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Company and Vemma International Holdings, Inc.*

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

Federal Trade Commission,

Plaintiff,

vs.

Vemma Nutrition Company, *et al.*,

Defendants.

NO. CV-15-01578-PHX-JJT

**DEFENDANTS VEMMA
NUTRITION COMPANY AND
VEMMA INTERNATIONAL
HOLDINGS, INC.'S MOTION TO
APPROVE REVISED
COMPENSATION PLAN**

Defendants Vemma Nutrition Company and Vemma International Holdings, Inc. (collectively, the “Corporate Defendants” or “Vemma”) hereby move the Court for an order approving the revised compensation plan attached hereto as Exhibit “1” (the “Revised Compensation Plan”). This Motion is supported by the following Memorandum of Points and Authorities, and the entire record in this case. A form of order granting this Motion is lodged herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to the Court's September 18, 2015 Order (Doc. 118) (the "Order"), requiring prior delivery to the FTC, and a five-day review period, of "any new marketing or sales materials" (*Id.*, at Part I.E.), the Corporate Defendants delivered an initial draft of the Revised Compensation Plan to the FTC on September 30, 2015. Five days later, on October 5, 2015, the FTC objected to this initial draft of the Revised Compensation Plan. Since then, the parties have exchanged additional written communications and engaged in two telephonic conferences.¹ Over the course of these communications, the Corporate Defendants agreed to make further changes to the plan requested by the FTC, which are now reflected in the Revised Compensation Plan attached as Exhibit "1" to this Motion. However, the parties are at an impasse and now require the Court's expedited consideration of this issue, which is critical to the Corporate Defendants' ability to restart operations following entry of the Order and the removal of the Receiver. As discussed below, the Revised Compensation Plan proposed by the Corporate Defendants satisfies all of the requirements contained in the Order. For this reason alone, the Revised Compensation Plan should be approved. The FTC's objections (which go well beyond the requirements and prohibitions contained in the Order) are without merit and should be overruled.

I. THE REVISED COMPENSATION PLAN COMPLIES WITH EACH OF THE REQUIREMENTS AND PROHIBITIONS STATED IN SECTION I OF THE COURT'S ORDER.

The Order did not enjoin the Corporate Defendants from restarting their business; it simply proscribes how the Corporate Defendants can operate their business going forward. As detailed below, the Revised Compensation Plan complies with each of the

¹ The written communications between the FTC and the Corporate Defendants concerning the Revised Compensation Plan (and earlier versions of the revised plan) are attached as Exhibit "2" to this Motion.

requirements and prohibitions stated in Section I of the Order.

- **Section I.A.1: Pays compensation for recruiting new members.**

The Revised Compensation Plan does not pay any rewards for the recruitment of a new Affiliate. The Revised Compensation Plan does not allow for the sale of Affiliate Starter Packs, pays no rewards relating to the sale of any such packs, and pays no compensation for recruiting a new Affiliate.

- **Section I.A.2: Encourages or incentivizes members to purchase goods or services to maintain eligibility for bonuses, rewards, or commissions rather than for resale or personal use.**

The Revised Compensation Plan complies with this prohibition against the encouragement of inventory loading by explicitly providing that “You will not be able to qualify for commissions based on your own purchases.” Therefore, under this plan, affiliates will have no incentive to purchase products other than for personal consumption or resale. Under the Revised Compensation Plan, all purchases by an Affiliate are purchases for personal use or resale (*i.e.*, sales to “ultimate users”) because, under the plan, none of those purchases qualify the Affiliate for rewards under the plan.

- **Section I.A.3: Induces others to encourage or incentivize members to purchase goods or services to maintain eligibility for bonuses, rewards, or commissions rather than for resale or personal use.**

Again, the Revised Compensation Plan explicitly provides that “You will not be able to qualify for commissions based on your own purchases.” Therefore, Affiliates will have no incentive to purchase products other than for personal consumption or resale. Under the Revised Compensation Plan, all purchases by an Affiliate are purchases for personal use or resale (*i.e.*, sales to “ultimate users”) because, under the plan, none of those purchases qualify the Affiliate for rewards under the plan.

- **Section I.A.4: Pays any compensation related to the purchase or sale of goods or services unless the majority of such compensation is derived from sales to or purchases by persons who are not members of the Marketing Plan.**

The Revised Compensation Plan enforces this requirement in the Order through a “51% Rule” which provides as follows:

You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization’s total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100. However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will not be banked.

Under this “51% Rule,” any compensation paid will come from product sales, and the majority of such compensation is derived from sales to Customers, not sales to Affiliates, as required by the Order. This 51% Rule also applies to rank advancement under the Revised Compensation Plan, so that at any level of the program an Affiliate is receiving compensation that is primarily derived from sales to Customers rather than sales to Affiliates.²

Moreover, as previously addressed, because the Revised Compensation Plan does

² This was always the intent under the Revised Compensation Plan. However, in response to recent questions raised by the FTC concerning operation of the 51% Rule, the Corporate Defendants have made further revisions in the Revised Compensation Plan to make it explicit that the 51% Rule applies not only to cycle commissions, but also to rank advancement and the bonuses associated with rank or rank advancement.

1 not allow for an Affiliate to qualify for bonuses based on his own purchases, any such
2 purchases are necessarily for resale or personal use. Under the Revised Compensation
3 Plan, Affiliates will be motivated to enroll and sell products to new and existing
4 Customers because their compensation under the plan is tied directly to the volume of
5 Customer sales in their sales organization. If they have no Customer sales, they receive
6 no compensation. If less than half of their sales in their sales organization comes from
7 Customers, then their compensation under the plan will be based on less than all of the
8 sales volume in their organization by operation of the 51% Rule. Thus, Affiliates under
9 this Revised Compensation Plan are required by the very terms of the plan to enroll and
10 generate sales of product by Customers if they want to earn any rewards under the
11 program.

12 • **Section I.A.5: Constitutes a pyramid scheme**

13 The Revised Compensation Plan does not constitute a pyramid scheme under the
14 *Koscot* test for distinguishing a legal Multi-Level Marketing (“MLM”) business from an
15 illegal pyramid scheme. First, under the Revised Compensation Plan, Affiliates are not
16 paying for the right to receive rewards under the compensation plan. Second, under the
17 Revised Compensation Plan, rewards are not paid primarily for recruitment rather than
18 sales of product to ultimate users. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 883-88
19 (9th Cir. 2014). The legality of the Revised Compensation Plan under controlling law is
20 not even a close call.

21 The first part of the *Koscot* test is satisfied by either a required purchase to become
22 a distributor, *see BurnLounge*, 753 F.3d at 833, or “where the participant is required to
23 purchase ‘non returnable’ inventory in order to receive the full benefits of the program”,
24 *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776, 782 (9th Cir. 1996). Under the provisions
25 of the Revised Compensation Plan, an Affiliate pays nothing for the right to receive
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1 rewards under the plan. By eliminating Affiliate Starter Packs, paying no rewards for the
2 mere act of recruiting (which was never the case), and no longer allowing an Affiliate to
3 qualify for rewards based on his own purchases, the Revised Compensation Plan does not
4 violate the first part of the *Koscot* test, as a matter of law.

5 There similarly can be no doubt that the Revised Compensation Plan does not
6 violate the second part of the *Koscot* test - rewards paid primarily for recruitment rather
7 than sales of product to ultimate users. In *BurnLounge*, the Ninth Circuit recognized that
8 internal consumption by participants may constitute sales of product to “ultimate users”
9 under the *Koscot* test: “BurnLounge is correct that when participants bought packages in
10 part for internal consumption . . . ***the participants were the ‘ultimate users’ of the***
11 ***merchandise and that this internal sale alone does not make BurnLounge a pyramid***
12 ***scheme.***” 753 F.3d at 887. The *BurnLounge* court also referenced the FTC’s own
13 guidance on the issue of internal consumption:

14 The critical question for the FTC is whether the revenues that
15 primarily support the commissions paid to all participants are
16 generated from purchases of goods and services that ***are not***
simply incidental to the purchase of the right to participate in
a money-making venture.

17 *BurnLounge*, 753 F.3d at 887 (quoting FTC Staff Advisory Opinion – Pyramid Scheme
18 Analysis, dated January 14, 2004) (emphasis added).

19 By no longer allowing Affiliates to qualify for rewards based on their own
20 purchases, there is no basis for the FTC to assert that any of the purchases Affiliates do
21 make are “simply incidental to the purchase of the right to participate.” In other words,
22 the purchases by Affiliates under the Revised Compensation Plan are presumptively
23 purchases for personal consumption or retail sale, and under *BurnLounge* all such sales
24 are sales of product to “ultimate users”. Because those sales are all sales of product to
25 ultimate users, any commissions based on these Affiliate sales are not - as a matter of law
26 - rewards paid for recruitment in violation of the second part of the *Koscot* test.

By no longer allowing an Affiliate to qualify for rewards based on the Affiliate's own personal purchases, the Revised Compensation Plan assures that all rewards paid under the plan are based entirely on sales of product to "ultimate users." This alone is enough to demonstrate, as a matter of law, that the plan is not a pyramid scheme under the *Koscot* test. But the Revised Compensation Plan goes even further to avoid even a suggestion that the plan could be a pyramid by requiring, in accordance with the Order, that the majority of any compensation paid be derived from sales to Customers, not sales to Affiliates. The Revised Compensation Plan does just this by way of the 51% Rule, which should dispel of any notion that this plan would, or could, incentivize "inventory loading" by Affiliates. First, an Affiliate's own purchases will not help him qualify for any rewards under the plan. Therefore, as discussed earlier, all of the purchases that are made by Affiliates are sales for personal consumption or retail sale (*i.e.*, sales to "ultimate users"). But assume, as illogical as it would be, that the Affiliate's downline Affiliates did purchase products not for consumption or resale, even though those purchases will not qualify him for any bonuses or rewards under the plan. Even then, the rewards paid to the sponsoring Affiliate would never come *primarily* from recruiting rather than sales of products to ultimate users because the rewards that can be received from Affiliate sales are capped by the 51% Rule contained in the Revised Compensation Plan. Under the *Koscot* test for distinguishing a legitimate MLM from an illegal pyramid scheme, the Revised Compensation Plan is, as a matter of law, a legitimate MLM plan.

- **Section I.A.6: With specific reference to Vemma's existing Marketing Program:**

- (a) Sells Affiliate Packs**

The sale of all Affiliate Starter Packs has been discontinued, as have all bonuses based on the sale of such packs.

(b) **Links or ties an Affiliate's eligibility for bonuses, or the Affiliate's accumulation of bonus qualifying points, to that Affiliate's purchase of [Vemma's] product, such as through auto-delivery or Two & Go.**

As previously discussed, the Revised Compensation Plan does not allow an Affiliate to qualify for rewards or bonuses based on the Affiliate's personal purchases. Nor does the plan provide for a "Two & Go" program, which was discontinued prior to entry of the Order and will not be restarted under the Revised Compensation Plan, or any other plan.

II. THE FTC'S OBJECTIONS SHOULD BE OVERRULED.

Even though the Revised Compensation Plan complies in every respect with the requirements and prohibitions of the Court's Order, the FTC has refused to withdraw its objection. Based on a telephonic conference between counsel for the Corporate Defendants and counsel for the FTC, and an October 15, 2015 e-mail from FTC counsel, the Corporate Defendants understand that the FTC has the following remaining objections to the Revised Compensation Plan:³

(1) the "51% Rule" does not adequately prevent inventory loading and should be interpreted to disallow any commissions unless the majority of all sales volume comes from Customers; and

³ During the call, the FTC raised an objection regarding the definition of Customer in the plan. The Corporate Defendants originally proposed the following: "An Affiliate is someone who intends to participate in and earn rewards under Vemma's Marketing Plan, and a Customer is someone who is primarily interested in purchasing and using our products." While this definition conforms to the definition used in the Order ("Affiliates are those participants who seek to avail themselves of the business opportunity of promoting Vemma and/or selling Vemma products and thereby earn bonuses, as opposed to customers, who are solely or primarily interested in purchasing Vemma products for their own consumption."), the Corporate Defendants believe they have resolved this objection by now defining a Customer in the Revised Compensation Plan as "someone who is only interested in purchasing and using our products."

1 (2) the plan is still a binary, multi-level marketing plan under which Affiliates
2 must have a downline in order to receive rewards under the program.

3 For the reasons discussed below, the Corporate Defendants respectfully disagree
4 with the FTC's overbroad and improper interpretation of the Court's Order and
5 controlling law.

6 **A. The Corporate Defendants' "51% Rule" Is An Effective "Anti-**
7 **Inventory Loading Rule".**

8 As explained above, the 51% Rule in the Revised Compensation Plan complies
9 with the Order. Nonetheless, the FTC objects arguing that the proposed 51% Rule is not
10 effective at preventing inventory loading and should instead be "all or nothing: an
11 affiliate is entitled to full compensation if the majority of downline sales volume comes
12 from customers rather than affiliates, and not entitled to any compensation if the reverse is
13 true."⁴ We are surprised by the FTC's position, not only because it is inconsistent with
14 the inventory loading principles set forth in *Amway* and every one of the decisions since
15 *Amway* (including the Ninth Circuit's most recent decision in *BurnLounge*), but because it
16 contradicts the very position that the FTC urged at the Preliminary Injunction Hearing.
17 During the cross-examination of Dr. Emre Carr, counsel for the FTC asked:

18 Wouldn't you agree that an effective *Amway*-type rule to keep
19 Affiliates from inventory loading, meaning purchasing product
20 for the purposes of qualifying for commissions, be to simply
21 disallow personal product purchases as a basis for
22 compensation?⁵

23 This is exactly what the Revised Compensation Plan now provides: "You will not
24 be able to qualify for commissions based on your own purchases." Under the Revised
25 Compensation Plan, every purchase by an Affiliate is necessarily a sale of product for
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⁴ See e-mail dated October 15, 2015 from Jason Moon to Kevin Quigley, included in Exhibit "2" to this Motion.

⁵ See Transcript of Preliminary Injunction Hearing, at page 147:16-20. This excerpt from the Transcript is attached as Exhibit "3."

1 personal consumption or retail sale; in other words, a sale to an “ultimate user.” Under
2 the Revised Compensation Plan, there cannot, and will not, be any inventory loading.

3 **B. The Order Prohibits The Corporate Defendants From Operating A**
4 **Pyramid Scheme, Not A Multi-Level Marketing Business.**

5 Even more troubling than the FTC’s overzealous objection to the 51% Rule in the
6 Revised Compensation Plan is the position the FTC now appears to be taking – that any
7 marketing plan that is binary and multi-level in nature is objectionable. The FTC’s
8 objection is not supported by the terms of the Order or the law.

9 As already shown, the Revised Compensation Plan complies, in every respect, with
10 the requirements and prohibitions set forth in the Order. And, as for the controlling law,
11 the Ninth Circuit in *BurnLounge* recognized that “[n]ot all MLM businesses are illegal
12 pyramid schemes.” 753 F.3d at 883. *See also United States v. Gold Unlimited, Inc.*, 177
13 F.3d 472, 480 (6th Cir. 1999) (“Courts and legislatures recognize a distinction between
14 legitimate programs (known as multi-level marketing systems) and illegal schemes.”).
15 The FTC’s objection to the Revised Compensation Plan is essentially an objection to all
16 MLM businesses, an objection which has no basis in the Order or support in the law.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Corporate Defendants respectfully request that the
3 Court enter an order approving the Revised Compensation Plan attached as Exhibit "1."

4 RESPECTFULLY SUBMITTED this 16th day of October, 2015.

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9 By /s/ Edward A. Salanga

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a copy was electronically submitted to counsel at the e-mail addresses below:

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/s/ Angelina Chavez

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EXHIBIT 1

COMPENSATION PLAN U.S. EDITION VEMMA COMPENSATION PLAN
CV/QV — POINTS

- This Compensation Plan shall apply to all currently enrolled Affiliates as well as any Affiliate who enrolls after the adoption of this Compensation Plan.
- The Compensation Plan shall apply to all Vemma operations, both in the United States as well in other countries, if and when foreign markets are opened.
- This Compensation Plan will not impact the pricing of product to either Affiliates or Customers, and there will not be any differential pricing between Affiliates or Customers.
- For purposes of this Compensation Plan, an "Affiliate" is someone who intends to participate in and earn rewards under Vemma's Marketing Plan, and a "Customer" is someone who is only interested in purchasing and using our products.

Equal in the Vemma Compensation Plan, both Commissionable Volume (CV) and Qualifying Volume (QV) are also known as "points." This is the value associated with the specific product that allows you to build cycles and earn income.

ENROLLER

When you introduce a new customer to Vemma and sign them up, you are their personal Enroller. Your Enroller is the person who introduced you to Vemma.

SPONSOR

The term Sponsor refers to the person immediately above you in the Vemma structure. You are the Sponsor of the two (2) Customers or Affiliates immediately below you, one (1) on your left team and one (1) on your right team.

QUALIFY

Each sales organization must be qualified to earn commissions and bonuses. You will not be able to qualify for commissions based on your own purchases. You qualify your sales organization by being active with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month, along with one (1) personally enrolled Customer/Affiliate on your left team and one (1)

personally enrolled Customer/Affiliate on your right team, each meeting the active requirements based on individual rank.

ACTIVE

In order to be considered active, you must have 25 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchase) every month. Affiliates with the rank of Platinum or higher are considered active if they have 50 PV. Either amount of PV (25 or 50) will activate your account for four (4) volume periods, including the volume week in which the volume is placed, plus one (1) volume week grace period.

ENROLLMENT LINE

Those who are connected by being personally enrolled. For example, your personally enrolled Customers/Affiliates and their personally enrolled Customers/Affiliates are part of an enrollment line.

ENROLLERSHIP VOLUME

All volume that originates from your activity of enrolling a Customer or Affiliate.

PV — PERSONAL VOLUME

Volume that is associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases.

AUTO-DELIVERY

Auto-delivery is a recurring monthly order that you can choose to have delivered to you each month, saving you the trouble of having to call in or go online.

VEMMA COMPENSATION PLAN

Our business model is designed to reward those people that promote the Vemma brand products. This is accomplished by devoting almost our entire marketing budget to fund the Vemma Compensation Plan. This plan is based on the simple two team-building concept — a left team and a right team. Since there are just two teams to build, this creates excitement as Customers join, one after the other, down team

lines, helping more people benefit from the products and the volume and creating greater leverage within the plan.

When you sign up to become an Affiliate and activate your account, you will receive full access to the Vemma back office information and a free marketing website. When you encounter someone who wants to become a Customer, you can enroll them through this marketing website.

As soon as you qualify your sales organization by enrolling at least one (1) active Customer on each of your left and right team (active is defined as having an active 25 PV every month), you are then eligible to earn income.

Best yet, the Vemma Compensation Plan pays out fifty percent (50%) of the Commissionable Volume (CV) weekly, so you have the opportunity to get paid every week if you qualify under the Compensation Plan. You will not be able to qualify for commissions based on your own purchases.

But each purchase by a personally enrolled Customer or Affiliate will activate your account for four (4) weeks, including the volume week in which the volume is placed, plus a one (1) week grace period.

CYCLE COMMISSION

Qualifications: Active Affiliates with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchase) every month, along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. At the end of each volume period (week), Vemma's computers search down Affiliates' left and right teams, and whenever 180 points on one team and 360 points on the opposite team occur (teams can switch back and forth), Affiliates are eligible to earn a Cycle Commission of approximately \$20 USD.** The weekly cycle value will be determined each week based upon total sales divided by the amount of qualified cycles.

51% Rule: You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization's total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100. However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will not be banked. Any questions regarding qualification and payment of commissions under the terms of this Compensation Plan should be directed to Vemma's Compliance Department.

For cycle volume information associated with products, please refer to the Cycle Credit Chart.

**All Vemma bonuses will be calculated in USD and paid in local currency. Vemma will evaluate and modify when necessary the exchange rates on a monthly basis.

YOU

LEFT = TEAM 1

= 1 CYCLE OF APPROXIMATELY \$20 USD**

RIGHT = TEAM 2

360 POINTS 180 POINTS

VEMMA CYCLE CREDIT CHART

Vemma® 1-Pack 25

Vemma 2-Pack 50

Vemma 4-Pack 100

Vemma 10-Pack 200

Vemma Nutri-Pack 50

Vemma Co Q10 12.5

Vemma Coral Calcium 12.5

Vemma EPA 1000 Omega-3 12.5

Vemma Variety Pack 12.5

Vemma Renew™ ½-Pack 12.5

Vemma Renew 1-Pack 25

Vemma Renew 2-Pack 50

Vemma Renew 10-Pack 200

V2 Fridge Brick® 25

V2 Fridge Brick 2-Pack 50

V2 Fridge Brick 4-Pack 100

V2 Fridge Brick 10-Pack 200

Verve® Energy Drink ½-Pack 12.5

Verve Energy Drink 1-Pack 25

Verve Energy Drink 2-Pack 50

Verve Energy Drink 10-Pack 200

Verve Energy Shot 1-Pack 25

Verve Energy Shot 2-Pack 50

Verve Energy Shot 4-Pack 100

Verve Energy Shot 10-Pack 200

Verve Energy Pack 50

Verve ReMIX™ ½-Pack 12.5

Verve ReMIX 1-Pack 25

Verve ReMIX 2-Pack 50

Verve ReMIX 10-Pack 200

Verve ParTea® ½-Pack 12.5

Verve ParTea 1-Pack 25

Verve ParTea 2-Pack 50

Verve ParTea 10-Pack 200

Verve Bold® ½-Pack 12.5

Vemma® Product Purchase Order Points Vemma® Product Purchase Order Points

CYCLE CREDIT CHART

Verve Bold 1-Pack 25

Verve Bold 2-Pack 50

Verve Bold 10-Pack 200

Verve Zero Sugar ½-Pack 12.5

Verve Combo ½-Pack 12.5

Verve Zero Sugar 1-Pack 25

Verve Zero Sugar 2-Pack 50

Verve Zero Sugar 10-Pack 200

Verve Combo 10-Pack 200

Bod•ē® Shake 1 Bag 12.5

Bod•ē Shake 2 Bags 25

Bod•ē Shake 4 Bags 50

Bod•ē Shake 10 Bags 200

Bod•ē Transformation Pack 35

Bod•ē Extreme Transformation Pack 50

Bod•ē Turbo 10-Pack 50

Bod•ē Build 1-Pack 25

Bod•ē Build 2-Pack 50

Bod•ē Build 10-Pack 200

Bod•ē Pro™ 24/7 Pack 75

Bod•ē Pro Trial Pack 12.5

Bod•ē Pro Fit Pack 50

Bod•ē Burn 1-Pack 25

Bod•ē Burn 2-Pack 50

Bod•ē Burn 10-Pack 200

Bod•ē Cleanse 1-Pack 10

Bod•ē Cleanse 2-Pack 20

Bod•ē Burn 3 oz 8-Pack 10

Bod•ē Burn 3 oz 24-Pack 30

Bod•ē Burn zero caffeine 3 oz 8-Pack 10

Bod•ē Burn zero caffeine 3 oz 24-Pack 30

Bod•ē Rest zero caffeine 3 oz 8-Pack 10

Bod•ē Rest zero caffeine 3 oz 24-Pack 30

Vemma NEXT® 1-Pack 25

Vemma NEXT 2-Pack 50

CYCLE EARNINGS LEVELS

The cycle earnings levels only apply to the Cycle Commission and do not affect any other areas of income in the Vemma Compensation Plan. As described above, cycle earnings are subject to the 51% Rule. Once the Affiliate reaches the maximum cycle level earnings on that position for four (4) consecutive weeks, the Affiliate will be given one (1) new position above his or her maxed position. That position will have the same earning level limit, unless the Affiliate rank advances to the higher rank, as specified below. Up to two (2) positions maximum are allowed per Affiliate, four (4) individual positions per married couple.

Affiliates will not be eligible to receive bonuses until they have qualified their sales organization by having 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month, one (1) active Vemma Customer/Affiliate on their left team and one (1) active Vemma Customer/Affiliate on their right team whom they personally enrolled.

Affiliates below the rank of Platinum are considered active if they have 25 PV every month. Platinum and above Affiliates are considered active if they have a 50 PV every month. After twenty-four (24) consecutive weeks without activity, the account will be terminated.

*Volume period is defined as a Vemma business period beginning on Friday at 12:00 a.m. and ending at 11:59 p.m. on Thursday night.

MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to four (4) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, two (2) anywhere else on their team.

The Matching Commission pays the Enroller up to ten percent (10%) on all of their personally enrolled Affiliates' Cycle Commission paid amounts. Cycle Commission paid amounts are subject to the 51% Rule. If an Affiliate does not meet the eligibility requirements to earn it, the Matching Commission will compress to the first eligible upline Enroller.

An Affiliate cannot earn both Matching Commission and the Second Tier Matching Commission on the same downline Affiliate. In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

SECOND TIER MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to six (6) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, four (4) anywhere else on their team.

Affiliates earn on the people that they personally enrolled, plus they are eligible to earn up to ten percent (10%) Matching Commission on all of their personal enrollees' personally enrolled Affiliates' Cycle Commission earned amounts. Cycle Commission earned amounts are subject to the 51% Rule. If an Affiliate does not meet the eligibility requirements to earn it, the Second Tier Matching Commission will compress to the first eligible upline Enroller.

In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

TIER MATCHING COMMISSION CAP

Earnings of the Matching Commission and Second Tier Matching Commission up to \$5,000 USD in a four (4) week rank advancement period will not require specific structure or rank qualifications. To be eligible to earn the Matching Commission and Second Tier Matching Commission in excess of \$5,000 USD in a four (4) week rank advancement period, an Affiliate must earn and maintain the "Paid As" rank of Platinum or higher.

BALANCED TEAM BONUS

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. Additional requirements are shown in the table below. This bonus pays out at the end of each four (4) week rank advancement period based upon the paid ranks achieved during the current or previous rank advancement period. Balanced Team Bonus is prorated amongst all qualified participants based upon "Paid As" rank. The Balanced Team Bonus Pool encompasses approximately three percent (3%) of the sales generated from countries that participate in the Balanced Team Bonus. Balanced Team Volume accumulated in a four (4) week rank advancement period does not roll over to the next four (4) week period. The payout at each level may vary from period to period. Affiliates can participate in the pools at Bronze through Gold Balanced Team level for a period of no longer than twelve (12) months from the date they first achieve that Balanced Team level. At the diamond level Affiliates can participate in that pool for a period of no longer than Twenty-Four (24) months from the date they first achieve the Diamond Balance Team Level. Affiliates who do not meet the requirements for their current paid level may participate in a lower pool for which they meet

the requirements.^

51% Rule: In order to earn Balanced Team Bonus, the Balanced Team Bonus volume each week must come from a majority of customer sales (51% or higher). If this requirement is not met the bonus will not be paid.

“PAID AS” RANK: BRONZE

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$100

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

BRONZE

^Affiliates with a “Paid As” rank of Bronze through Star Platinum are eligible to earn the Balanced Team Bonus at the Bronze through Diamond levels. Affiliates who reach the rank of Executive or above are no longer eligible to earn the Balanced Team Bonus.

*The downline Affiliate’s “Paid As” rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan. Cycle earnings are subject to the 51% Rule.

BALANCED TEAM BONUS

“PAID AS” RANK: SILVER

Bronze* on each team in the enrollment line and

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$200†

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

SILVER

BRONZE BRONZE

BALANCED TEAM BONUS

"PAID AS" RANK: GOLD

Silver* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$300

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

GOLD

SILVER SILVER

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan. Cycle earnings are subject to the 51% Rule.

50 PTS 500 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

DIAMOND

BALANCED TEAM BONUS GOLD GOLD

"PAID AS" RANK: DIAMOND

Gold* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$400

VEMMA LOYALTY PROGRAM

Eligibility is based on having an order of at least 25 QV per month for six (6) consecutive months or by placing a minimum 25 QV product order for six (6) consecutive months. Once a Customer or Affiliate has purchased their sixth consecutive monthly order, the Customer or Affiliate will receive a case of free product in the seventh month.* Customer or Affiliate can continue to receive free product every six (6) consecutive months from the last redeemed free product order. Customers or Affiliates currently qualified for the Customer Referral Program will be allowed to continue to receive the benefits of the Customer Referral Program until December 31, 2015 as long as they continue to meet the qualifications

to earn free product through this program. Once a Customer or Affiliate does not qualify for the Customer Referral Program, the Customer or Affiliate will be transitioned into the Vemma Loyalty Program.**

*Free order will be the equivalent of the lowest order placed over the six-month qualifying period. Free product must be redeemed within two (2) months of the qualifying six-month period or it will be null and void. The free product amount will be either 25QV or 50QV after meeting the six-month qualification time frame. Free product does not carry qualifying volume (QV) or commissionable volume (CV).

**The free products sent to Customers and Affiliates are subject to reporting on Form 1099-MISC. For Affiliates, the free product is considered taxable compensation for services. For the Customer, the free product is a taxable prize or award. In both cases, the amount of taxable income to the recipient is the fair market value of the merchandise.

ONE-TIME RANK ADVANCEMENT REWARDS

After qualifying at a new rank (Silver through Star Executive) for two (2) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. Two Four (4) Week Periods bonuses:

Silver \$100 USD

Gold \$250 USD

Diamond \$500 USD

Star Diamond \$625 USD

Platinum \$750 USD

Star Platinum \$1,000 USD

Executive \$1,500 USD

Star Executive \$2,000 USD

After qualifying at a new rank (Presidential through Royal Ambassador) for four (4) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. For Presidential through Royal Ambassador ranks, the Affiliate will need to maintain a minimum of one "Paid As" Star Platinum in their personally enrolled downline on each team of their business. Four Consecutive Four (4) Week Periods bonuses:

Presidential \$3,000 USD

Star Presidential \$5,000 USD

Ambassador \$10,000 USD

Star Ambassador \$15,000 USD

Royal Ambassador \$25,000 USD

Rank Advancement and other recognition will be based on four (4) week periods and calculated when bonuses are run for the last week of the four (4) week period. This recognition will be posted in your Vemma Back Office approximately two (2) weeks after the bonus run. By earning a certain number of cycles in a four (4) week period, Affiliates can achieve various ranks and be recognized as a Leader!

Affiliates within their first four (4) week rank advancement period have the ability to accumulate cycles up to two (2), four (4) week rank advancement periods for Rank Advancement purposes.

NUMBER OF CYCLES IN LEADER RANK QUALIFICATIONS A FOUR (4) WEEK PERIOD

Bronze 1

Silver 5

Gold 10

Diamond 20

Star Diamond 35

Platinum 50

Star Platinum 75

Executive 100

Star Executive 175

Presidential 250

Star Presidential 375

Ambassador 500

Star Ambassador 1,000

Royal Ambassador 2,000

*Star Royal Ambassador 4,000

*Pinnacle Leader 6,000

*Star Pinnacle 10,000

*Royal Pinnacle 15,000

*Legend 20,000

*In addition to earning the required cycles in the four (4) week Rank Advancement period, you will need to meet the required structure to receive the Paid As rank. Star Royal Ambassadors must have two (2) Presidential enroller teams on the left team and the right team; Pinnacle Leaders must have three (3) Presidentials, enroller teams on the left team and the right team; Star Pinnacles must have three (3) Star Presidential enroller teams on the left team and the right team; Royal Pinnacles must have three (3) Ambassador enroller teams on the left team and the right teams; Legends must have three (3) Star Ambassador enroller teams on the left team and the right team. Vemma values recognition. Affiliates are eligible to earn special awards at each level. Achieve each rank two (2) consecutive four (4) week periods to qualify for Silver through Star Ambassador awards, and six (6) consecutive four (4) week periods to qualify for Royal Ambassador and above awards. Cycle earnings necessary to advance in rank are subject to the 51% Rule.

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For more information,

please contact us at:

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Email: info@vemmanutrition.com

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EXHIBIT 2

Salanga, Edward A. (PHX x3422)

From: Salanga, Edward [Edward.Salanga@quarles.com]
Sent: Wednesday, September 30, 2015 4:07 PM
To: Moon, Jason C
Cc: Quigley, Kevin D. (PHX x3433)
Subject: Vemma New Compensation Plan [QBLLP-ACTIVE.FID38201419]
Attachments: New Comp Plan.docx

Jason,

Attached is a draft of Vemma's new compensation plan that Vemma intends to implement going forward. Please let us know if you have any questions or comments. As this is a new marketing and sale material within the meaning of the Order, you will have 5 days to let us know if you have any objections. However, I trust that you will be able to review and advise us of any issues the FTC may have in less than that amount of time. I am copying my partner, Kevin Quigley, who will be available to respond to any questions while I am away next week on business.

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COMPENSATION PLAN U.S. EDITION VEMMA COMPENSATION PLAN
CV/QV — POINTS

Equal in the Vemma Compensation Plan, both Commissionable Volume (CV) and Qualifying Volume (QV) are also known as “points.” This is the value associated with the specific product that allows you to build cycles and earn income.

CUSTOMER

In order to sell the Vemma brands, you must first begin as a customer. Once you have enrolled one (1) new customer on your left team and one (1) new customer on your right team, you will be given the option to be promoted to the Affiliate status.

ENROLLER

When you introduce a new customer to Vemma and sign them up, you are their personal Enroller. Your Enroller is the person who introduced you to Vemma.

SPONSOR

The term Sponsor refers to the person immediately above you in the Vemma structure. You are the Sponsor of the two (2) Customers or Affiliates immediately below you, one (1) on your left team and one (1) on your right team.

QUALIFY

Each sales organization must be qualified to earn commissions and bonuses. You will not be able to qualify for commissions based on your own purchases. You qualify your sales organization by being active with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month, along with one (1) personally enrolled Customer/Affiliate on your left team and one (1) personally enrolled Customer/Affiliate on your right team, each meeting the active requirements based on individual rank.

ACTIVE

In order to be considered active, you must have 25 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchase) every month.

Affiliates with the rank of Platinum or higher are considered active if they have 50 PV. Either amount of PV (25 or 50) will activate your account for four (4) volume periods, including the volume week in which the volume is placed, plus one (1) volume week grace period.

ENROLLMENT LINE

Those who are connected by being personally enrolled. For example, your personally enrolled Customers/Affiliates and their personally enrolled Customers/Affiliates are part of an enrollment line.

ENROLLERSHIP VOLUME

All volume that originates from your activity of enrolling a Customer or Affiliate.

PV — PERSONAL VOLUME

Volume that is associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases.

AUTO-DELIVERY

Auto-delivery is a recurring monthly order that you can choose to have delivered to you each month, saving you the trouble of having to call in or go online.

VEMMA COMPENSATION PLAN

Our business model is designed to reward those people that promote the Vemma brand products. This is accomplished by devoting almost our entire marketing budget to fund the Vemma Compensation Plan. This plan is based on the simple two team-building concept — a left team and a right team. Since there are just two teams to build, this creates excitement as Customers join, one after the other, down team lines, helping more people benefit from the products and the volume and creating greater leverage within the plan. When you earn the right to become an Affiliate and activate your account, you will receive full access to the Vemma back office information and a free marketing website. When you encounter someone who wants to become a Customer, you can enroll them through this marketing website.

As soon as you qualify your sales organization by enrolling at

least one (1) active Customer on each of your left and right team (active is defined as having an active 25 PV every month), you are then eligible to earn income. Best yet, the Vemma Compensation Plan pays out fifty percent (50%) of the Commissionable Volume (CV) weekly, so you have the opportunity to get paid every week if you qualify under the Compensation Plan. You will not be able to qualify for commissions based on your own purchases. But each purchase by a personally enrolled Customer or Affiliate will activate your account for four (4) weeks, including the volume week in which the volume is placed, plus a one (1) week grace period.

CYCLE COMMISSION

Qualifications: Active Affiliates with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchase) every month, along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. At the end of each volume period (week), Vemma's computers search down Affiliates' left and right teams, and whenever 180 points on one team and 360 points on the opposite team occur (teams can switch back and forth), Affiliates are eligible to earn a Cycle Commission of approximately \$20 USD.** The weekly cycle value will be determined each week based upon total sales divided by the amount of qualified cycles.

51% Rule: You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization's total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100. However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will not be banked. Any questions regarding qualification and payment of commissions under the terms of this Compensation Plan should be directed to Vemma's Compliance Department.

For cycle volume information associated with products, please refer to the Cycle Credit Chart.

**All Vemma bonuses will be calculated in USD and paid in local currency. Vemma will evaluate and modify when necessary the exchange rates on a monthly basis.

YOU

LEFT = TEAM 1

= 1 CYCLE OF APPROXIMATELY \$20 USD**

RIGHT = TEAM 2

360 POINTS 180 POINTS

VEMMA CYCLE CREDIT CHART

Vemma® 1-Pack 25

Vemma 2-Pack 50

Vemma 4-Pack 100

Vemma 10-Pack 200

Vemma Nutri-Pack 50

Vemma Co Q10 12.5

Vemma Coral Calcium 12.5

Vemma EPA 1000 Omega-3 12.5

Vemma Variety Pack 12.5

Vemma Renew™ ½-Pack 12.5

Vemma Renew 1-Pack 25

Vemma Renew 2-Pack 50

Vemma Renew 10-Pack 200

V2 Fridge Brick® 25

V2 Fridge Brick 2-Pack 50

V2 Fridge Brick 4-Pack 100

V2 Fridge Brick 10-Pack 200

Verve® Energy Drink ½-Pack 12.5

Verve Energy Drink 1-Pack 25

Verve Energy Drink 2-Pack 50

Verve Energy Drink 10-Pack 200

Verve Energy Shot 1-Pack 25

Verve Energy Shot 2-Pack 50

Verve Energy Shot 4-Pack 100

Verve Energy Shot 10-Pack 200

Verve Energy Pack 50

Verve ReMIX™ ½-Pack 12.5

Verve ReMIX 1-Pack 25

Verve ReMIX 2-Pack 50

Verve ReMIX 10-Pack 200

Verve ParTea® ½-Pack 12.5

Verve ParTea 1-Pack 25

Verve ParTea 2-Pack 50

Verve ParTea 10-Pack 200

Verve Bold® ½-Pack 12.5

Vemma® Product Purchase Order Points Vemma® Product Purchase Order Points

CYCLE CREDIT CHART

Verve Bold 1-Pack 25

Verve Bold 2-Pack 50
Verve Bold 10-Pack 200
Verve Zero Sugar ½-Pack 12.5
Verve Combo ½-Pack 12.5
Verve Zero Sugar 1-Pack 25
Verve Zero Sugar 2-Pack 50
Verve Zero Sugar 10-Pack 200
Verve Combo 10-Pack 200
Bod•ē® Shake 1 Bag 12.5
Bod•ē Shake 2 Bags 25
Bod•ē Shake 4 Bags 50
Bod•ē Shake 10 Bags 200
Bod•ē Transformation Pack 35
Bod•ē Extreme Transformation Pack 50
Bod•ē Turbo 10-Pack 50
Bod•ē Build 1-Pack 25
Bod•ē Build 2-Pack 50
Bod•ē Build 10-Pack 200
Bod•ē Pro™ 24/7 Pack 75
Bod•ē Pro Trial Pack 12.5
Bod•ē Pro Fit Pack 50
Bod•ē Burn 1-Pack 25
Bod•ē Burn 2-Pack 50
Bod•ē Burn 10-Pack 200
Bod•ē Cleanse 1-Pack 10
Bod•ē Cleanse 2-Pack 20
Bod•ē Burn 3 oz 8-Pack 10
Bod•ē Burn 3 oz 24-Pack 30
Bod•ē Burn zero caffeine 3 oz 8-Pack 10
Bod•ē Burn zero caffeine 3 oz 24-Pack 30
Bod•ē Rest zero caffeine 3 oz 8-Pack 10
Bod•ē Rest zero caffeine 3 oz 24-Pack 30
Vemma NEXT® 1-Pack 25
Vemma NEXT 2-Pack 50

CYCLE EARNINGS LEVELS

The cycle earnings levels only apply to the Cycle Commission and do not affect any other areas of income in the Vemma Compensation Plan. Once the Affiliate reaches the maximum cycle level earnings on that position for four (4) consecutive weeks, the Affiliate will be given one (1) new position above his or her maxed position. That position will have the same earning level limit, unless the Affiliate rank advances to the higher rank, as specified below. Up to two (2) positions maximum are allowed per Affiliate, four (4) individual positions per married couple.

Affiliates will not be eligible to receive bonuses until they have qualified their sales organization by having 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month, one (1) active Vemma Customer/Affiliate on their left team and one (1) active Vemma Customer/Affiliate on their right team whom they personally enrolled.

Affiliates below the rank of Platinum are considered active if they have 25 PV every month. Platinum and above Affiliates are considered active if they have a 50 PV every month. After twenty-four (24) consecutive weeks without activity, the account will be terminated.

*Volume period is defined as a Vemma business period beginning on Friday at 12:00 a.m. and ending at 11:59 p.m. on Thursday night.

MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to four (4) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, two (2) anywhere else on their team.

The Matching Commission pays the Enroller up to ten percent (10%) on all of their personally enrolled Affiliates' Cycle Commission paid amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Matching Commission will compress to the first eligible upline Enroller.

An Affiliate cannot earn both Matching Commission and the Second Tier Matching Commission on the same downline Affiliate. In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

SECOND TIER MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to six (6) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, four (4) anywhere else on their team.

Affiliates earn on the people that they personally enrolled, plus they are eligible to earn up to ten percent (10%) Matching Commission on all of their personal enrollees' personally enrolled Affiliates'

Cycle Commission earned amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Second Tier Matching Commission will compress to the first eligible upline Enroller.

In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

TIER MATCHING COMMISSION CAP

Earnings of the Matching Commission and Second Tier Matching Commission up to \$5,000 USD in a four (4) week rank advancement period will not require specific structure or rank qualifications. To be eligible to earn the Matching Commission and Second Tier Matching Commission in excess of \$5,000 USD in a four (4) week rank advancement period, an Affiliate must earn and maintain the "Paid As" rank of Platinum or higher.

BALANCED TEAM BONUS

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. Additional requirements are shown in the table below. This bonus pays out at the end of each four (4) week rank advancement period based upon the paid ranks achieved during the current or previous rank advancement period. Balanced Team Bonus is prorated amongst all qualified participants based upon "Paid As" rank. The Balanced Team Bonus Pool encompasses approximately three percent (3%) of the sales generated from countries that participate in the Balanced Team Bonus. Balanced Team Volume accumulated in a four (4) week rank advancement period does not roll over to the next four (4) week period. The payout at each level may vary from period to period. Affiliates can participate in the pools at Bronze through Gold Balanced Team level for a period of no longer than twelve (12) months from the date they first achieve that Balanced Team level. At the diamond level Affiliates can participate in that pool for a period of no longer than Twenty-Four (24) months from the date they first achieve the Diamond Balance Team Level. Affiliates who do not meet the requirements for their current paid level may participate in a lower pool for which they meet the requirements.^

51% Rule: In order to earn Balanced Team Bonus, the Balanced Team Bonus volume each week must come from a majority of customer sales (51% or higher). If this requirement is not met the bonus will not be paid.

"PAID AS" RANK: BRONZE

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$100

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

BRONZE

^Affiliates with a "Paid As" rank of Bronze through Star Platinum are eligible to earn the Balanced Team Bonus at the Bronze through Diamond levels. Affiliates who reach the rank of Executive or above are no longer eligible to earn the Balanced Team Bonus.

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

BALANCED TEAM BONUS

"PAID AS" RANK: SILVER

Bronze* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$200†

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

SILVER

BRONZE BRONZE

BALANCED TEAM BONUS

"PAID AS" RANK: GOLD

Silver* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$300

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

GOLD

SILVER SILVER

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

50 PTS 500 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

DIAMOND

BALANCED TEAM BONUS GOLD GOLD

"PAID AS" RANK: DIAMOND

Gold* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$400

VEMMA LOYALTY PROGRAM

Eligibility is based on having an order of at least 25 QV per month for six (6) consecutive months or by placing a minimum 25 QV product order for six (6) consecutive months. Once a Customer or Affiliate has purchased their sixth consecutive monthly order, the Customer or Affiliate will receive a case of free product in the seventh month.* Customer or Affiliate can continue to receive free product every six (6) consecutive months from the last redeemed free product order. Customers or Affiliates currently qualified for the Customer Referral Program will be allowed to continue to receive the benefits of the Customer Referral Program until December 31, 2015 as long as they continue to meet the qualifications to earn free product through this program. Once a Customer or Affiliate does not qualify for the Customer Referral Program, the Customer or Affiliate will be transitioned into the Vemma Loyalty Program.**

*Free order will be the equivalent of the lowest order placed over the six-month qualifying period. Free product must be redeemed within two (2) months of the qualifying six-month period or it will be null and void. The free product amount will be either 25QV or 50QV after meeting the six-month qualification time frame. Free product does not carry qualifying volume (QV) or commissionable volume (CV).

**The free products sent to Customers and Affiliates are subject to reporting on Form 1099-MISC. For Affiliates, the free product is considered taxable compensation for services. For the Customer, the free product is a taxable prize or

award. In both cases, the amount of taxable income to the recipient is the fair market value of the merchandise.

ONE-TIME RANK ADVANCEMENT REWARDS

After qualifying at a new rank (Silver through Star Executive) for two (2) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. Two Four (4) Week Periods bonuses:

Silver \$100 USD

Gold \$250 USD

Diamond \$500 USD

Star Diamond \$625 USD

Platinum \$750 USD

Star Platinum \$1,000 USD

Executive \$1,500 USD

Star Executive \$2,000 USD

After qualifying at a new rank (Presidential through Royal Ambassador) for four (4) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. For Presidential through Royal Ambassador ranks, the Affiliate will need to maintain a minimum of one "Paid As" Star Platinum in their personally enrolled downline on each team of their business. Four Consecutive Four (4) Week Periods bonuses:

Presidential \$3,000 USD

Star Presidential \$5,000 USD

Ambassador \$10,000 USD

Star Ambassador \$15,000 USD

Royal Ambassador \$25,000 USD

Rank Advancement and other recognition will be based on four (4) week periods and calculated when bonuses are run for the last week of the four (4) week period. This recognition will be posted in your Vemma Back Office approximately two (2) weeks after the bonus run. By earning a certain number of cycles in a four (4) week period, Affiliates can achieve various ranks and be recognized as a Leader! Affiliates within their first four (4) week rank advancement period have the ability to accumulate cycles up to two (2), four (4) week rank advancement periods for Rank Advancement purposes.

NUMBER OF CYCLES IN LEADER RANK QUALIFICATIONS A FOUR (4) WEEK PERIOD

Bronze 1

Silver 5

Gold 10

Diamond 20

Star Diamond 35

Platinum 50

Star Platinum 75

Executive 100

Star Executive 175

Presidential 250

Star Presidential 375

Ambassador 500

Star Ambassador 1,000

Royal Ambassador 2,000

*Star Royal Ambassador 4,000

*Pinnacle Leader 6,000

*Star Pinnacle 10,000

*Royal Pinnacle 15,000

*Legend 20,000

*In addition to earning the required cycles in the four (4) week Rank Advancement period, you will need to meet the required structure to receive the Paid As rank. Star Royal Ambassadors must have two (2) Presidential enroller teams on the left team and the right team; Pinnacle Leaders must have three (3) Presidentials, enroller teams on the left team and the right team; Star Pinnacles must have three (3) Star Presidential enroller teams on the left team and the right team; Royal Pinnacles must have three (3) Ambassador enroller teams on the left team and the right teams; Legends must have three (3) Star Ambassador enroller teams on the left team and the right team. Vemma values recognition. Affiliates are eligible to earn special awards at each level. Achieve each rank two (2) consecutive four (4) week periods to qualify for Silver through Star Ambassador awards, and six (6) consecutive four (4) week periods to qualify for Royal Ambassador and above awards.

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For more information,

please contact us at:

Phone: 1-800-577-0777

Email: info@vemmanutrition.com

VEMMA CUSTOMER SERVICE HOURS:

Monday — Friday: 8am - 5pm (AZ TIME)

1621 W. Rio Salado Parkway

Tempe, AZ 85281

vemmanutrition.com

®



Salanga, Edward A. (PHX x3422)

From: Moon, Jason C [jmoon@ftc.gov]
Sent: Monday, October 05, 2015 11:56 AM
To: Quigley, Kevin D. (PHX x3433); Salanga, Edward A. (PHX x3422)
Cc: Linville, Angeleque P.; Brown, Dama J.; 'kenton.johnson@robbevans.com'
Subject: Vemma's proposed compensation plan
Attachments: Letter to Salanga and Quigley (comp plan)100415.pdf

Counsel,

Please see attached correspondence regarding Vemma's proposed compensation plan.

Jason C. Moon
Attorney
Federal Trade Commission—Southwest Region
(214) 979-9378



United States of America
FEDERAL TRADE COMMISSION
Southwest Region

Jason C. Moon
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(214) 979-9378
jmoon@ftc.gov

October 5, 2015

Mr. Edward Salanga
Mr. Kevin Quigley
Quarles & Brady LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004
By email: esalanga@quarles.com
kquigley@quarles.com

Re: *FTC v. Vemma Nutrition Company, et al.*
Proposed compensation plan received September 30, 2015

Dear Mr. Salanga and Mr. Quigley:

We received Vemma's proposed compensation plan, transmitted to us after hours on September 30, 2015, and have conducted a preliminary review. The FTC objects to the plan. Given the complexity of the plan, and the fact that the plan does not describe many terms and conditions that will affect implementation, this letter describes the FTC's objections generally, without limiting the FTC's ability to object on additional grounds as details emerge or are made clear.

Despite representing to the Court that it would work to develop a business model that emphasizes retail sales to ultimate users, Vemma has proposed a compensation plan that is in many respects unchanged from the plan that Judge Tuchi determined was likely to be a pyramid scheme. It is a binary compensation plan that provides no new incentives for sales to ultimate users; as such, it will likely incentivize continual enrollment of Affiliates in an endless chain of recruitment, at the expense of retail sales. As with the previous plan, the plan provides no meaningful safeguards to prevent Affiliates from focusing on recruitment to the detriment of retail sales. The proposed plan's "51% rule" is ineffective, in the following respects:

- 1) Vemma's definition of "Customer" includes consumers who intend to participate in the purported business opportunity, not just users of the product. If this definition is used, affiliates will be eligible for bonuses even if the majority of their qualifying volume comes from purchasers who are attempting to pursue the business opportunity. This violates Section I.A.4. of the Court's preliminary injunction (#118); and

2) Vemma's interpretation of Section I.A.4., which permits Affiliates to be paid commissions even when purchases by participants outweigh purchases to non-participants, conflicts with the Section's prohibition on paying "any compensation" unless the majority of the compensation is based on sales to non-participants. This interpretation insufficiently incentivizes sales to non-participants.

The FTC also is concerned by the requirement that Vemma affiliates must begin as Customers, which implies that a personal purchase is necessary for Affiliate status. Such a requirement would violate Section I.A.2, and any upline bonuses based on these mandatory purchases would violate Section I.A.3.

In addition, the proposed compensation plan leaves many issues unaddressed, including how existing down lines would be treated and whether the compensation plan is limited to the U.S. or applies worldwide. We would welcome an opportunity to discuss these issues more fully. Please contact me at the number above with any questions about our position or to discuss these matters further.

Sincerely,

/s/ Jason C. Moon

Jason C. Moon

cc: Kenton Johnson



Salanga, Edward A. (PHX x3422)

From: Quigley, Kevin D. (PHX x3433)
Sent: Wednesday, October 07, 2015 3:29 PM
To: 'Moon, Jason C'
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: Vemma's proposed compensation plan [QBLLP-ACTIVE.FID38201419]
Attachments: Letter to Salanga and Quigley (comp plan)100415.pdf; New Comp Plan - Redline Version (2).docx; New Comp Plan - Clean Version (2).docx

Jason -

Following up on John's and my conversation with you yesterday, we are attaching a clean and redline copy of the proposed compensation plan. As we discussed, we believe we have addressed the FTC's concerns contained in your 10/5/15 letter as well as what we discussed on the phone. Please note the following:

- Vemma has eliminated the requirement that new participants first be a Customer. New participants will continue to have the option of enrolling as either a Customer or Affiliate.
- We have now addressed the reclassification issue based on the parties' mutual agreement. This should address any concerns with complying with the 9/18 Order mandating that compensation can only be paid for sales made to a majority of Customers, as discussed below.
- The 51% rule applies across the board. Commissions will only be paid for sales, the majority of which are to Customers. Therefore, Affiliates are incentivized to sell the majority of product to Customers. And, this rule specifically enforces the Order's requirement on this point.
- Affiliates cannot qualify for commissions or bonuses on their own purchases. This was the case in the initial proposed plan, and remains with the revised plan. The only reason for Affiliates to purchase product is for self-consumption or resale.
- While always the intent, the plan now specifically states that this is the only compensation plan - it will apply to all Affiliates either existing or newly-enrolled, and in the United States and any foreign markets that are opened. It also states there will not be different pricing between Customers and Affiliates.

We believe we have addressed the concerns stated in your letter as well as what we discussed on the phone. Please review and let us know if you have any further questions. While we understand you have 5 days under the 9/18 Order, we hope you can review and respond in fewer than 5 days. We appreciate your cooperation.

Kevin Quigley / Partner

Renaissance One, Two North Central Avenue / Phoenix, AZ 85004-2391
Office 602-229-5433
Assistant Kelly Thwaites 602-230-5518

COMPENSATION PLAN U.S. EDITION VEMMA COMPENSATION PLAN
CV/QV — POINTS

- This Compensation Plan shall apply to all currently enrolled Affiliates as well as any Affiliate who enrolls after the adoption of this Compensation Plan.
- The Compensation Plan shall apply to all Vemma operations, both in the United States as well in other countries, if and when foreign markets are opened.
- This Compensation Plan will not impact the pricing of product to either Affiliates or Customers, and there will not be any differential pricing between Affiliates or Customers.

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Equal in the Vemma Compensation Plan, both Commissionable Volume (CV) and Qualifying Volume (QV) are also known as "points." This is the value associated with the specific product that allows you to build cycles and earn income.

CUSTOMER

In order to sell the Vemma brands, you must first begin as a customer. Once you have enrolled one (1) new customer on your left team and one (1) new customer on your right team, you will be given the option to be promoted to the Affiliate status.

ENROLLER

When you introduce a new customer to Vemma and sign them up, you are their personal Enroller. Your Enroller is the person who introduced you to Vemma.

SPONSOR

The term Sponsor refers to the person immediately above you in the Vemma structure. You are the Sponsor of the two (2) Customers or Affiliates immediately below you, one (1) on your left team and one (1) on your right team.

QUALIFY

Each sales organization must be qualified to earn commissions and bonuses. You will not be able to qualify for commissions based on your own purchases. You qualify your sales organization by being active with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month, along with one (1) personally

enrolled Customer/Affiliate on your left team and one (1) personally enrolled Customer/Affiliate on your right team, each meeting the active requirements based on individual rank.

ACTIVE

In order to be considered active, you must have 25 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchase) every month. Affiliates with the rank of Platinum or higher are considered active if they have 50 PV. Either amount of PV (25 or 50) will activate your account for four (4) volume periods, including the volume week in which the volume is placed, plus one (1) volume week grace period.

ENROLLMENT LINE

Those who are connected by being personally enrolled. For example, your personally enrolled Customers/Affiliates and their personally enrolled Customers/Affiliates are part of an enrollment line.

ENROLLERSHIP VOLUME

All volume that originates from your activity of enrolling a Customer or Affiliate.

PV — PERSONAL VOLUME

Volume that is associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases.

AUTO-DELIVERY

Auto-delivery is a recurring monthly order that you can choose to have delivered to you each month, saving you the trouble of having to call in or go online.

VEMMA COMPENSATION PLAN

Our business model is designed to reward those people that promote the Vemma brand products. This is accomplished by devoting almost our entire marketing budget to fund the Vemma Compensation Plan. This plan is based on the simple two team-building concept — a left team and a right team. Since there are just two teams to build, this creates

excitement as Customers join, one after the other, down team lines, helping more people benefit from the products and the volume and creating greater leverage within the plan. When you earn the right to become an Affiliate and activate your account, you will receive full access to the Vemma back office information and a free marketing website. When you encounter someone who wants to become a Customer, you can enroll them through this marketing website. As soon as you qualify your sales organization by enrolling at least one (1) active Customer on each of your left and right team (active is defined as having an active 25 PV every month), you are then eligible to earn income. Best yet, the Vemma Compensation Plan pays out fifty percent (50%) of the Commissionable Volume (CV) weekly, so you have the opportunity to get paid every week if you qualify under the Compensation Plan. You will not be able to qualify for commissions based on your own purchases. But each purchase by a personally enrolled Customer or Affiliate will activate your account for four (4) weeks, including the volume week in which the volume is placed, plus a one (1) week grace period.

CYCLE COMMISSION

Qualifications: Active Affiliates with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchase) every month, along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. At the end of each volume period (week), Vemma's computers search down Affiliates' left and right teams, and whenever 180 points on one team and 360 points on the opposite team occur (teams can switch back and forth), Affiliates are eligible to earn a Cycle Commission of approximately \$20 USD. ** The weekly cycle value will be determined each week based upon total sales divided by the amount of qualified cycles.

51% Rule: You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization's total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100. However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will

not be banked. Any questions regarding qualification and payment of commissions under the terms of this Compensation Plan should be directed to Vemma's Compliance Department.

For cycle volume information associated with products, please refer to the Cycle Credit Chart.

**All Vemma bonuses will be calculated in USD and paid in local currency. Vemma will evaluate and modify when necessary the exchange rates on a monthly basis.

YOU

LEFT = TEAM 1

= 1 CYCLE OF APPROXIMATELY \$20 USD**

RIGHT = TEAM 2

360 POINTS 180 POINTS

MEMMA CYCLE CREDIT CHART

Vemma® 1-Pack 25

Vemma 2-Pack 50

Vemma 4-Pack 100

Vemma 10-Pack 200

Vemma Nutri-Pack 50

Vemma Co Q10 12.5

Vemma Coral Calcium 12.5

Vemma EPA 1000 Omega-3 12.5

Vemma Variety Pack 12.5

Vemma Renew™ ½-Pack 12.5

Vemma Renew 1-Pack 25

Vemma Renew 2-Pack 50

Vemma Renew 10-Pack 200

V2 Fridge Brick® 25

V2 Fridge Brick 2-Pack 50

V2 Fridge Brick 4-Pack 100

V2 Fridge Brick 10-Pack 200

Verve® Energy Drink ½-Pack 12.5

Verve Energy Drink 1-Pack 25

Verve Energy Drink 2-Pack 50

Verve Energy Drink 10-Pack 200

Verve Energy Shot 1-Pack 25

Verve Energy Shot 2-Pack 50

Verve Energy Shot 4-Pack 100

Verve Energy Shot 10-Pack 200

Verve Energy Pack 50

Verve ReMIX™ ½-Pack 12.5

Verve ReMIX 1-Pack 25

Verve ReMIX 2-Pack 50

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Verve ReMIX 10-Pack 200
Verve ParTea® ½-Pack 12.5
Verve ParTea 1-Pack 25
Verve ParTea 2-Pack 50
Verve ParTea 10-Pack 200
Verve Bold® ½-Pack 12.5
Vemma® Product Purchase Order Points Vemma® Product Purchase Order Points

CYCLE CREDIT CHART

Verve Bold 1-Pack 25
Verve Bold 2-Pack 50
Verve Bold 10-Pack 200
Verve Zero Sugar ½-Pack 12.5
Verve Combo ½-Pack 12.5
Verve Zero Sugar 1-Pack 25
Verve Zero Sugar 2-Pack 50
Verve Zero Sugar 10-Pack 200
Verve Combo 10-Pack 200
Bod•ē® Shake 1 Bag 12.5
Bod•ē Shake 2 Bags 25
Bod•ē Shake 4 Bags 50
Bod•ē Shake 10 Bags 200
Bod•ē Transformation Pack 35
Bod•ē Extreme Transformation Pack 50
Bod•ē Turbo 10-Pack 50
Bod•ē Build 1-Pack 25
Bod•ē Build 2-Pack 50
Bod•ē Build 10-Pack 200
Bod•ē ProTM 24/7 Pack 75
Bod•ē Pro Trial Pack 12.5
Bod•ē Pro Fit Pack 50
Bod•ē Burn 1-Pack 25
Bod•ē Burn 2-Pack 50
Bod•ē Burn 10-Pack 200
Bod•ē Cleanse 1-Pack 10
Bod•ē Cleanse 2-Pack 20
Bod•ē Burn 3 oz 8-Pack 10
Bod•ē Burn 3 oz 24-Pack 30
Bod•ē Burn zero caffeine 3 oz 8-Pack 10
Bod•ē Burn zero caffeine 3 oz 24-Pack 30
Bod•ē Rest zero caffeine 3 oz 8-Pack 10

Bod•ē Rest zero caffeine 3 oz 24-Pack 30
Vemma NEXT® 1-Pack 25
Vemma NEXT 2-Pack 50

CYCLE EARNINGS LEVELS

The cycle earnings levels only apply to the Cycle Commission and do not affect any other areas of income in the Vemma Compensation Plan. Once the Affiliate reaches the maximum cycle level earnings on that position for four (4) consecutive weeks, the Affiliate will be given one (1) new position above his or her maxed position. That position will have the same earning level limit, unless the Affiliate rank advances to the higher rank, as specified below. Up to two (2) positions maximum are allowed per Affiliate, four (4) individual positions per married couple.

Affiliates will not be eligible to receive bonuses until they have qualified their sales organization by having 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month, one (1) active Vemma Customer/Affiliate on their left team and one (1) active Vemma Customer/Affiliate on their right team whom they personally enrolled.

Affiliates below the rank of Platinum are considered active if they have 25 PV every month. Platinum and above Affiliates are considered active if they have a 50 PV every month. After twenty-four (24) consecutive weeks without activity, the account will be terminated.

*Volume period is defined as a Vemma business period beginning on Friday at 12:00 a.m. and ending at 11:59 p.m. on Thursday night.

MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to four (4) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, two (2) anywhere else on their team.

The Matching Commission pays the Enroller up to ten percent (10%) on all of their personally enrolled Affiliates' Cycle Commission paid amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Matching Commission will compress to the first eligible upline Enroller.

An Affiliate cannot earn both Matching Commission and the Second Tier Matching Commission on the same downline Affiliate. In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

SECOND TIER MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month in addition to six (6) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, four (4) anywhere else on their team.

Affiliates earn on the people that they personally enrolled, plus they are eligible to earn up to ten percent (10%) Matching Commission on all of their personal enrollees' personally enrolled Affiliates' Cycle Commission earned amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Second Tier Matching Commission will compress to the first eligible upline Enroller.

In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

TIER MATCHING COMMISSION CAP

Earnings of the Matching Commission and Second Tier Matching Commission up to \$5,000 USD in a four (4) week rank advancement period will not require specific structure or rank qualifications. To be eligible to earn the Matching Commission and Second Tier Matching Commission in excess of \$5,000 USD in a four (4) week rank advancement period, an Affiliate must earn and maintain the "Paid As" rank of Platinum or higher.

BALANCED TEAM BONUS

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. Additional requirements are shown in the table below. This bonus pays out at the end of each four (4) week rank advancement period based upon the paid ranks achieved during the current or previous rank advancement period. Balanced Team Bonus is prorated amongst all qualified participants based upon "Paid As" rank. The Balanced Team Bonus Pool encompasses approximately three percent (3%) of the sales generated from countries that participate in the Balanced Team Bonus. Balanced Team Volume accumulated in a four (4) week rank advancement period does not roll over to the next four (4) week period. The payout at each level may vary from period to period. Affiliates can participate in the pools at Bronze through Gold Balanced Team level for a period of no longer than twelve (12) months from the date they first achieve that Balanced Team level. At the diamond level Affiliates can participate in that pool for a period of no longer than Twenty-Four (24) months from the date they first achieve the Diamond Balance Team Level. Affiliates who do not meet the requirements for their current paid level may participate in a lower pool for which they meet the requirements.[^]

51% Rule: In order to earn Balanced Team Bonus, the Balanced Team Bonus volume each week must come from a majority of customer sales (51% or higher). If this requirement is not met the bonus will not be paid.

"PAID AS" RANK: BRONZE

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$100

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

BRONZE

^Affiliates with a "Paid As" rank of Bronze through Star Platinum are eligible to earn the Balanced Team Bonus at the Bronze through Diamond levels. Affiliates who reach the rank of Executive or above are no longer eligible to earn the Balanced Team Bonus.

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

BALANCED TEAM BONUS

"PAID AS" RANK: SILVER

Bronze* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$200†

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

SILVER

BRONZE BRONZE

BALANCED TEAM BONUS

"PAID AS" RANK: GOLD

Silver* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$300

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

GOLD

SILVER SILVER

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

50 PTS 500 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

DIAMOND

BALANCED TEAM BONUS GOLD GOLD

"PAID AS" RANK: DIAMOND

Gold* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$400

VEMMA LOYALTY PROGRAM

Eligibility is based on having an order of at least 25 QV per month for six (6) consecutive months or by placing a minimum 25 QV product order for six (6) consecutive months. Once a Customer or Affiliate has purchased their sixth consecutive monthly order, the Customer or Affiliate will receive a case of free product in the seventh month.* Customer or Affiliate can continue to receive free product every six (6) consecutive months from the last redeemed free product order. Customers or Affiliates currently qualified for the Customer Referral Program will be allowed to continue to receive the benefits of the Customer Referral Program until December 31, 2015 as long as they continue to meet the qualifications to earn free product through this program. Once a Customer or Affiliate does not qualify for the Customer Referral Program, the Customer or Affiliate will be transitioned into the Vemma

Loyalty Program.**

*Free order will be the equivalent of the lowest order placed over the six-month qualifying period. Free product must be redeemed within two (2) months of the qualifying six-month period or it will be null and void. The free product amount will be either 25QV or 50QV after meeting the six-month qualification time frame. Free product does not carry qualifying volume (QV) or commissionable volume (CV).

**The free products sent to Customers and Affiliates are subject to reporting on Form 1099-MISC. For Affiliates, the free product is considered taxable compensation for services. For the Customer, the free product is a taxable prize or award. In both cases, the amount of taxable income to the recipient is the fair market value of the merchandise.

ONE-TIME RANK ADVANCEMENT REWARDS

After qualifying at a new rank (Silver through Star Executive) for two (2) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. Two Four (4) Week Periods bonuses:

Silver \$100 USD
Gold \$250 USD
Diamond \$500 USD
Star Diamond \$625 USD
Platinum \$750 USD
Star Platinum \$1,000 USD
Executive \$1,500 USD
Star Executive \$2,000 USD

After qualifying at a new rank (Presidential through Royal Ambassador) for four (4) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. For Presidential through Royal Ambassador ranks, the Affiliate will need to maintain a minimum of one "Paid As" Star Platinum in their personally enrolled downline on each team of their business. Four Consecutive Four (4) Week Periods bonuses:

Presidential \$3,000 USD
Star Presidential \$5,000 USD
Ambassador \$10,000 USD
Star Ambassador \$15,000 USD
Royal Ambassador \$25,000 USD

Rank Advancement and other recognition will be based on four (4) week periods and calculated when bonuses are run for the last week of the four (4) week period. This recognition will be posted in your Vemma Back Office approximately two (2) weeks after the bonus run. By earning a certain number of cycles in a four (4) week period, Affiliates can achieve various ranks and be recognized as a Leader! Affiliates within their first four (4) week rank advancement period have the ability to accumulate cycles up to two (2), four (4) week rank advancement periods for Rank Advancement purposes.

NUMBER OF CYCLES IN LEADER RANK QUALIFICATIONS A FOUR (4) WEEK PERIOD

Bronze 1
Silver 5
Gold 10
Diamond 20
Star Diamond 35
Platinum 50
Star Platinum 75
Executive 100
Star Executive 175
Presidential 250
Star Presidential 375
Ambassador 500
Star Ambassador 1,000
Royal Ambassador 2,000
*Star Royal Ambassador 4,000
*Pinnacle Leader 6,000
*Star Pinnacle 10,000
*Royal Pinnacle 15,000
*Legend 20,000

*In addition to earning the required cycles in the four (4) week Rank Advancement period, you will need to meet the required structure to receive the Paid As rank. Star Royal Ambassadors must have two (2) Presidential enroller teams on the left team and the right team; Pinnacle Leaders must have three (3) Presidentials, enroller teams on the left team and the right team; Star Pinnacles must have three (3) Star Presidential enroller teams on the left team and the right team; Royal Pinnacles must have three (3) Ambassador enroller teams on the left team and the right teams; Legends must have three (3) Star Ambassador enroller teams on the left team and the right team. Vemma values recognition. Affiliates are eligible to earn special awards at each level. Achieve each rank two (2) consecutive four (4) week periods to qualify for Silver through Star Ambassador awards, and six (6) consecutive four (4) week periods to qualify for Royal Ambassador and above awards.

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For more information,
please contact us at:

Phone: 1-800-577-0777

Email: info@vemma.com

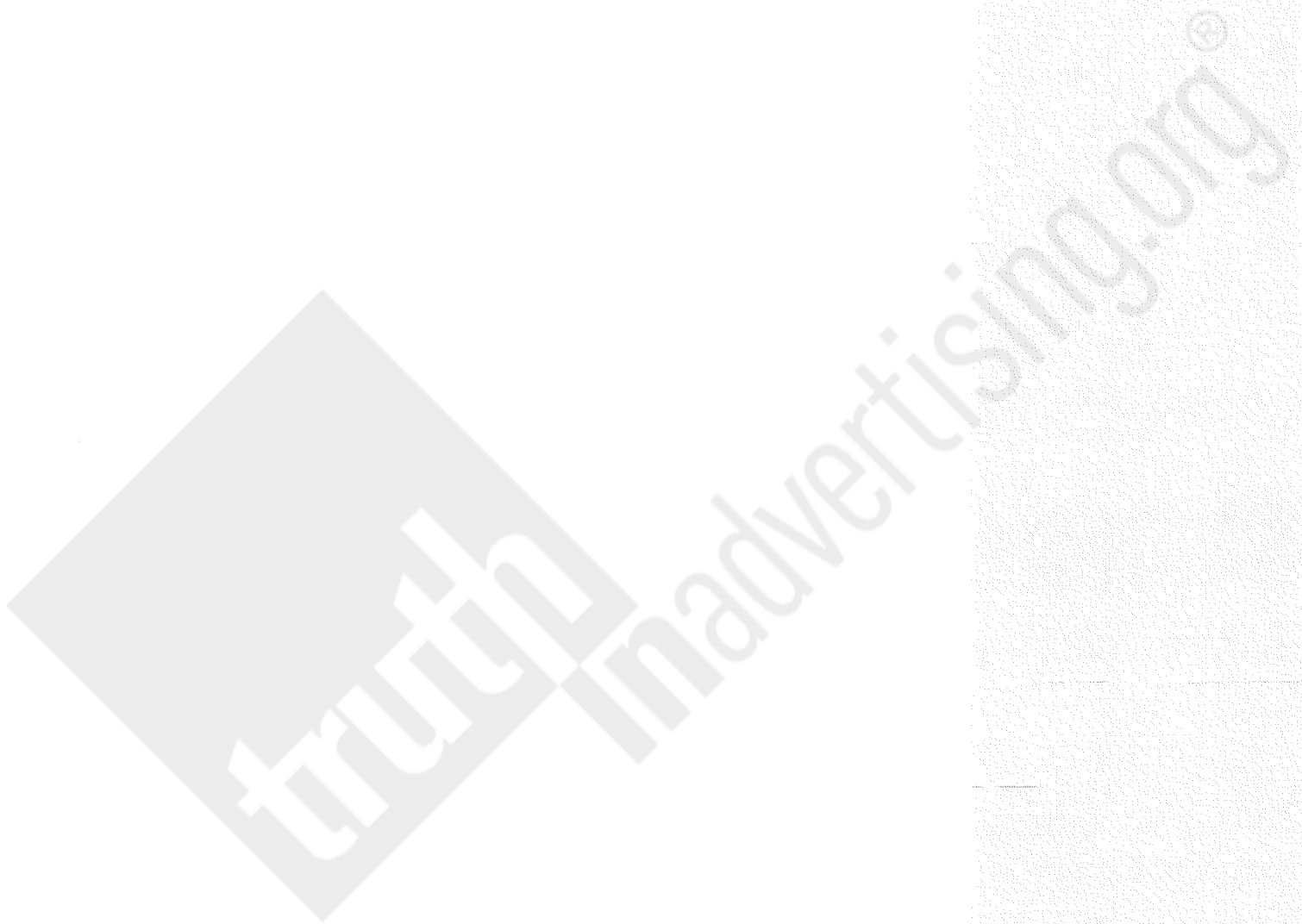
VEMMA CUSTOMER SERVICE HOURS:

Monday — Friday: 8am - 5pm (AZ TIME)

1621 W. Rio Salado Parkway

Tempe, AZ 85281

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Salanga, Edward A. (PHX x3422)

From: Linville, Angeleque P. [alinville@ftc.gov]
Sent: Monday, October 12, 2015 11:41 AM
To: Salanga, Edward A. (PHX x3422); Quigley, Kevin D. (PHX x3433)
Cc: Moon, Jason C; 'Kenton Johnson'; Brick Kane
Subject: Vemma - Correspondence re. Revised Compensation Plan
Attachments: Letter to Salanga and Quigley (revised compensation plan)101215.pdf

Please see attached.

Thank you,

Angeleque P. Linville
Attorney
FEDERAL TRADE COMMISSION
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9381



United States of America
FEDERAL TRADE COMMISSION
Southwest Region

Jason C. Moon
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1999 Bryan Street, Suite 2150
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jmoon@ftc.gov

October 12, 2015

Mr. Edward Salanga
Mr. Kevin Quigley
Quarles & Brady LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004
By email: esalanga@quarles.com
kquigley@quarles.com

Re: *FTC v. Vemma Nutrition Company, et al.*
Revised proposed compensation plan received October 7, 2015

Dear Mr. Salanga and Mr. Quigley:

We received Vemma's revised proposed compensation plan, transmitted to us after business hours on October 7, 2015. While we acknowledge Vemma's efforts to address some of the FTC's concerns, we cannot approve the plan as written. The revision does not address the structural problem described in our October 5 letter—the compensation plan provides no additional incentives for retail sales and will likely result in an endless chain of recruitment. Most resulting purchases will be motivated by the business opportunity rather than personal consumption, in violation of the preliminary injunction. This is a fundamental flaw in the plan that will require major changes to address.

Second, the revision does not address the FTC's objection to Vemma's interpretation of Section I.A.4 of the Court's preliminary injunction, as illustrated by Vemma's "51% rule." Third, while the objectionable definition of "Customer" has been removed, the plan provides no alternative definition of "Customer" or "Affiliate," which are essential terms for purposes of the operation of the "51% Rule" and the compensation plan as a whole. While Vemma may intend to define these terms in other documents, as noted in our October 5 letter it is difficult for the FTC to approve this document in isolation when there may be other materials that will greatly impact the compensation plan. We encourage Vemma to present all materials that are essential to a complete understanding of the compensation plan, rather than presenting the plan in piecemeal fashion.

Please contact me at the number above with any questions about our position or to discuss these matters further.

Sincerely,

/s/ Jason C. Moon

Jason C. Moon

Cc: Kenton Johnson

truth



Salanga, Edward A. (PHX x3422)



From: Quigley, Kevin D. (PHX x3433)
Sent: Tuesday, October 13, 2015 3:37 PM
To: Moon, Jason C
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan
Attachments: 0652_001.pdf

Jason -

Attached please find our correspondence responding to the FTC's objections contained in your letter from yesterday. Per Ed's email forwarding Vemma's proposed new terms and conditions to the Affiliate Agreement, we would like to discuss the matter with you when you are back in the office tomorrow, and hopefully avoid further motion practice as the Court encouraged. Please let us know when you are available to discuss. Thank you.



Kevin Quigley / Partner

Kevin.Quigley@quarles.com /  

Renaissance One, Two North Central Avenue / Phoenix, AZ 85004-2391

Office 602-229-5433 / quarles.com

Assistant Kelly Thwaites 602-230-5518

From: Linville, Angeleque P. [<mailto:alinville@ftc.gov>]
Sent: Monday, October 12, 2015 11:41 AM
To: Salanga, Edward A. (PHX x3422); Quigley, Kevin D. (PHX x3433)
Cc: Moon, Jason C; 'Kenton Johnson'; Brick Kane
Subject: Vemma - Correspondence re. Revised Compensation Plan

Please see attached.

Thank you,

Angeleque P. Linville
Attorney
FEDERAL TRADE COMMISSION
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9381

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Attorneys at Law in
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Indianapolis
Madison
Milwaukee
Naples
Phoenix
Scottsdale
Tampa
Tucson
Washington, D.C.

October 13, 2015

VIA E-MAIL

Jason C. Moon
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, TX 75201
Email: jmoon@ftc.gov

RE: Vemma Revised Compensation Plan

Dear Mr. Moon:

We have received your second objection letter, dated October 12, 2015, to the Vemma revised compensation plan which was submitted to the FTC on October 8 to address concerns it raised with the initial draft (which was sent to you on September 30). We are sending this letter to again address your stated objections, and try to reach a resolution of this matter as quickly as possible, and hopefully without having to involve the Court. Your October 12 letter asserts that the revised plan does not comply with the Court's September 18, 2015 Order for three stated reasons:

(i) You assert that the revised plan provides "no additional incentives for retail sales and will likely result in an endless chain of recruitment". You do not, however, identify what specific part of the plan is objectionable or violates any part of the Court's Order. Your assertion is not supported by the language of the revised plan and the Court's Order.

(ii) You assert that the "51% rule" stated in the revised plan violates the Order. Again, you do not identify what specific provisions of the rule violate the Court's Order. This assertion also is not supported by the language of the revised plan and the Court's Order.

(iii) You state that the definitions of "Affiliate" and "Customer" need to be defined in the revised plan. Vemma will add definitions to the plan, and will use the terms as defined in Affiliate re-classification message which the FTC previously agreed to.

Jason C. Moon
October 13, 2015
Page 2

I. The Revised Plan Complies With the Court's September 18, 2015 Order In All Respects.

A. The Revised Compensation Plan Complies With Each Of The Requirements/Prohibitions Stated In Section I Of The Court's Order.

The revised compensation plan complies with the specific terms of each of the requirements/prohibitions stated in Section I. of the Order:

- (A)(1): Pays compensation for recruiting new members.

The proposed compensation plan does not pay any rewards for the recruitment of a new Affiliate. Of note, the plan does not allow for the sale of Affiliate Starter Packs, and therefore pays no rewards relating to the sale of any such packs.

- (A)(2): Encourages or incentivizes members to purchase goods or services to maintain eligibility for bonuses, rewards, or commissions rather than for resale or personal use.

The proposed compensation plan explicitly provides that "You will not be able to qualify for commissions based on your own purchases." Therefore, affiliates have no incentive to purchase products other than for personal consumption or resale.

- (A)(3): Induces others to encourage or incentivize members to purchase goods or services to maintain eligibility for bonuses, rewards, or commissions rather than for resale or personal use.

The proposed compensation plan explicitly provides that "You will not be able to qualify for commissions based on your own purchases." Therefore, Affiliates have no incentive to purchase products other than for personal consumption or resale.

- (A)(4): Pays any compensation related to the purchase or sale of goods or services unless the majority of such compensation is derived from sales to or purchases by persons who are not members of the Marketing Plan.

The proposed compensation plan specifically contains a "51% Rule" which provides as follows:

You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization's total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100.

Jason C. Moon
October 13, 2015
Page 3

However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will not be banked.

Under this 51% rule, any compensation paid will come from sales, and the majority of such compensation by definition will come from sales to Customers, not sales to Affiliates. Moreover, because the compensation plan does not allow for an affiliate to qualify for bonuses based on his/her own purchases, any such purchases are necessarily for resale or personal use. With these proposed changes, Affiliates will be motivated to enroll and sell products to new Customers because their compensation under the plan will be limited by the number of Customer sales in their sales organization. These changes to the compensation plan specifically adopt the requirements contained in the Court's Order. There is no basis for your assertion that under these provisions "most resulting purchases will be motivated by the business opportunity, rather than for personal consumption" as you state in your October 12 letter, or that the plan "insufficiently incentivizes sales to non-participants" as you stated in your earlier October 5, 2015 letter which responded to the initial version of the revised compensation plan.

- (A)(5): Constitutes a pyramid scheme

The proposed compensation plan will not constitute a pyramid scheme under controlling law because (1) Affiliates are not paying for the right to receive rewards under the compensation plan and (2) rewards are not paid primarily for recruitment rather than sales of product to ultimate users.

- (A)(6): With specific reference to Vemma's existing Marketing Program:
 - Sells Affiliate Packs

The sale of all Affiliate Starter Packs has been discontinued, as have all bonuses based on the sale of such packs.

- Links or ties an Affiliate's eligibility for bonuses, or the Affiliate's accumulation of bonus qualifying points, to that Affiliate's purchase of [Vemma's] product, such as through auto-delivery or Two & Go.

The proposed compensation plan does not allow for qualification for bonuses based on an Affiliate's personal purchases. Nor does the plan provide for a "Two & Go" program, which has been eliminated.

Jason C. Moon
October 13, 2015
Page 4

In short, the revised compensation plan complies with each of the specific requirements/prohibitions contained in the Court's Order.

B. Definitions of Customer/Affiliate.

Regarding the definitions of Affiliates/Customers, Vemma will agree to include in the revised compensation plan the following definitions, which you already approved in connection with the Affiliate re-classification email:

"An Affiliate is someone who intends to participate in and earn rewards under Vemma's Marketing Plan, and a Customer is someone who is primarily interested in purchasing and using our products."

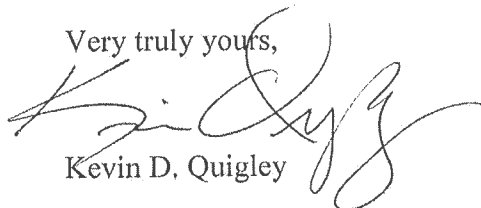
This definition mirrors the definitions contained in the Court's Order (Page 3) for Affiliates and Customers: "Affiliates are those participants who seek to avail themselves of the business opportunity of promoting Vemma and/or selling Vemma products and thereby earn bonuses, as opposed to customers, who are solely or primarily interested in purchasing Vemma products for their own consumption."

II. Conclusion.

The Court specifically allowed Vemma to recommence its operations. The revised compensation plan is critical to Vemma's ability to operate. As detailed above, Vemma's proposed revised compensation plan specifically takes into consideration and satisfies each point raised in the Court's Order. The FTC has not raised any specific objections as to how the proposed compensation plan violates the Court's September 18 Order, other than to make conclusory statements which are without basis (as demonstrated above).

As stated, Vemma hopes that a cooperative resolution can be obtained and that it does not have to file a motion with the Court to approve the revised compensation plan. However, because of the importance of the plan to Vemma's operations, it needs to resolve the matter promptly. If you believe we have misstated the content of either the compensation plan or the Court's Order in the discussion above, or if there is some specific language in the plan that you can identify as violating the Court's Order, please send that to us immediately and Vemma will respond. However, Vemma must proceed and if this matter cannot be resolved by the close of business tomorrow, October 14, 2015, Vemma will have no choice but to seek relief from the Court. We look forward to hearing from you.

Very truly yours,



Kevin D. Quigley

KDQ/kt



Salanga, Edward A. (PHX x3422)

From: Quigley, Kevin D. (PHX x3433)
Sent: Wednesday, October 14, 2015 11:26 AM
To: Moon, Jason C
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan
Attachments: 36913750_2.docx

Jason -

Attached is the revised Compensation Plan including the definition of Customer and Affiliate. KDO

From: Quigley, Kevin D. (PHX x3433)
Sent: Tuesday, October 13, 2015 3:37 PM
To: Moon, Jason C
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan

Jason -

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Quarles & Brady LLP

Kevin Quigley / Partner
Kevin.Quigley@quarles.com /  
Renaissance One, Two North Central Avenue / Phoenix, AZ 85004-2391
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Assistant Kelly Thwaites 602-230-5518

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Please see attached.

Thank you,

Angeleque P. Linville
Attorney
FEDERAL TRADE COMMISSION
Southwest Region
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COMPENSATION PLAN U.S. EDITION VEMMA COMPENSATION PLAN
CV/QV — POINTS

- This Compensation Plan shall apply to all currently enrolled Affiliates as well as any Affiliate who enrolls after the adoption of this Compensation Plan.
- The Compensation Plan shall apply to all Vemma operations, both in the United States as well in other countries, if and when foreign markets are opened.
- This Compensation Plan will not impact the pricing of product to either Affiliates or Customers, and there will not be any differential pricing between Affiliates or Customers.
- For purposes of this Compensation Plan, an "Affiliate" is someone who intends to participate in and earn rewards under Vemma's Marketing Plan, and a "Customer" is someone who is primarily interested in purchasing and using our products.

Equal in the Vemma Compensation Plan, both Commissionable Volume (CV) and Qualifying Volume (QV) are also known as "points." This is the value associated with the specific product that allows you to build cycles and earn income.

ENROLLER

When you introduce a new customer to Vemma and sign them up, you are their personal Enroller. Your Enroller is the person who introduced you to Vemma.

SPONSOR

The term Sponsor refers to the person immediately above you in the Vemma structure. You are the Sponsor of the two (2) Customers or Affiliates immediately below you, one (1) on your left team and one (1) on your right team.

QUALIFY

Each sales organization must be qualified to earn commissions and bonuses. You will not be able to qualify for commissions based on your own purchases. You qualify your sales organization by being active with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month, along with one (1) personally enrolled Customer/Affiliate on your left team and one (1)

personally enrolled Customer/Affiliate on your right team, each meeting the active requirements based on individual rank.

ACTIVE

In order to be considered active, you must have 25 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchase) every month. Affiliates with the rank of Platinum or higher are considered active if they have 50 PV. Either amount of PV (25 or 50) will activate your account for four (4) volume periods, including the volume week in which the volume is placed, plus one (1) volume week grace period.

ENROLLMENT LINE

Those who are connected by being personally enrolled. For example, your personally enrolled Customers/Affiliates and their personally enrolled Customers/Affiliates are part of an enrollment line.

ENROLLERSHIP VOLUME

All volume that originates from your activity of enrolling a Customer or Affiliate.

PV — PERSONAL VOLUME

Volume that is associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases.

AUTO-DELIVERY

Auto-delivery is a recurring monthly order that you can choose to have delivered to you each month, saving you the trouble of having to call in or go online.

VEMMA COMPENSATION PLAN

Our business model is designed to reward those people that promote the Vemma brand products. This is accomplished by devoting almost our entire marketing budget to fund the Vemma Compensation Plan. This plan is based on the simple two team-building concept — a left team and a right team. Since there are just two teams to build, this creates excitement as Customers join, one after the other, down team

lines, helping more people benefit from the products and the volume and creating greater leverage within the plan.

When you earn the right to become an Affiliate and activate your account, you will receive full access to the Vemma back office information and a free marketing website. When you encounter someone who wants to become a Customer, you can enroll them through this marketing website.

As soon as you qualify your sales organization by enrolling at least one (1) active Customer on each of your left and right team (active is defined as having an active 25 PV every month), you are then eligible to earn income.

Best yet, the Vemma Compensation Plan pays out fifty percent (50%) of the Commissionable Volume (CV) weekly, so you have the opportunity to get paid every week if you qualify under the Compensation Plan. You will not be able to qualify for commissions based on your own purchases. But each purchase by a personally enrolled Customer or Affiliate will activate your account for four (4) weeks, including the volume week in which the volume is placed, plus a one (1) week grace period.

CYCLE COMMISSION

Qualifications: Active Affiliates with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchase) every month, along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. At the end of each volume period (week), Vemma's computers search down Affiliates' left and right teams, and whenever 180 points on one team and 360 points on the opposite team occur (teams can switch back and forth), Affiliates are eligible to earn a Cycle Commission of approximately \$20 USD.** The weekly cycle value will be determined each week based upon total sales divided by the amount of qualified cycles.

51% Rule: You will only be paid on the volume in your organization that is at least 51% Customer volume. You will be paid on all volume that meets this requirement. In other words, if 49% of your volume is Affiliate volume, and 51% of your volume is Customer volume, you will receive commissions on the entire 100% of your organization's total volume. For example, if you had \$100 in organizational volume of which \$51 came from Customers and \$49 came from Affiliates, you would be paid on the entire \$100. However, if only \$40 of your organizational volume came from Customers and \$60 came from Affiliates, you would only be paid on \$79 of your organizational volume. You would be paid on the entire \$40 of Customer volume. But under our 51% Rule which requires that a majority of the commissionable volume come from Customers, you would only be paid on \$39 of the \$60 dollars of Affiliate volume, for a total of \$79 in commissionable volume. The remaining \$21 of Affiliate volume will not be banked. Any questions regarding qualification and payment of commissions under the terms of this Compensation Plan should be directed to Vemma's Compliance Department.

For cycle volume information associated with products, please refer to the Cycle Credit Chart.

**All Vemma bonuses will be calculated in USD and paid in local currency. Vemma will evaluate and modify when necessary the exchange rates on a monthly basis.

YOU

LEFT = TEAM 1

= 1 CYCLE OF APPROXIMATELY \$20 USD**

RIGHT = TEAM 2

360 POINTS 180 POINTS

MEMMA CYCLE CREDIT CHART

Vemma® 1-Pack 25

Vemma 2-Pack 50

Vemma 4-Pack 100

Vemma 10-Pack 200

Vemma Nutri-Pack 50

Vemma Co Q10 12.5

Vemma Coral Calcium 12.5

Vemma EPA 1000 Omega-3 12.5

Vemma Variety Pack 12.5

Vemma Renew™ ½-Pack 12.5

Vemma Renew 1-Pack 25

Vemma Renew 2-Pack 50

Vemma Renew 10-Pack 200

V2 Fridge Brick® 25

V2 Fridge Brick 2-Pack 50

V2 Fridge Brick 4-Pack 100

V2 Fridge Brick 10-Pack 200

Verve® Energy Drink ½-Pack 12.5

Verve Energy Drink 1-Pack 25

Verve Energy Drink 2-Pack 50

Verve Energy Drink 10-Pack 200

Verve Energy Shot 1-Pack 25

Verve Energy Shot 2-Pack 50

Verve Energy Shot 4-Pack 100

Verve Energy Shot 10-Pack 200

Verve Energy Pack 50

Verve ReMIX™ ½-Pack 12.5

Verve ReMIX 1-Pack 25

Verve ReMIX 2-Pack 50

Verve ReMIX 10-Pack 200

Verve ParTea® ½-Pack 12.5

Verve ParTea 1-Pack 25

Verve ParTea 2-Pack 50

Verve ParTea 10-Pack 200

Verve Bold® ½-Pack 12.5

Vemma® Product Purchase Order Points Vemma® Product Purchase Order Points

CYCLE CREDIT CHART

Verve Bold 1-Pack 25

Verve Bold 2-Pack 50

Verve Bold 10-Pack 200

Verve Zero Sugar ½-Pack 12.5

Verve Combo ½-Pack 12.5

Verve Zero Sugar 1-Pack 25

Verve Zero Sugar 2-Pack 50

Verve Zero Sugar 10-Pack 200

Verve Combo 10-Pack 200

Bod•ē® Shake 1 Bag 12.5

Bod•ē Shake 2 Bags 25

Bod•ē Shake 4 Bags 50

Bod•ē Shake 10 Bags 200

Bod•ē Transformation Pack 35

Bod•ē Extreme Transformation Pack 50

Bod•ē Turbo 10-Pack 50

Bod•ē Build 1-Pack 25

Bod•ē Build 2-Pack 50

Bod•ē Build 10-Pack 200

Bod•ē Pro™ 24/7 Pack 75

Bod•ē Pro Trial Pack 12.5

Bod•ē Pro Fit Pack 50

Bod•ē Burn 1-Pack 25

Bod•ē Burn 2-Pack 50

Bod•ē Burn 10-Pack 200

Bod•ē Cleanse 1-Pack 10

Bod•ē Cleanse 2-Pack 20

Bod•ē Burn 3 oz 8-Pack 10

Bod•ē Burn 3 oz 24-Pack 30

Bod•ē Burn zero caffeine 3 oz 8-Pack 10

Bod•ē Burn zero caffeine 3 oz 24-Pack 30

Bod•ē Rest zero caffeine 3 oz 8-Pack 10

Bod•ē Rest zero caffeine 3 oz 24-Pack 30

Vemma NEXT® 1-Pack 25

Vemma NEXT 2-Pack 50

CYCLE EARNINGS LEVELS

The cycle earnings levels only apply to the Cycle Commission and do not affect any other areas of income in the Vemma Compensation Plan. Once the Affiliate reaches the maximum cycle level earnings on that position for four (4) consecutive weeks, the Affiliate will be given one (1) new position above his or her maxed position. That position will have the same earning level limit, unless the Affiliate rank advances to the higher rank, as specified below. Up to two (2) positions maximum are allowed per Affiliate, four (4) individual positions per married couple.

Affiliates will not be eligible to receive bonuses until they have qualified their sales organization by having 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s) or Affiliate(s) purchases) every month, one (1) active Vemma Customer/Affiliate on their left team and one (1) active Vemma Customer/Affiliate on their right team whom they personally enrolled.

Affiliates below the rank of Platinum are considered active if they have 25 PV every month. Platinum and above Affiliates are considered active if they have a 50 PV every month. After twenty-four (24) consecutive weeks without activity, the account will be terminated.

*Volume period is defined as a Vemma business period beginning on Friday at 12:00 a.m. and ending at 11:59 p.m. on Thursday night.

MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to four (4) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, two (2) anywhere else on their team.

The Matching Commission pays the Enroller up to ten percent (10%) on all of their personally enrolled Affiliates' Cycle Commission paid amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Matching Commission will compress to the first eligible upline Enroller.

An Affiliate cannot earn both Matching Commission and the Second Tier Matching Commission on the same downline Affiliate. In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

SECOND TIER MATCHING COMMISSION

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month in addition to six (6) personally enrolled active Customers/Affiliates, one (1) on the Affiliate's left team and one (1) on the right team, four (4) anywhere else on their team.

Affiliates earn on the people that they personally enrolled, plus they are eligible to earn up to ten percent (10%) Matching Commission on all of their personal enrollees' personally enrolled Affiliates' Cycle Commission earned amounts. If an Affiliate does not meet the eligibility requirements to earn it, the Second Tier Matching Commission will compress to the first eligible upline Enroller.

In the case of compression of the Matching Commission due to the direct Enroller's ineligibility, the Second Tier Matching Commission will compress as well.

TIER MATCHING COMMISSION CAP

Earnings of the Matching Commission and Second Tier Matching Commission up to \$5,000 USD in a four (4) week rank advancement period will not require specific structure or rank qualifications. To be eligible to earn the Matching Commission and Second Tier Matching Commission in excess of \$5,000 USD in a four (4) week rank advancement period, an Affiliate must earn and maintain the "Paid As" rank of Platinum or higher.

BALANCED TEAM BONUS

Qualifications: Active and qualified with 50 PV (volume associated with 100% of the QV from your personally enrolled Customer(s)' or Affiliate(s)' purchases) every month along with two (2) personally enrolled active Customers/Affiliates, one (1) on each team. Additional requirements are shown in the table below. This bonus pays out at the end of each four (4) week rank advancement period based upon the paid ranks achieved during the current or previous rank advancement period. Balanced Team Bonus is prorated amongst all qualified participants based upon "Paid As" rank. The Balanced Team Bonus Pool encompasses approximately three percent (3%) of the sales generated from countries that participate in the Balanced Team Bonus. Balanced Team Volume accumulated in a four (4) week rank advancement period does not roll over to the next four (4) week period. The payout at each level may vary from period to period. Affiliates can participate in the pools at Bronze through Gold Balanced Team level for a period of no longer than twelve (12) months from the date they first achieve that Balanced Team level. At the diamond level Affiliates can participate in that pool for a period of no longer than Twenty-Four (24) months from the date they first achieve the Diamond Balance Team Level. Affiliates who do not meet the requirements for their current paid level may participate in a lower pool for which they meet the requirements.^

51% Rule: In order to earn Balanced Team Bonus, the Balanced Team Bonus volume each week must come from a majority of customer sales (51% or higher). If this requirement is not met the bonus will not be paid.

"PAID AS" RANK: BRONZE

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$100

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

BRONZE

^Affiliates with a "Paid As" rank of Bronze through Star Platinum are eligible to earn the Balanced Team Bonus at the Bronze through Diamond levels. Affiliates who reach the rank of Executive or above are no longer eligible to earn the

Balanced Team Bonus.

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

BALANCED TEAM BONUS

"PAID AS" RANK: SILVER

Bronze* on each team in the enrollment line and

500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$200†

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

SILVER

BRONZE BRONZE

BALANCED TEAM BONUS

"PAID AS" RANK: GOLD

Silver* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$300

50 PTS 50 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

GOLD

SILVER SILVER

*The downline Affiliate's "Paid As" rank must be achieved and maintained by earning a certain number of cycles in a four (4) week rank advancement period as defined in the Rank Advancement section of the Vemma Compensation Plan.

50 PTS 500 PTS

100 PTS 100 PTS

125 PTS

125 PTS 125 PTS

100 PTS 100 PTS

125 PTS

YOU

DIAMOND

BALANCED TEAM BONUS GOLD GOLD

"PAID AS" RANK: DIAMOND

Gold* on each team in the enrollment line and 500 points consisting of Customer and Affiliate orders from enrollership volume on their left team and their right team.

Max Payout Per Share: Up to \$400

VEMMA LOYALTY PROGRAM

Eligibility is based on having an order of at least 25 QV per month for six (6) consecutive months or by placing a minimum 25 QV product order for six (6) consecutive months. Once a Customer or Affiliate has purchased their sixth consecutive monthly order, the Customer or Affiliate will receive a case of free product in the seventh month.* Customer or Affiliate can continue to receive free product every six (6) consecutive months from the last redeemed free product order. Customers or Affiliates currently qualified for the Customer Referral Program will be allowed to continue to receive the benefits of the Customer Referral Program until December 31, 2015 as long as they continue to meet the qualifications to earn free product through this program. Once a Customer or Affiliate does not qualify for the Customer Referral Program, the Customer or Affiliate will be transitioned into the Vemma Loyalty Program.**

*Free order will be the equivalent of the lowest order placed over the six-month qualifying period. Free product must be redeemed within two (2) months of the qualifying six-month period or it will be null

and void. The free product amount will be either 25QV or 50QV after meeting the six-month qualification time frame. Free product does not carry qualifying volume (QV) or commissionable volume (CV).

**The free products sent to Customers and Affiliates are subject to reporting on Form 1099-MISC. For Affiliates, the free product is considered taxable compensation for services. For the Customer, the free product is a taxable prize or award. In both cases, the amount of taxable income to the recipient is the fair market value of the merchandise.

ONE-TIME RANK ADVANCEMENT REWARDS

After qualifying at a new rank (Silver through Star Executive) for two (2) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. Two Four (4) Week Periods bonuses:

Silver \$100 USD

Gold \$250 USD

Diamond \$500 USD

Star Diamond \$625 USD

Platinum \$750 USD

Star Platinum \$1,000 USD

Executive \$1,500 USD

Star Executive \$2,000 USD

After qualifying at a new rank (Presidential through Royal Ambassador) for four (4) consecutive four (4) week rank advancement periods, a one-time bonus will pay out. For Presidential through Royal Ambassador ranks, the Affiliate will need to maintain a minimum of one "Paid As" Star Platinum in their personally enrolled downline on each team of their business. Four Consecutive Four (4) Week Periods bonuses:

Presidential \$3,000 USD

Star Presidential \$5,000 USD

Ambassador \$10,000 USD

Star Ambassador \$15,000 USD

Royal Ambassador \$25,000 USD

Rank Advancement and other recognition will be based on four (4) week periods and calculated when bonuses are run for the last week of the four (4) week period. This recognition will be posted in your Vemma Back Office approximately two (2) weeks after the bonus run. By earning a certain number of cycles in a four (4) week period, Affiliates can achieve various ranks and be recognized as a Leader! Affiliates within their first four (4) week rank advancement period have the ability to accumulate cycles up to two (2), four (4) week rank advancement periods for Rank Advancement purposes.

NUMBER OF CYCLES IN LEADER RANK QUALIFICATIONS A FOUR (4) WEEK PERIOD

Bronze 1

Silver 5

Gold 10
Diamond 20
Star Diamond 35
Platinum 50
Star Platinum 75
Executive 100
Star Executive 175
Presidential 250
Star Presidential 375
Ambassador 500
Star Ambassador 1,000
Royal Ambassador 2,000
*Star Royal Ambassador 4,000
*Pinnacle Leader 6,000
*Star Pinnacle 10,000
*Royal Pinnacle 15,000
*Legend 20,000

*In addition to earning the required cycles in the four (4) week Rank Advancement period, you will need to meet the required structure to receive the Paid As rank. Star Royal Ambassadors must have two (2) Presidential enroller teams on the left team and the right team; Pinnacle Leaders must have three (3) Presidentials, enroller teams on the left team and the right team; Star Pinnacles must have three (3) Presidential enroller teams on the left team and the right team; Royal Pinnacles must have three (3) Ambassador enroller teams on the left team and the right teams; Legends must have three (3) Star Ambassador enroller teams on the left team and the right team. Vemma values recognition. Affiliates are eligible to earn special awards at each level. Achieve each rank two (2) consecutive four (4) week periods to qualify for Silver through Star Ambassador awards, and six (6) consecutive four (4) week periods to qualify for Royal Ambassador and above awards.

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For more information,
please contact us at:

Phone: 1-800-577-0777

Email: info@vemmanutrition.com

MEMMA CUSTOMER SERVICE HOURS:

Monday — Friday: 8am - 5pm (AZ TIME)

1621 W. Rio Salado Parkway

Tempe, AZ 85281

vemmanutrition.com

®



Salanga, Edward A. (PHX x3422)

From: Moon, Jason C [jmoon@ftc.gov]
Sent: Thursday, October 15, 2015 7:57 AM
To: Quigley, Kevin D. (PHX x3433)
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406); Linville, Angeleque P.
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan

Gentlemen,

A few points following up on our conversation yesterday:

1. The cleanest definition of Customer would be a participant who is solely interested in purchasing products, not in participating in the marketing program. Please provide us the new definition as soon as you can. It would also be helpful for us to see the actual process and verbiage used when a participant elects to be a customer or Affiliate.
2. We believe the 51% rule should be all or nothing: an affiliate is entitled to full compensation if the majority of downline sales volume comes from customers rather than affiliates, and not entitled to any compensation if the reverse is true. The 51% rule as interpreted by Vemma is not an adequate safeguard given the incentives of the binary comp plan. The Rule would also have to be applied across the board for all bonuses, including bonuses based on rank or rank advancement. You were going to check to see if the Rule would affect actual point volume for rank purposes and therefore the purposes of bonuses associated with rank or rank advancement, rather than just affecting Cycle Commission compensation.
3. We have no objection to an accelerated schedule for briefing, and to hearing the matter next Wed if the judge permits. I'll leave it to you how you want to initiate the process, but we do intend to file written papers explaining our position.

Thanks,

Jason C. Moon
Attorney
Federal Trade Commission—Southwest Region
(214) 979-9378

From: Quigley, Kevin D. (PHX x3433) [<mailto:Kevin.Quigley@quarles.com>]
Sent: Wednesday, October 14, 2015 1:26 PM
To: Moon, Jason C
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan

Jason -
Attached is the revised Compensation Plan including the definition of Customer and Affiliate. KDK



From: Quigley, Kevin D. (PHX x3433)
Sent: Tuesday, October 13, 2015 3:37 PM
To: Moon, Jason C
Cc: Salanga, Edward A. (PHX x3422); Harris, John A. (PHX x3406)
Subject: RE: Vemma - Correspondence re. Revised Compensation Plan

Jason -

Attached please find our correspondence responding to the FTC's objections contained in your letter from yesterday. Per Ed's email forwarding Vemma's proposed new terms and conditions to the Affiliate Agreement, we would like to discuss the matter with you when you are back in the office tomorrow, and hopefully avoid further motion practice as the Court encouraged. Please let us know when you are available to discuss. Thank you.



Kevin Quigley / Partner

Kevin.Quigley@quarles.com /  

Renaissance One, Two North Central Avenue / Phoenix, AZ 85004-2391

Office 602-229-5433 / quarles.com

Assistant Kelly Thwaites 602-230-5518

From: Linville, Angeleque P. [<mailto:alinville@ftc.gov>]
Sent: Monday, October 12, 2015 11:41 AM
To: Salanga, Edward A. (PHX x3422); Quigley, Kevin D. (PHX x3433)
Cc: Moon, Jason C; 'Kenton Johnson'; Brick Kane
Subject: Vemma - Correspondence re. Revised Compensation Plan

Please see attached.

Thank you,

Angeleque P. Linville
Attorney
FEDERAL TRADE COMMISSION
Southwest Region
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9381

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EXHIBIT 3

CV-15-01578-PHX-JJT, September 15, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Federal Trade Commission,)
)
Plaintiff,)
)
vs.) CV-15-01578-PHX-JJT
)
Vemma Nutrition Corporation, a)
corporation, et al.,)
) Phoenix, Arizona
Defendants.) September 15, 2015
) 9:02 a.m.

BEFORE: THE HONORABLE JOHN J. TUCHI, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY INJUNCTION HEARING

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
Sandra Day O'Connor U.S. Courthouse
401 West Washington Street
Suite 312, SPC 35
Phoenix, Arizona 85003-2150
(602) 322-7245

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

United States District Court

CV-15-01578-PHX-JJT, September 15, 2015

I N D E XTESTIMONY

WITNESS	Direct	Cross	Redirect	Recross
MATTHEW THACKER		10	28	
DR. STACIE BOSLEY		30	60	
BONNIE PATTEN		64		
KENTON JOHNSON		72	102	
		117		
EMRE CARR, PH.D.		121	148	
ALLISON TENGAN		160	176	
BRAD WAYMENT		181	189	

E X H I B I T S

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14 Vemma Affiliate Agreement Terms and Conditions	170
21 New Two & Go Training Video with Tom Alkazin (pdf) from www.vemmanews.com	138
41 YPR Radio - Brad Alkazin Full Length (transcript excerpts)	165
43 Zero to Sixty: a Start-up Business Action Plan for Young People Self-employment, with Alex Morton (transcript excerpts)	164
63 BK Boreyko Talks to Parents (transcript excerpts)	163
70 Declaration of Bonnie Patten	64
96 YPR Radio - Brad Alkazin Full Length (video)	165
98 Zero to Sixty: a Start-up Business Action Plan for Young People Self-employment, with Alex Morton (video)	164
114 Vemma Success Alex Morton (video)	203
117 Vemma Nutrition Company Marketing and Sales Business Plan for Premium Supplement Products (video)	203

United States District Court

1 inventory loading? 02:16:36

2 MR. SALANGA: Objection. Your Honor, this is way
3 outside the scope of, one, I think the report and then, two,
4 the premise of these questions, as I understood it, from the
5 beginning of Mr. Moon's questions was that these were a 02:16:51
6 discussion of the Amway rules.

7 MR. MOON: Your Honor, the witness is trying to
8 convince the Court that his sales data shows the Court that
9 Affiliates are not inventory loading. I think this is a
10 perfectly legitimate line of questioning. 02:17:05

11 THE COURT: I agree.

12 Mr. Moon, you can continue on that. The objection is
13 overruled.

14 THE WITNESS: Would you repeat the question for me?

15 BY MR. MOON: 02:17:17

16 Q. Wouldn't you agree that an effective Amway-type rule to
17 keep Affiliates from inventory loading, meaning purchasing
18 product for the purposes of qualifying for commissions, be to
19 simply disallow personal product purchases as a basis for
20 compensation? 02:17:36

21 A. It's an available option for the company to do but I'm not
22 sure it's necessary.

23 Q. And would you agree with me that there are certain bonuses
24 that Vemma has in which to qualify for them, you have to
25 purchase an Affiliate Pack? 02:18:02

C E R T I F I C A T E

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

DATED at Phoenix, Arizona, this 16th day of
September, 2015.

s/Elaine M. Cropper

Elaine M. Cropper, RDR, CRR, CCP

United States District Court