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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CV-15-01578-PHX-JJT

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| <p>Federal Trade Commission;</p> <p>Plaintiff,</p> <p>v.</p> <p>Vemma Nutrition Company, a corporation; Vemma International Holdings, Inc., a corporation; Benson K. Boreyko a/k/a B.K. Boreyko, individually and as an officer of Vemma Nutrition Company and Vemma International Holdings, Inc.; and Tom Alkazin, an individual;</p> <p>Defendants, and</p> <p>Bethany Alkazin, an individual;</p> <p>Relief Defendant.</p> |
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No. _____

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, the appointment of a receiver, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the advertising, marketing, promotion, and sale of opportunities to sell health and wellness drinks.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (c)(2) and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts,

restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Vemma Nutrition Company is an Arizona corporation with its principal place of business at 1621 West Rio Salado Parkway, Tempe, Arizona 85281. Vemma Nutrition Company transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Vemma Nutrition Company has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

7. Defendant Vemma International Holdings, Inc. is an Arizona corporation with its principal place of business at 1621 West Rio Salado Parkway, Tempe, Arizona 85281. Vemma International Holdings, Inc. transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Vemma International Holdings, Inc. has advertised, marketed, distributed, or sold business opportunities to consumers throughout the United States.

8. Defendant Benson K. Boreyko, also known as B.K. Boreyko (“Boreyko”), is the Chief Executive Officer, Secretary, and a director of Vemma Nutrition Company. He is also the President, Secretary, and a director of Vemma International Holdings, Inc. At all times material to this Complaint, acting alone or in concert with others, Boreyko has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Boreyko resides in this district

and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Tom Alkazin is a promoter of the business opportunities offered by Vemma Nutrition Company and Vemma International Holdings, Inc. At all times material to this Complaint, he has participated in the acts and practices set forth in this Complaint. Tom Alkazin resides in California and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Relief Defendant Bethany Alkazin is an individual who has received funds that can be traced directly to Defendants' deceptive acts or practices alleged below, and she has no legitimate claim to those funds. Bethany Alkazin resides with her husband, Defendant Tom Alkazin, in California.

COMMON ENTERPRISE

11. Defendants Vemma Nutrition Company and Vemma International Holdings, Inc. (collectively, "Vemma") have operated as a common enterprise while engaging in the deceptive and unlawful acts and practices alleged herein. Defendants have conducted the business practices described below through interrelated companies that commingle funds and have common ownership, officers, directors, and office locations. Because Vemma has operated as a common enterprise, each entity is jointly and severally liable for the acts and practices alleged below.

COMMERCE

12. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

13. Vemma, founded by Boreyko in 2004, is an international multilevel marketing company that promotes health and wellness drinks through a network of independent distributors called “Affiliates.” These products include health (“Vemma Health”), energy (“Verve”), and weight loss (“Bod•ē”) drinks (collectively, the “Vemma Products”), which all purport to contain the “VEMMA” formula of vitamins, essential minerals, mangosteen, and aloe.

14. Vemma Affiliates can earn financial and other rewards for building two “teams” or “downlines” of individuals who also enroll with the company, either as an Affiliate, if the individual is interested in the purported money-making opportunities presented by enrolling others, or as a customer, if the individual is only interested in purchasing Vemma Products.

15. As evidenced by their sales and marketing activities and compensation plan, Defendants’ business model depends upon recruiting individuals to participate in Vemma as Affiliates and encouraging them to purchase Vemma Products in connection with such participation, rather than selling products to ultimate-user consumers. Defendants’ sales and marketing activities and their compensation plan place little emphasis on sales to consumers outside of the Vemma organization.

16. Using this business model, Vemma earned more than \$200 million in annual revenues in 2013 and 2014.

Defendants' Sales and Marketing Activities

17. Defendants promote the Vemma program through a variety of channels, including websites, videos, testimonials, print materials, social media tools, and live presentations and meetings, such as "opportunity events" and "home events."

Opportunity events are meetings designed to motivate and train Affiliates and to recruit new Affiliates. High-level Affiliates, including Defendant Alkazin, typically host these events in hotel ballrooms, conference rooms, or convention centers around the country, and Defendants Boreyko and Alkazin often speak at these events. Home events are smaller recruitment meetings at an Affiliate's residence, dorm room, park, or other location.

18. Through each of these channels, Defendants pressure consumers to become Vemma Affiliates and to recruit others, including friends and family members, to do the same.

19. Vemma's marketing efforts include a campaign called the "YPR," "Young People Revolution," or "Young Professional Revolution," which targets young adults, including college students. Defendants visit college campuses and present Vemma as a profitable alternative to traditional employment. Vemma's YPR marketing materials prominently feature young, seemingly affluent individuals surrounded by conspicuous displays of wealth, such as luxury vehicles, jets, and yachts.

20. Through their sales and marketing activities, Defendants misrepresent the nature and income potential of Vemma. Defendants repeatedly tout that Vemma can provide anyone an easy path to financial freedom and independence:

- a. What's possible with a Vemma business?
Unlimited possibilities! We don't place any barriers ahead of you; we let you determine your own success. Achieve goals like obtaining financial freedom, receiving rewards and recognition, having more time for the things and people who matter the most, enjoying flexible schedules, and taking the opportunity to be your own boss and define how much or little you want to make. If you can dream it, you can achieve it!
- b. So if your dream is to run your own business, get out of debt, earn a secondary source of income, exchange the traditional 9 to 5 for your own schedule, or all of the above, Vemma's business opportunity can help you achieve it. Now is the best time to make a change and choose to live to your full potential.
- c. Joining Vemma as an Affiliate affords you the opportunity to earn a second income WITHOUT a second job, and so much more!
- d. My name is B.K. Boreyko, and a big part of my job here at Vemma is to help people create a full-time income with part-time effort, to offer hope to those wanting an opportunity for time freedom and financial independence.

21. Defendants emphasize recruitment over product sales and stress the importance of recruiting new participants into the Vemma program. Defendants direct new and prospective Affiliates to follow a simple "system" in order to be successful, which generally consists of the following four steps.

22. First, the individual should become an Affiliate by purchasing an "Affiliate Pack," which costs approximately \$500 or \$600 and which contains a mixture of various

Vemma Products, audio and video recordings, print materials, and Vemma branded items. Defendants tell consumers:

- a. [Y]ou don't have to buy an affiliate pack, but you *have* to buy an affiliate pack.
- b. Anyone can join — it's FREE to sign up! But if you're interested in a life-changing opportunity and ready to build a business to earn immediate commission for your efforts, we recommend starting out by choosing an Affiliate Pack. The Affiliate Pack maximizes your opportunity and gives you the tools and products to start sharing Vemma with others.

23. Defendants frequently describe the Affiliate Pack as the Affiliate's initial investment or start-up cost. For example, Vemma states:

If you are ready to achieve your financial dreams without any barriers, now is the perfect time to join Vemma as an Affiliate. Simply choose an Affiliate Pack to maximize your opportunity so you can start earning immediate income. You'll see how this tiny investment in your business is pennies compared to the huge earning potential this opportunity can afford you.

24. Second, the Affiliate should sign up for monthly "auto-delivery" in an amount sufficient to maintain eligibility for bonuses, which is approximately \$150 per month. Auto-delivery automatically charges the Affiliate on a set periodic basis for a standing product purchase-order. Defendants refer to auto-delivery as an expense to participate in the business. In Defendant Boreyko's words:

[A]fter you've done your affiliate pack, you need to get on an auto-delivery order. Do the two -- what I would do is I would get four of those variety packs, two cases, 120 points. That is like your trump card. That makes sure that you're qualified. And here's the thing, yes, you can qualify with customers, but you know what, sometimes customers don't order and they don't tell you they don't order, and all of a sudden you're like, hey, I didn't get — I wasn't qualified.

25. Third, the Affiliate should find others who “see what [they] see” and enroll them as Affiliates. Defendant Boreyko states:

And I know with this move [] to affiliate marketing and a lot of people have been talking about, hey, customers, that’s great. I mean, but we’re mining for gold, and we’re looking for those [] entrepreneurs. But when you find a silver nugget, you don’t throw it away. You say, hey, that’s great, that’s a byproduct of our business. And [] so, those customers are like silver . . . but the affiliates, man, they are like gold and you got to treat them like gold. And, so, you’re going to find people that are into health make great customers. You’re going to find these nuggets of gold, these people that are entrepreneurial, they’re people that have this desire to [] get out of their job, pay off their debt, have [] leverage in their life, time freedom, money freedom. And -- and that is the people that we’re looking for.

26. Other company materials reiterate this focus on recruiting like-minded individuals into the program:

- a. When you believe in this opportunity and help others do the same, you can turn this business into career income, and you should know that it’s happening for people just like you.
- b. And when you find someone who sees what you and I see, who are excited about what this can do for their life, those are the people you got to focus on.

27. Fourth, the Affiliate should teach those recruits to “duplicate” this process (*i.e.*, purchase an Affiliate Pack, get on a qualifying monthly auto-delivery order, recruit others, and teach them to repeat). Defendants further stress the importance of duplication by telling new Affiliates:

- a. It’s not what you can do; it’s what you can model and replicate so hundreds, thousands, or even tens of thousands of people can do. You are used to producing 100 percent of the results by your efforts. The beauty of this model is you can earn 1 percent from 100 people’s efforts if not 1 percent from 1,000, 10,000, or more . . . To go from you to a few, to hundreds, to tens of thousands, you need a simple, duplicatable

system that anyone with little to no skills can use anywhere at any time. The leadership in Vemma has that system, just don't get in the way of it.

- b. [Y]ou want the system to do all the work. Not only will it then work for you, it will work for anyone, and that's when the magic of duplication can kick in and send your financial potential into the stratosphere.
- c. As you'll soon see, your Vemma business is easy to set in motion and easy to duplicate. Keeping the business simple attracts others to your network. Presenting a plan that can be duplicated encourages others to make their dreams a reality!

28. While slight variations of this recommended system exist, the focus is consistently on recruitment. As Defendant Boreyko stated during a company event:

[H]ere's our simple plan. Number one, buy an affiliate pack. Number two, find three people that see what you see in this business in your first week. Remember, you got that 24-second shot clock in a basketball game. That's what brings excitement. We got this thing called a frenzy bonus and a double frenzy bonus, that all that does is bring excitement to your business here. So, find three people that see what you see in this business. You might find three or four or five customers, but find three [A]ffiliates and get them to buy an [A]ffiliate pack. And guess what, you're going to make approximately 700 bucks. Wow, you got your money back for your [] business, you're fired up, and you got three great people that have raised their hands saying I want significant change financially in my life. (Cheers and applause.)

Third thing, third thing: Get car qualified. If I'm going to give you 400 bucks a month to go get yourself a car so you can feel good, and here's what's great about the car is it actually helps your business because people look at you and they go, you're driving that? What, maybe I should sit down with you...So, you get yourself in a car and then you help five people get in a car, you're making \$50,000 approximately in residual income. And that is our plan. That's it. (Cheers and applause.)

And the more you do it, the more you get. But here's the . . . here's the trick. The more you don't do it, the less you get.

29. Conversely, Defendants provide no guidance on where to market or sell Vemma Products. Instead, Defendants teach Affiliates to give away the products as samples and to concentrate their efforts on recruiting new participants.

30. To help Affiliates recruit new Vemma participants, Defendants provide numerous tools and training materials. For example, Vemma's websites, including www.vemma.com, www.vemmanews.com, www.achieve.vemma.com, and www.vemnavideos.com, provide videos, live and pre-recorded calls, and print materials, many of which Defendants direct Affiliates to show at their recruitment meetings or home events. One such video proclaims that "[i]t's not uncommon for people to begin earning from their Vemma opportunity in the first seven to thirty days."

31. Vemma additionally provides each Affiliate with his or her own e-commerce website to market Vemma's program. Vemma provides Affiliates with a website template that includes a list of videos the Affiliate may choose to display on his or her website. Many of those videos contain misrepresentations regarding the income potential of Vemma.

32. Affiliates have also created training and promotional materials related to Vemma. For example, Defendant Alkazin's website, www.myroadmaptosuccess.com, provides access to multiple training presentations, including a purchasable audio CD and training workbook titled "Roadmap to Success – A Working Plan for Creating Wealth Through the Vemma Opportunity" (the "Roadmap"). The Roadmap, which has gone through at least three iterations since 2009, describes Defendant Alkazin's eight-step system for building a Vemma business. Vemma requires company approval prior to the

distribution of materials by Affiliates. In addition, Vemma may formally integrate Affiliate materials into its own resources. In 2014, for example, Vemma incorporated the Alkazin Roadmap into an official training program called “Affiliate Action Plan: 8 Steps To Your Success.”

Defendants’ Income Claims

33. Defendants assert that consumers can earn significant income and rewards through Vemma, and that Affiliates’ income potential is limited only by their own efforts. Defendant Boreyko has repeatedly made income claims during Vemma presentations:

- a. We have a game plan to get you earning \$500, \$5,000, or even \$50,000 per month!
- b. And whether you tell three or four [people] and enjoy free product or a lightbulb comes on and you get how powerful this concept is, when you meet some of the people that have partnered up with us and have begun generating an extra \$500, \$5,000, even \$50,000 or more per month part-time.
- c. You know, we have young people doing enough just to enjoy some free product and we have some making an extra \$500 a month, we have some making an extra \$500 a week, and some young people really get serious about this business model and they’ve developed a residual income of \$5,000 a month or even \$5,000 a week. In fact, I’ve got a 26-year-old, get a load of this, that will earn \$1 million this year.
- d. I’d like to lay out a game plan that can give you the opportunity to get profitable fast and be driving a new BMW within the next 90 days.
- e. So, in fact, we’ve got people making \$1,000, \$1,500, \$2,000 in their very first month. Now, let’s get you in that new BMW.
- f. Step number two, now just help one person on each side of your business duplicate the success that you’re having and create about \$5,000 in volume, bam, you’re car qualified.

- g. Step number three, just help five people on your two teams get a car and you're earning about \$50,000 a year residual income part-time, and it just keeps growing from there.
- h. You see, I'm projected, on these referral bonuses, to pay out bonuses totaling \$50 million this year alone.
- i. I don't care if you want to make [\$]500 [] a month or \$5,000 a month. I don't care what you want to make. You get to decide that. And that is the opportunity here . . . Think of the fact that two to four years invested into this business, you have a great chance of setting yourself up financially for potentially the rest of your life.
- j. This next couple, you guys are going to absolutely love this next couple. I had the privilege to pay this couple and their children in one month, not too many months ago, 900 – \$963,000, in one month, ladies and gentlemen, our star pinnacle leaders Tom and Bethany Alkazin.

34. Defendant Boreyko also interviews Vemma Affiliates about their purported success and presents their testimonials in videos that are posted to the company's websites, YouTube channels, and social media sites. Throughout these testimonials, Affiliates attest to how easily and quickly they were able to earn lucrative pay by building their downlines. Many of these videos feature young adults who talk about having financial wealth without a college degree or the confines of a 9-to-5 job, or about driving the luxury Mercedes-Benz or BMW that they received through Vemma:

Boreyko: [T]ell me how that feels when you are driving this [new BMW] and you're taking your friends somewhere . . . [W]hat kind of things are you hearing?

Affiliate 1: Well, they see that it's doable and, you know, a lot of people [] don't understand . . . kids at a young age making [] these types of money, I mean, \$2,000 a month.

Boreyko: And you made \$5,000 last month.

Affiliate 1: I made \$5,000 last month, and it's absolutely insane, you know, to think about what we can do and what we can change with this entire thing. And [] we're taking over the entire country. I mean, this guy is the first person on my left leg, so I have over 650 people in my business in just five months.

Boreyko: That is absolutely incredible. Now, what do your friends say when they get behind the wheel, and you've been in this four and a half months, driving a new BMW, having me pay for it, which I love to do. Is this something that helps people's believability? Does it help to move your business forward?

Affiliate 2: Yeah.

* * *

Boreyko: All right. So, how does it feel to be 19 years old, making \$5,000 a month promoting a healthy energy drink? And are you having fun doing this?

Affiliate 2: Absolutely . . . we're hanging out with our friends anyway and helping them [] and that's special. And making money while you're doing it, it's [] killing two birds with one stone.

* * *

Boreyko: [G]ive us some words of wisdom. You get in the business five months ago; you blow this thing up. Tell me, you know, how long did it take you to cycle for the first time and then what did you do month two, month three, month four, month five.

Affiliate 1: Yeah, well, mainly, you know, just duplicated the system . . . I saw high schoolers [] making \$1,000 a week, and that . . . blew my mind . . . And I have a [guy who is] 17 years old [who] got [] Diamond in 21 days . . . So, company-paid car. He's made over, you know, five grand in the past two and a half months.

* * *

Boreyko: We got, you know, hundreds and hundreds of the young kids at this – at this meeting here in North Carolina, and all they're talking about is becoming millionaires . . . And for some kids, it's like the first time -- I think everybody always dreamt they'd want to become a millionaire, but really for a lot of these kids, it's the first time they've actually had a shot at becoming a millionaire in a business like this.

35. Defendant Alkazin has likewise made income claims when presenting the Vemma opportunity:

- a. It's not uncommon for us to see people earning anywhere from \$500, \$1,000, \$2,000, even \$3,000 in their first four to eight weeks in the business.
- b. [H]ow well does this work? We have people earning \$100 to \$200 per week cycle bonus income. We have some earning \$300 to \$500 per week. We have some earning \$1,000 to \$3,000 a week. We have some earning, five, ten, fifteen. Imagine this, some even more than \$20,000 on a weekly basis. Now, if we're doing this well after this short amount of time, can you imagine what the next three to five years holds in store?

36. Defendant Alkazin also directs his downlines to make income claims. For example, his Roadmap provides Affiliates with scripts to follow when attempting to recruit new participants, such as:

John, if I could show you how to invest \$120 per month in your family's health and turn that into \$1000 to \$3000 per month, part time, what would you say?

37. Defendants and their Affiliates make other claims regarding the high income potential purportedly associated with Vemma in various videos and print materials:

- a. Do you want a few hundred dollars a month on the side? Do you want to make a six-figure income? A million? All of this is possible but you have to know where you want to go to determine what, and how much you have to do.
- b. Do you want to make an extra \$500-\$1000 in order to quit your part time job, or do you want to make six figures to gain the time and financial freedom that you have always dreamed of? Both are achievable, and both have been done before, you just need to ask yourself . . . how big do you want to dream?

- c. And guess what, we even have a 26-year-old guy . . . earning over \$1 million a year.
- d. Here's the thing, guys. When I first got in this business, my own roommate . . . who's now earning over \$12,000 a month in Vemma, told me no. So, when your friends don't want to do it, don't get discouraged, guys. They will come around. When they start seeing you make money, when they see you getting free BMWs, guys, they will eventually come around.
- e. You don't want to live life with no money. You want to have so much money it doesn't even matter. That's why people do Vemma, to have enough money to where it doesn't even matter anymore, guys.
- f. [T]he days of the week shouldn't even matter to you, guys. Why does the day of the week even matter? The sun comes up, goes down, we make money while we're asleep. That's how Vemma works. You're paid 24 hours a day, seven days a week no matter what you are doing.
- g. Here's the thing: in the last two weeks, I have earned \$59,500.

38. In addition, during company events and conventions, Vemma presents the select few top earners with large checks representing their yearly or lifetime earnings.

39. While Defendants sometimes attempt to provide disclaimers when making these and other income claims, their attempts are inadequate. Vemma typically dilutes purported disclaimers, such as "results may vary," with statements implying that negative results are due to the inadequate efforts of the Affiliate.

40. Defendants consistently lead consumers to believe that if they simply work hard, they can and will earn substantial sums. For instance, during a presentation, Boreyko stated:

This is a product that you could earn seven figures, and I'm not making any kind of income claims, because your results may vary ; it's happened to other people, so why shouldn't it happen to you? I mean, results aren't typical; I hope you're not typical.

41. One high-ranking Vemma Affiliate even tells potential recruits:

The only way you fail in this is by quitting or doing nothing. That's it. If you do something and don't quit, you succeed every time, no matter where you come from, no matter what your educational level is.

42. In addition, Vemma has published annual disclosure statements since 2012.

For example, the 2013 U.S. Disclosure Statement shows that in 2013, more than 93 percent of Affiliates earned less than \$6,169; more than 87 percent earned less than \$3,674; more than 40 percent earned less than \$939; and less than 0.62 percent earned \$92,181 or more.

43. While the figures contained in the company's disclosure statements are somewhat revealing, they nonetheless do not show the whole picture and are misleading. Among other things, the disclosure statements only take into account "active" Affiliates who have met certain minimum purchase thresholds and omit participants who fared worse.

44. In contrast to Defendants' numerous claims regarding profitability and the unlimited income potential associated with Vemma, the vast majority of Affiliates make no money. Vemma's compensation plan, further discussed below, and its corresponding marketing activities dictate that at any particular time, the majority of Affiliates lose money.

Vemma's Compensation Plan

45. Vemma's compensation plan is based on a binary system, and Affiliates can earn financial and other rewards for building two "downlines" – a "left team" and a "right team" – of individuals who enroll with Vemma as Affiliates or customers.

46. There are several levels of Affiliates, and Affiliates' rank and bonus eligibility is generally determined by the number of "points" they earn during a specified period. Points are earned through product purchases.

47. To become an Affiliate, a consumer must either purchase an Affiliate Pack of Vemma Products and tools for approximately \$500 or \$600, or personally enroll a customer or Affiliate. In practice, Defendants advise consumers to buy the \$500 or \$600 Affiliate Pack, which they characterize as the Affiliate's initial investment.

48. After becoming an Affiliate, the individual must maintain a "qualified" status to be eligible for financial compensation and other rewards. This means the Affiliate must have: (1) a minimum of 120 points in "personal volume" each month; and (2) at least one "active" customer or Affiliate on each of the Affiliate's left and right teams.

49. To achieve 120 personal volume points in a month, Affiliates can personally purchase products worth that same number in "qualifying volume" points or "QV" (e.g., a 2-pack of Vemma Health at \$171 for 120 QV), have double that (i.e., 240 QV) purchased by their personally enrolled customers, or some combination of both.

50. Active customers or Affiliates must have a minimum of 60 personal volume points in a month. They can do this by personally purchasing products worth 60

QV that month (e.g., a 1-pack of Vemma Health at \$74), having double that purchased by their personally enrolled customers, or some combination of both. In some cases, the requirements for active status are doubled and match the requirements for qualified status.

51. As stated above, Vemma urges Affiliates to purchase products through a personal monthly auto-delivery order of 120 QV to ensure uninterrupted qualification for bonuses.

52. Vemma's compensation plan includes many confusing and convoluted rules and requirements, and some bonuses or rewards impose additional restrictions or limitations.

53. Vemma states that its compensation plan generally offers two types of financial compensation: (a) immediate income and (b) long-term or "residual" income.

Immediate Income

54. Affiliates may receive a **New Customer Bonus** ranging from \$5 to \$100 on the first purchase made by a new customer or Affiliate, so long as the Affiliate personally enrolled them.

55. Affiliates who purchased an Affiliate Pack may earn **Frenzy** or **Double Frenzy Bonuses**. **Frenzy Bonuses** are paid to qualified Affiliates who recruit three people who purchase at least 120 QV of Vemma Products within the same week they enroll in Vemma. **Double Frenzy Bonuses** pay higher rewards if each of those three recruits purchases an Affiliate Pack (which signifies enrollment as an Affiliate) and signs up for a monthly auto-delivery order worth at least 120 QV. An Affiliate may earn up to

\$700 through the New Customer and Double Frenzy bonuses combined. Defendants tout this as the way for Affiliates to recover the cost of their initial investments.

Long-term or Residual Income

56. Vemma describes residual income as “the art of earning income after the initial work has been done.”

57. Vemma states that the “most powerful” bonus, and the pathway to residual income, is its **Cycle Commission**. At the end of each week, Affiliates may earn approximately \$20 each time they “cycle,” or accumulate 360 QV points on one team and 180 QV points on the other. For example, an Affiliate cycles one time, and earns roughly \$20, where he or she has three 2-pack Vemma Health purchases on the left team (totaling \$444) and three 1-pack Vemma Health purchases on the right team (totaling \$222, for a combined total of \$666 in purchases).

Other Rewards

58. Vemma offers other bonuses that are connected to the Affiliate’s number of cycles. **Rank Advancement Awards** are one-time bonuses paid when an Affiliate achieves a new “rank.” There are at least eighteen ranks within the compensation plan ranging from Bronze to Legend, based upon the number of cycles the Affiliate accrues during a four-week rank advancement period or “RAP.” For example, if the Affiliate reaches the rank of Silver (five cycles – which is equivalent to approximately \$3,330 in Vemma Health 2-pack purchases – per RAP) and maintains that rank for at least two consecutive RAPs, the Affiliate receives \$100. Affiliates may receive up to \$1 million if they reach the highest rank of Legend (20,000 cycles – which is equivalent to

approximately \$13.32 million in Vemma Health 2-pack purchases – per RAP) and maintain that rank for at least four consecutive RAPs.

59. Other bonuses tied to the Affiliate's number of cycles include the **Premier Club Bonus, Balanced Team Bonus, Affiliate Pack Flag, Matching Commission, Second Tier Matching Commission, and Global Bonus Pool.**

60. Under the **Vemma Loyalty Program**, Affiliates can earn a free case of product (in a maximum amount of 120 QV or the lowest order placed) if they purchase a minimum of 60 QV per month for six consecutive months. The free product does not constitute points for purposes of bonus determination.

61. Affiliates do not primarily earn bonuses for actual sales of Vemma Products. Instead, Vemma rewards Affiliates for personally purchasing Vemma Products to maintain bonus eligibility, and for recruiting others who likewise purchase Vemma Products to maintain bonus eligibility. Overall, the key determinate of an Affiliate's income, and thus the activity incentivized by the compensation plan, is the recruitment of Affiliates into the Affiliate's downline teams, who then recruit other Affiliates, and so on.

62. In fact, the likelihood of Affiliates earning profits on retail sales is minimal. While Vemma states that Affiliates may keep profits they earn by selling Vemma Products, Vemma offers no meaningful discounts or incentives to encourage such behavior. The company also severely restricts Affiliates from selling Vemma Products, expressly prohibiting sales at business or retail outlets or offices, flea markets, swap meets, garage sales, home shopping networks, and online stores or auction sites, including eBay and Craigslist.

63. In sum, unlike legitimate multilevel marketing businesses, Defendants reward Affiliates for recruiting and for purchasing products to maintain bonus eligibility rather than for selling products to ultimate-user consumers.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

64. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

65. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

Illegal Pyramid

66. As alleged above, Defendants promote participation in Vemma, which has a compensation program based primarily on providing payments to participants for the recruitment of new participants, not on the retail sale of products or services, thereby resulting in a substantial percentage of participants losing money.

67. Defendants’ promotion of this type of scheme, often referred to as a pyramid scheme, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Income Claims

68. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the right to participate in the Vemma program,

Defendants have represented, directly or indirectly, expressly or by implication, that consumers who become Vemma Affiliates are likely to earn substantial income.

69. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 68 of this Complaint, consumers who become Vemma Affiliates are not likely to earn substantial income.

70. Therefore, Defendants' representations are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Failure to Disclose

71. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of the right to participate in the Vemma program, Defendants have represented, directly or indirectly, expressly or by implication, that individuals have earned substantial income from participation in the Vemma program, and that any consumer who becomes a Vemma Affiliate has the ability to earn substantial income.

72. In numerous instances in which Defendants have made the representation set forth in Paragraph 71 of this Complaint, Defendants have failed to disclose, or disclose adequately, that Vemma's structure ensures that most consumers who become Vemma Affiliates will not earn substantial income.

73. This additional information would be material to consumers in deciding whether to participate in the Vemma program.

74. Defendants' failure to disclose, or to disclose adequately, the material information described in paragraph 72, in light of the representations made in paragraph 71, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Means and Instrumentalities

75. By furnishing Vemma Affiliates with promotional materials to be used in recruiting new participants that contain false and misleading representations, Defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

76. Therefore, Defendants' practices, as described in Paragraph 75 of this Complaint, constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

Relief Defendant

77. Relief Defendant Bethany Alkazin, has received, directly or indirectly, funds or other assets from Defendants that are traceable to funds obtained from Defendants' customers through the deceptive acts or practices described herein.

78. Relief Defendant is not a bona fide purchaser with legal and equitable title to Defendants' customers' funds, and Relief Defendant will be unjustly enriched if she is not required to disgorge the funds or the value of the benefit she received as a result of Defendants' deceptive acts or practices.

79. By reason of the foregoing, Relief Defendant holds funds and assets in constructive trust for the benefit of Defendants' customers.

CONSUMER INJURY

80. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

81. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to,

temporary and preliminary injunctions, an order freezing assets, immediate access, and appointment of a receiver;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Enter an order requiring Relief Defendant to disgorge all funds and assets, or the value of the benefit she received from the funds and assets, which are traceable to Defendants' deceptive acts or practices; and

E. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

DATED this 17th day of August, 2015.

Respectfully submitted,

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