (as defined in Section 17 above) with your Market America business. You will keep each business totally separate and distinct from the other.
24. Non-Competition after Termination. For a period of six (6) months after termination of your Market America Distributorship, whether by voluntary termination, involuntary termination, or non-renewal, you will not contact or communicate with any Market America Distributor, or any of your former retail customers of Market America products, or any retail customers of anyone in your former Market America downline, on behalf of any other Internet One-To-One Marketing Company (as defined in Section 17 above):
- (A) within 100 miles of your residence during the time you were a Distributor, or

(B) within 100 miles of the residences of any of your personally sponsored Distributors, or

(C) within 100 miles of any Distributor in your Market America downline who achieved the level of Certified Executive Coordinator or above during the time that you were a Market America Distributor.
- In calculating the six-month time period provided in this Section, the time shall be suspended during any period in which you are not in compliance with this Agreement.
25. Indemnification. You agree to defend, indemnify and hold harmless Market America, its owners, representatives, officers, employees, agents, and assigns from and against any and all liability, actions, claims, judgments, lawsuits, demands, costs and expenses (including attorney’s fees) arising out of, resulting from or in any way connected to your performance under this Agreement, whether occasioned by the actions or omissions to act of you or your representatives, contractors, agents, employees or invitees. This indemnity clause shall apply without regard to whether or not Market America is actively or passively negligent with respect to the liability, action, claim, judgment, lawsuit and/or demand. You will provide the defense of any and all such actions, claims, lawsuits and/or demands, and will employ counsel who is satisfactory to Market America for that purpose. Alternatively, Market America may, in its sole discretion, provide its own defense at your expense.
26. Non-Waiver. Any failure to enforce any right hereunder shall not constitute a waiver of any right granted herein or existing under North Carolina law.
27. Unenforceable Terms. In the event any one or more of the terms contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term had never been contained herein.
28. Choice of Law. North Carolina law shall govern any dispute arising out of, or related to, this Agreement notwithstanding its choice of law provisions.
29. Arbitration. **Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall ultimately be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrators may be entered in a court of competent jurisdiction. You understand that this arbitration provision means you are giving up the right to have any dispute you have regarding this Agreement heard by a jury and determined in a court of law. The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina. Either party may seek emergency or provisional relief in the General Court of Justice, Guilford County, North Carolina, prior to invoking the arbitration remedy.**
30. Entire Agreement. This Agreement and Part 2 of the *Career Manual* constitute the entire agreement between you and Market America. Market America has not made any additional promises, representations, guarantees or agreements to or with you. You agree that you shall not rely on any representation made by a Distributor, whether verbal or written, regarding the terms and conditions of this Agreement, as the basis for a claim of misrepresentation against Market America. To the extent that there is any inconsistency between this Agreement and Part 2 of the *Career Manual*, this Agreement controls. No additional promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by an authorized officer of Market America.

Exhibit 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-4012-GW(JEMx)	Date	September 28, 2017
Title	<i>Chuanjie Yang, et al. v. Market America, Inc., et al.</i>		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE
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Javier Gonzalez

Katie Thibodeaux

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Daren M. Schlecter
Blake J. Lindemann

Lawrence B. Steinberg
Pressly M. Millen

PROCEEDINGS: DEFENDANTS' MOTION TO TRANSFER ACTION TO MIDDLE DISTRICT OF NORTH CAROLINA, OR, IN THE ALTERNATIVE, TO STAY OR DISMISS ACTION PENDING ARBITRATION [39]

The Court's Tentative Ruling is circulated and attached hereto. Court hears oral argument. For reasons stated on the record, Defendants' motion is TAKEN UNDER SUBMISSION. Court to issue ruling.

A Status Conference is set for November 6, 2017 at 8:30 a.m. Parties will file a report by October 26, 2017.

Initials of Preparer JG

: 12

Yang, et al. v. Mkt. Am., Inc., et al., Case No. 2:17-cv-04012-GW-(JEMx)
Tentative Ruling on Defendants’ Motion to Transfer Action to Middle District of North Carolina, or, in the Alternative, to Stay or Dismiss Action Pending Arbitration

Chuanjie Yang, Ollie Lan aka Ruoning Lan, and Liu Liu (collectively, “Plaintiffs”) sue Market America, Inc. (“Market America”), Market America Worldwide, Inc., James Howard Ridinger, Loren Ridinger, and Marc Ashley (collectively, “Defendants”), asserting eight claims for relief in their First Amended Complaint – Class Action (“FAC”) filed on July 20, 2017: 1) judgment declaring the arbitration provision unenforceable; 2) endless chain scheme; 3) unfair and deceptive practices claims under Cal. Bus. & Prof. Code § 17200, et seq.; 4) false advertising, pursuant to Cal. Bus. & Prof. Code § 17500, et seq.; 5) violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(a); 6) RICO, 18 U.S.C. § 1962(c); 7) RICO, 18 U.S.C. § 1962(d); and 8) federal securities fraud. *See* Docket No. 33.

According to the FAC, the case generally involves allegations that Defendants operate an illegal pyramid/fraudulent endless-chain scheme targeting Chinese-American immigrants. *See* FAC ¶¶ 3, 6, 100-03. They take money by charging fees in return for the right to sell products that they do not manufacture, and reward for recruiting other participants into the pyramid. *See id.* ¶¶ 6, 29-30. Income is made only from the recruitment of additional sales representatives, and by way of wholesale commissions. *See id.* ¶¶ 43, 46. The individual defendants, all at the top of the pyramid, collude by making similar statements to promote the MarketAmerica scheme. *See id.* ¶¶ 55, 59-60. Plaintiffs were distributors of MarketAmerica. *See id.* ¶¶ 68-70.

Plaintiffs acknowledge that some class members have had to sign a one-page document labeled “Independent Distributor Application and Agreement,” which requires a distributor to agree to the “terms” of the agreement. *See id.* ¶¶ 73-74. Below the signature box on the form, the agreement directs those viewing it to see the reverse side for “terms and conditions” of the agreement and, on the reverse side, there is an arbitration provision. *See id.* ¶¶ 75-76. There is also, according to Plaintiffs, an “internal reconciliation procedure” and a “two-tiered Kangaroo court administrative review proceeding” that are a “sham.” *See id.* ¶ 84. Plaintiffs assert that the arbitration

provision is unenforceable. *See id.* ¶¶ 77-90, 108-10.

Defendants now move to transfer the action to the Middle District of North Carolina or, alternatively, to stay or dismiss the action. They do not move to compel arbitration, however, apparently because of a belief – shared by Plaintiffs¹ – that this Court cannot compel arbitration outside of this District.² This notion is the lynchpin of this particular motion.³ *See, e.g.*, Docket No. 39, at 6:1-3 (“[T]he Court must honor the parties’ agreement and transfer this case to the Middle District of North Carolina so that Defendants can compel arbitration in that district.”).

The problem with this lynchpin is that – even assuming there are no questions whatsoever about enforceability of the arbitration agreement and its venue provision – it appears to the Court that it may be a faulty one. Although there are differing views on this question, one leading practice guide on the topic of arbitration suggests that, at least in the Ninth Circuit, a court *may* order arbitration to commence in a location outside the district court’s boundaries: “According to the Ninth Circuit, a petition to compel need not be filed in the forum designated in the arbitration agreement as the place for the arbitration hearing: ‘(T)he venue provisions of the FAA do not supplant the general venue provisions of 28 USC §1391(a).’” Knight, Chernick, et al., California Practice Guide: Alternative Dispute Resolution (2016) (“Knight & Chernick”) § 5:300.2, at 5-296 (quoting *Textile Unlimited, Inc. v. A.BMH & Co., Inc.*, 240 F.3d 781, 784 (9th Cir. 2001)).

¹ Defendants appear to have been influenced, in their structuring of this motion, by the allegation in Plaintiffs’ FAC that “[u]nder controlling precedent in the Ninth Circuit, Market America cannot seek to compel arbitration in another state, here the Middle District of North Carolina,” and, consequently, “Market America’s sole remedy is to seek to transfer the case should it seek to compel arbitration in another venue.” FAC ¶ 72; *see also* Docket No. 39, at 20:7-10 (“In the FAC, Plaintiffs point out that this Court may not compel arbitration in North Carolina, as the parties agreed to do.”). The only case citation Plaintiffs offer in support of their “controlling precedent in the Ninth Circuit” assertion is to a Northern District of California case, *Beauperthuy v. 24 Hour Fitness USA, Inc.*, No. 06-0715-SC, 2012 WL 3757486, *5 (N.D. Cal. July 5, 2012). *See* FAC ¶ 72. A district court ruling is, of course, not “controlling precedent.” That decision does, however, cite three Ninth Circuit cases discussed further *infra*.

² The arbitration agreement (if enforceable and applicable) has an arbitration-venue provision calling for any arbitration to occur in Greensboro, North Carolina: “The arbitration shall be heard by one arbitrator, and it shall take place in Greensboro, North Carolina.” Declaration of Eugene Wallace (Docket No. 39-1), ¶ 13.

³ Defendants did file a motion to compel arbitration with respect to the original Complaint, but the Court vacated that motion when Plaintiffs filed a First Amended Complaint as-of-right. *See* Docket No. 35.

If that predicate for Defendants' motion falls away, the rest of the motion – as currently presented – crumbles. There may still be a question of whether a court may *permissively* transfer an action to the venue where the arbitration would occur under an agreement, or whether a different type of transfer – for instance, a Section 1404(a) transfer – is available, or even whether this Court should simply go ahead and compel arbitration itself (or deny a request to compel arbitration). But the current motion does not seek, or advocate for, any of these outcomes.

For the same reason, the dispute in the parties' briefs (and the view reflected in the FAC) about whether plaintiff Yang agreed to the arbitration (and venue) provision is irrelevant. The venue provision is irrelevant at this stage because it does not – if the interpretation set forth above is correct – *require* transfer, even if agreed-to, and the arbitration provision is irrelevant because Defendants have not moved to compel arbitration (though questions of arbitrability were raised and discussed in the course of this *transfer* motion). The same is true with respect to the parties' debate about the applicability and scope of Market America's Career Manual's internal dispute resolution procedure: if Defendants are not asking the Court to compel arbitration, the Court has no reason at this time to assess whether the arbitration provision or, instead, some other agreement, would govern the parties' dispute.

As a result, the question of where Ninth Circuit law allows a district court to compel arbitration becomes a crucial threshold issue to the further consideration of this motion. Aside from Plaintiffs' citation, as referenced *supra*, Footnote 1, to *Beauperthuy* in the FAC, Defendants point to the Ninth Circuit's 1941 decision in *Continental Grain Co. v. Dant & Russell*, 118 F.2d 967 (9th Cir. 1941), as support for the proposition that the Ninth Circuit does not allow courts to compel arbitration outside of their home district (and then also cite two district court decisions from within this Circuit that, in transferring the cases, followed the approach Plaintiffs insist is appropriate, and two more district court cases that *dismissed* cases because of a conclusion that they could not compel arbitration out-of-state). See Docket No. 39, at 20:10-16, 25:15-20. Plaintiffs, for their part, first cite *Textile Unlimited* – the case *Knight & Chernick* relies upon to suggest (at least according to one interpretation) that the Ninth Circuit takes the *opposite* view – before then selectively citing language from 9 U.S.C. § 4 (part of the Federal

Arbitration Act (“FAA”)),⁴ then again citing *Textile Unlimited*, along with citations to *Continental Grain, Bauhinia Corp. v. China Nat’l Mach. & Equip. Imp. & Exp. Corp.*, 819 F.2d 247, 250 (9th Cir. 1987), and a district court case from the Northern District of California. *See* Docket No. 42, at 1:24-26, 10:22-11:3. That is the full extent of the parties’ presentation on this issue. An examination of these cases – and at least one other Ninth Circuit decision – is required (along with consideration of how this suit was initiated and the position that Defendants find themselves in as a result).

Textile Unlimited involved a suit “to enjoin an arbitration.” 240 F.3d at 783. “Under the circumstances presented by [that] case, [the Ninth Circuit] conclude[d] that the [FAA] does not require venue in the contractually-designated arbitration locale.” *Id.* The court concluded that venue was proper in the Central District of California under the general venue statute, 28 U.S.C. § 1391, and that nothing in the FAA required that it be brought “where the contract designated the arbitration to occur.” *Id.* at 784. In reaching the conclusion, the Ninth Circuit noted that the Supreme Court had “recently explained [that] the [Federal Arbitration Act’s] venue provisions are discretionary, not mandatory,” commenting further that the Supreme Court’s analysis “pertained to the [Federal Arbitration Act] as a whole.” *Id.* (citing *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 194-96 (2000)). “Thus, the venue provisions of the [Federal Arbitration Act] do not supplant the general venue provisions of 28 U.S.C. § 1391(a); rather, they are permissive and supplement those sections.” *Id.*

⁴ As Knight & Chernick makes clear, the different approaches on this question each find support in language from Section 4, which provides, in pertinent part, as follows:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.... The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearings and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed....

9 U.S.C. § 4. Plaintiffs quote only the phrase “shall be within the district in which the petition for an order directing such arbitration is filed.” Docket No. 42, at 10:19-21.

That being said, the parties could view *Textile Unlimited* as favoring their conclusion by way of that decision's explanation of the result of its analysis of Section 4. Rejecting the argument that venue over an action to compel arbitration in "any place other than the place of arbitration contractually specified is precluded by the § 4 provision that '[t]he hearing and proceedings under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed,'" the Ninth Circuit explained that, "by its terms, § 4 only confines the *arbitration* to the district in which the petition to compel is filed. It does not require that the petition be filed where the contract specified that arbitration should occur." *Id.* at 785. Perhaps the parties are correct, and what this means is that if Defendants want an arbitration to occur in North Carolina, they would have to move or petition to compel that result in that venue.⁵ But, as an initial matter, that downplays the clear general instruction from *Textile Unlimited* that the general venue statute is the primary venue rule, with the FAA's venue provisions merely supplementing them. Moreover, as explained further herein, that understanding may not adequately take into account the distinction between a "petition" to compel arbitration (which Section 4 specifically provides for) and a motion to compel arbitration.

Examining *Continental Grain*, that decision does indeed observe that "[t]he statute expressly provides that the hearing and proceeding shall be within the district in which the petition for the order directing the arbitration is filed." 118 F.2d at 968. This Court has reason, however, to question whether *Continental Grain*'s reasoning still rests on solid ground. The decision rejected the appellant's challenge that the district court had no right "to order the arbitration within the district of Oregon because such an order does not conform to the agreement of the parties for an arbitration in New York." *Id.* at 969. In explaining its rejection, the Ninth Circuit offered that "[p]rior to the enactment of the United States arbitration act (1925) such agreements could not be enforced in the courts of the United States." *Id.* From that starting point, it continued that "[i]f there could be any doubt of the power of the legislature to limit the right of arbitration to one conducted within the jurisdiction of the district court ordering the arbitration, it must be dispelled by the consideration that Congress could attach any limitation it desired to the

⁵ If true, this leads to the question of why Defendants did not simply initiate an action in North Carolina, petitioning to compel an arbitration there, referencing this case. The Court might ask the parties why that is not an option as opposed to moving to transfer this action.

right to enforce arbitration in the federal courts [and] that it has made a condition that the arbitration be held in the district where the court sits....” *Id.*; see also *Beauperthuy*, 2012 WL 3757486, *5 (“Assuming that the district court finds [a valid agreement and that the agreement encompasses the dispute], the court lacks discretion to do anything other than order arbitration to proceed *according to its terms*. One term, however, may be *disregarded*: under Ninth Circuit precedent, § 4 ‘confines the arbitration to the district in which the petition to compel is filed.’”) (quoting *Textile Unlimited*, 240 F.3d at 785) (emphases added). Of course, when it comes to guessing how the present Supreme Court might resolve the apparent inconsistency in Section 4, this Court imagines there would be little dispute from the parties that the current trend is in respecting and enforcing the parties’ agreement as written, notwithstanding courts’ and legislatures’ attempts to impose conditions on the enforceability of those agreements.

Beyond even that, *Continental Grain* closed this part of its analysis by commenting that “[t]he appellant, having invoked the jurisdiction of the United States District Court for Oregon is hardly in a position to complain that it has exercised that jurisdiction in accordance with the statute giving it jurisdiction.” Of course, Defendants did *not* initiate this lawsuit in this forum; Plaintiffs did. If the parties’ interpretation of Section 4 is given credence, a plaintiff can force a defendant to either give up rights under a contractual choice-of-forum clause designating that arbitration take place elsewhere or (unless the defendant simply takes the step of filing a competing petition to compel arbitration in the venue housing the purported arbitration locale, see Footnote 5, *supra*) engage in at least some measure of litigation efforts (for instance, a relatively-complicated motion to transfer) before finally being able to move to compel such arbitration. In short, this case is somewhat unlike *Continental Grain* given the fact that it is not Defendants’ doing that results in this case presently being centered here.

As it relates to Section 4, *Bauhinia Corp.* (the final Ninth Circuit decision the parties rely upon, but a case unmentioned in *Textile Unlimited*) merely quotes the statutory language before concluding that the only place the district court could order arbitration was the Eastern District of California, where the plaintiff had sued and the defendant had moved to compel. See 819 F.2d at 248, 250. *Bauhinia Corp.* is the only one of the three Ninth Circuit decisions the parties cite which is procedurally-comparable

to this situation (or at least this situation if indeed Defendants were now moving to compel arbitration): a plaintiff filing suit in a venue other than one containing the location called for by the arbitration agreement, and a defendant moving to compel arbitration in a location outside the venue chose by the plaintiff in its lawsuit. One might understandably see this decision as potentially cementing the issue in favor of the resolution the parties advance here. However, there is one more Ninth Circuit decision to consider.

In 2002 – after the decisions in *Continental Grain*, *Bauhinia Corp.*, and *Textile Unlimited* – the Ninth Circuit, in a published decision, “express[ed] no view as to whether the district court properly compelled arbitration in Chicago, even though the federal action was filed in California,” because the appellant had not raised the issue on appeal. *Sovak v. Chugai Pharm. Co.*, 280 F.3d 1266, 1271 n.1 (9th Cir. 2002), *amended* by 289 F.3d 615, 615 (9th Cir. 2002). In offering that hands-off comment, the court provided a citation asking the reader to compare *Continental Grain* with the Fifth Circuit’s decision in *Depuy-Busching Gen. Agency v. Ambassador Ins. Co.*, 524 F.2d 1275, 1276-78 (5th Cir. 1975), with *Sovak* offering the following parenthetical description of *Depuy-Busching*: “concluding that § 4 bars ordering arbitration in another judicial district *only when the party seeking to compel arbitration filed the federal suit.*” *Sovak*, 280 F.3d at 1271 n.1 (emphasis added). *Sovak* did not mention, or even acknowledge the existence, of *Bauhinia Corp.*

Thus, even if the Court were prepared to conclude – given *Continental Grain*, *Bauhinia Corp.* and the actual language in *Textile Unlimited* – that its initial interpretation of the passage in *Knight & Chernick* perhaps read too much into the phrasing used, *Sovak* seemingly leaves the door for that interpretation cracked-open. In some sense, that crack can be justified. After all, 9 U.S.C. § 4 provides a basis for a party to *initiate an action* by way of a “petition” in order to get an allegedly-recalcitrant opponent to proceed to arbitration. Even assuming that the parties are correct about how Section 4 should be interpreted, Section 4’s terms arguably only apply where that particular procedure is initiated by the same party who is seeking to compel arbitration.⁶

⁶ As *Textile Unlimited* itself pointed out, “[b]y its terms, [Section 4] only embraces *actions to compel arbitration.*” 240 F.3d at 785 (emphasis added). A *motion* to compel arbitration in response to an *action*

That is – presumably – the point the footnote in *Sovak* was attempting to get across.

In contrast, where a plaintiff – as is the case here – initiates a lawsuit (allegedly in derogation of an arbitration agreement and its venue provision) in a venue other than one that includes the allegedly-appropriate location for an allegedly-applicable arbitration, the defendant is powerless to inform that choice of locations. But the defendant is not powerless to respond to the lawsuit. Although the defendant was given a right, statutorily, to file a “petition” to compel arbitration where there was not yet an active case, where a case has been filed against the defendant, the defendant of course still may (indeed, must, for fear of facing default) respond to the action. Moving the court to compel arbitration – in effect, asking for injunctive relief for specific performance of a contract – is one way in which a defendant can respond. The Court can see no reason why *that* maneuver should be governed by the terms of Section 4, whatever they may say.

In the end, the Court has more than a little bit of doubt about the accuracy of the assertion that Defendants could not simply move – in this case, in this District – to compel arbitration in North Carolina. With that doubt, the Court will not proceed to the other issues raised, relevantly or not, by the instant motion and Plaintiffs’ Opposition.

Perhaps the Court is wrong about some or all of the foregoing. The parties can attempt to make that case at oral argument, or in supplemental briefing. But, if not, the Court will not grant the current motion.

The parties should consider the following, however, in connection with their further thoughts about how best to proceed here. If the Court ultimately concludes, after further argument, that it *would* have the authority to compel arbitration in North Carolina and, after briefing on such a motion, grants it, Plaintiffs would seem to have a very interesting issue to present before the Ninth Circuit (and, quite possibly, beyond). Time and money would be spent on that endeavor. They could save themselves that effort and expense by reaching a stipulation here that might include a provision tolling any applicable statute of limitations, and allowing a suit to be filed in the proper forum in North Carolina – either by way of a petition Defendants initiate or a legal action Plaintiffs

filed by another in court is – at least in literal terms – not an “action to compel arbitration.”

file that would allow Defendants to respond with a motion to compel arbitration – that could address the arbitration issue without this potentially-sizable procedural point. The stipulation could include a provision that envisions that case being dismissed, or consensually-transferred to this Court, should the North Carolina court, for whatever reason, decline to enforce the arbitration agreement.