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FILED  LODGED  
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AUG 17 2015  
CLERK U.S. DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

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Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION

SEALED

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

CV-15-01578-PHX-JJT

**Federal Trade Commission;**

Plaintiff,

v.

**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;

Defendants, and

**Bethany Alkazin**, an individual;

Relief Defendant.

Case No. \_\_\_\_\_

**PLAINTIFF FEDERAL TRADE  
COMMISSION'S EX PARTE  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER WITH ASSET FREEZE,  
APPOINTMENT OF A  
RECEIVER, AND OTHER  
EQUITABLE RELIEF, AND AN  
ORDER TO SHOW CAUSE  
WHY A PRELIMINARY  
INJUNCTION SHOULD NOT  
ISSUE**

**UNDER SEAL**

Plaintiff Federal Trade Commission (“FTC”), having filed its Complaint, files this *ex parte* Application for Temporary Restraining Order (“TRO”) and applies to this court, under Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b), and Federal Rule of Civil Procedure 65(b), for an *ex parte* TRO. As grounds therefore, the FTC states that the Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., Benson K. Boreyko a/k/a B.K. Boreyko, and Tom Alkazin (“Defendants”) have engaged in, and may continue to engage in, acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as set forth in the FTC’s Complaint, the Memorandum of Points and Authorities in Support of Plaintiff’s *Ex Parte* Application for TRO, and the supporting appendix.

The FTC seeks immediate and temporary *ex parte* relief because of the substantial risk that Defendants may dissipate assets and destroy relevant business records unless restrained by the court. In order to halt Defendants’ deceptive business practices and protect consumers from further injury, and to halt Defendants from dissipating assets and destroying records, the FTC seeks entry of a TRO that includes an injunction against further illegal conduct, appointment of a temporary receiver, an asset freeze as to three Defendants, access to the business premises and business records, and other forms of equitable relief designed to identify, preserve, and protect assets and documents that are critical for a determination of this action. The FTC asks that the court enter the proposed TRO until such time as a preliminary injunction hearing may be held according to Federal Rule of Civil Procedure 65(a).

Plaintiff asks that the Court enter a TRO that will:

1. Temporarily restrain Defendants from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in the Complaint;
2. Temporarily restrain Defendants from failing to maintain business records, from destroying business records, and from failing to provide written disclosure to the FTC if they create, operate, or exercise any control over any new business entity;

3. Prohibit Defendants from disclosing certain personal identifying information of its consumers;

4. Temporarily restrain Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., and Benson K. Boreyko from disposing of individual or corporate assets, including financial accounts, real and personal property, safe deposit boxes, storage units, and other assets;

5. Temporarily restrain third parties holding assets of Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., and Benson K. Boreyko from permitting Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., and Benson K. Boreyko to access or dispose of assets or to access safe deposit boxes;

6. Require third parties holding assets on behalf of Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., and Benson K. Boreyko to file a statement describing any such assets, and to provide the Plaintiff's representatives copies of all records relating to such assets;

7. Require Defendants Vemma Nutrition Company, Vemma International Holdings, Inc., and Benson K. Boreyko to complete and provide to the Plaintiff financial accounting forms, attached to the proposed TRO;

8. Require repatriation of assets and documents located in foreign countries;

9. Prohibit interference with repatriation;

10. Appoint a temporary receiver over Defendants Vemma Nutrition Company and Vemma International Holdings, Inc., and outline the duties and compensation of the temporary receiver;

11. Permit the FTC's and temporary receiver's representatives, agents, and assistants immediate access to Defendants' business premises, mail drops, storage facilities, and all other business locations used by Defendants, including 1621 West Rio Salado Parkway, Tempe, Arizona, 85281, for the purpose of inspecting, copying, and imaging material relevant to this action, including financial records, computer data,

electronically stored information, and other information concerning Defendants' business practices and assets;

12. Require Defendants to turn over all receivership property to the temporary receiver;

13. Require Defendants to cooperate with and prohibit Defendants from interfering with the temporary receiver;

14. Institute a stay of all actions against Defendants or relating to Defendants' assets;

15. Permit expedited discovery for the temporary receiver to take depositions and to serve upon parties requests for documents and interrogatories according to Rules 30(a) and 36 of the Federal Rules of Civil Procedure;

16. Require Defendants immediately to provide a copy of the entered TRO to each of their employees and affiliates;

17. Require consumer reporting agencies, upon request by the FTC, to furnish Defendants' consumer credit reports;

18. Require Defendants to show cause why a preliminary injunction should not issue extending the temporary relief until the merits of the Plaintiff's allegations are finally adjudicated; and

19. Order other relief as set forth in the proposed TRO.

*Ex parte* relief is warranted because Defendants are likely to dissipate assets and destroy or conceal evidence if notified of this action. If this occurs, it will likely cause irreparable damage to this Court's ability to provide effective final relief to consumers. Therefore, the FTC requests that the Court grant an *ex parte* TRO and waive any requirement of notice to the Defendants until after Defendants' assets are frozen and they have been served with the requested TRO.

In support of this Application, the FTC respectfully refers the Court to its Memorandum of Points and Authorities in Support of Plaintiff Federal Trade

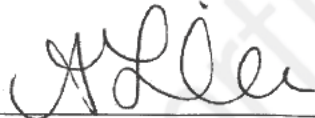


Commission's *Ex Parte* Motion for a Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, and Other Equitable Relief, and the appendix filed in support thereof and in support of this Motion. Additionally, the FTC refers the Court to the Rule 65(b) Certification of FTC Counsel Angeleque Linville concerning the need for *ex parte* relief. The FTC has not previously applied for the relief sought in this *ex parte* motion or any similar relief against Defendants.

Dated: August 17, 2015

Respectfully submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel



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