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

**Federal Trade Commission;**

Plaintiff,

v.

**Vemma Nutrition Company, *et al***

**No. CV-15-01578-PHX-JJT**

**PLAINTIFF FEDERAL  
TRADE COMMISSION'S  
REPLY TO TOM ALKAZIN'S  
RESPONSE TO FTC'S  
MOTION TO CLARIFY OR  
RECONSIDER  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

The FTC's Motion to Clarify or Reconsider Preliminary Injunction as to Defendant Tom Alkazin (Doc. 135) was predicated on the fact that the Court had already made necessary factual findings to support injunctive relief against Defendant Alkazin on all counts in the Complaint. In finding that Defendant Alkazin participated in both the

deceptive income claims and the pyramid marketing (Doc. 118, at 8,12), the Court already considered many of the arguments advanced by Defendant Alkazin in his Response. However, the Response does include new legal discussion and supplements the factual record.<sup>1</sup> This Reply addresses Defendant Alkazin's attempt to recast the legal standards for liability for participation under Section 5 of the FTC Act. It also addresses Defendant Alkazin's factual allegations and informs the Court about other facts obtained through discovery that support injunctive relief against Defendant Alkazin.

## II. ARGUMENT

### A. Defendant Alkazin's Participation in Deceptive Income Claims and Pyramid Marketing Violated Section 5 of the FTC Act.

#### 1. Controlling case law supports Section 5 liability for participation even in the absence of control

Defendant Alkazin's discussion of the case law is somewhat confusing. While he never directly disputes that the FTC may prove liability through either control or participation, he seems to argue that the FTC must show a level of participation that is essentially equivalent to control. While the line between acts of participation and acts of control may be blurry in some instances, the Ninth Circuit is very clear that "control" in the sense of the ability to determine the acts of the company is not a necessary element of individual liability. In *FTC v. Grant Connect, LLC*, 763 F.3d 1094 (9th Cir. 2014), a defendant was held liable for misrepresentations disseminated by the company even after he was imprisoned and unable to control the company because "[o]ur case law makes

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<sup>1</sup> Defendant Alkazin's argument that the FTC did not sufficiently develop facts against Mr. Alkazin because it did not call him to testify at the preliminary injunction hearing (Doc. 250, at 3) is irrelevant and inapposite. The Court required the parties to submit testimony through declaration only. Doc. 25. Defendant Alkazin elected not to submit a declaration setting out the facts he asserts in this Response, instead submitting only a sparse declaration by his assistant, Lisa Schuster. Doc. 75. As such, the FTC was not permitted to call him or cross-examine him.

clear that an individual is liable for corporate violations of the FTC Act where that individual ‘participated directly in the violation.’ . . . [the defendant] is personally liable for [his company’s] violations in connection with the Grant Connect scheme because of his personal involvement in that violation—drafting the misleading advertisements that constituted the violation.” *Id.* at 1103 (citing *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997)).

In *FTC v. Burnlounge, Inc.*, 584 Fed. Appx. 315 (9th Cir. 2014), one of the Ninth Circuit’s most recent pronouncements in an FTC pyramid action, the Court examined the scope of a monetary judgment imposed against Rob DeBoer, an affiliate who “was not an employee, officer, decision maker or shareholder [. . .]” *Id.* at 318 (quoting the district court). Like Defendant Alkazin, defendant DeBoer’s participation included giving presentations at recruitment events and making misleading income claims to consumers. *Id.* The Court remanded the matter at the FTC’s request for a recalculation of the equitable monetary relief, without questioning the propriety of liability based solely on participation as a promoter of a pyramid scheme. *Id.* at 318-319.

Defendant Alkazin’s discussion of *FTC v. J.K. Publications, Inc.*, 99 F. Supp. 1176 (C.D. Cal. 2000), emphasizes that the defendant in that case was an officer of the company. However, the court explicitly held that the defendant’s control was not necessary to impose liability. *Id.* at 1205-1206. The court granted summary judgment for the FTC despite evidence of the defendant’s inability to control the company, holding that the FTC “need not show authority to control to prevail on this element [. . .][I]f the undisputed facts show that [the defendant] participated directly in the wrongful acts or practices, she can be held individually liable for JKP’s unfair practices.” *Id.*

Similarly, while discussing *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D. Minn. 1985), Defendant Alkazin emphasizes the defendants’ roles with the company; one defendant was the president of the company and the other was the principal. However, the *Kitco* court explicitly held that those roles only affected the defendants’ liability “[i]n

*addition to liability based on direct participation* in the deceptive sale of business opportunities.” *Id.* at 1292-1293 (emphasis added). In finding that the defendants were liable based on direct participation, the court relied upon the facts that the defendants “initially attracted potential purchasers by falsely advertising that Kitco offered contract work and a “nice income . . . Profit claims ranged as high as \$50,000/year while earnings claims were as high at \$170,000/year. Defendants’ exaggerated profit and earning prediction cut to the core of the customer’s decision to invest in Kitco.” *Id.* at 1292.

The FTC’s Motion cited *FTC v. Nat’l Urological Group, Inc.*, 645 F. Supp. 2d 1167 (N.D. Ga. 2008) and *FTC v. Money Now Funding, LLC*, No. 2:13-1583-ROS (D. Ariz. July 15, 2015) as examples of cases in which the courts found Section 5 liability based on participation rather than control.<sup>2</sup> Defendant Alkazin’s discussion of these cases essentially argues that these cases involved a higher degree of participation than what he believes can be shown in this case, so that finding participation on the facts of this case would be a dramatic “expansion” of FTC case law. While there may be cases in which the defendant’s participation is so minimal as to test the boundaries of Section 5 liability, this is not one of them. Defendant Alkazin’s prominent role in the Vemma affiliate network, his personal deceptive income claims, his support of the highly deceptive “Young People Revolution” (“YPR”) campaign, and his personal promotion of the pyramid are more than sufficient to support Section 5 liability.

2. Defendant Alkazin’s Role in Vemma’s Marketing Meets the Legal Threshold of Participation Under Section 5 of the FTC Act

The parties’ briefing in this case has tended to address deceptive income claims and pyramid marketing separately. However, the two issues are necessarily interrelated;

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<sup>2</sup> The FTC provided *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168 (9th Cir. 1997) simply to show the disjunctive nature of the participation requirement—that the FTC may show either participation or control. *Id.* (citing *Am. Standard Credit Sys.*, 874 F. Supp. 1080, 1087 (C.D. Cal. 1994)).

the promoter relies on income claims to recruit prospects into the pyramid, and those income claims are inevitably deceptive because of the nature of the pyramid.<sup>3</sup> In this case, Defendant Alkazin participated in promoting the pyramid through deceptive income claims and through promotion of the elements of the pyramid itself: encouraging prospects to purchase product to qualify for bonuses and recruit others to do the same.

i. Deceptive Income Claims

The evidence presented at the preliminary injunction stage in this matter established that Vemma provided its Affiliates marketing materials that were “replete with deceptive income statements.” Doc. 118 at 25. Even if Defendant Alkazin had only disseminated these deceptive materials, he would be liable under Section 5. But, in fact, his role in the Vemma pyramid scheme was much greater.

Defendant Alkazin presented himself and his family as an illustration of the lucrative income a Vemma Affiliate could supposedly earn from the Vemma business opportunity. Marketing materials touting Defendant Alkazin’s income and his status as top earner for the company were integral to Vemma’s pitch to consumers. Doc. 9, footnotes 19-22. For example, in one videotaped event, Defendant Boreyko introduced Tom and Bethany Alkazin by stating that he had paid them “\$900,063 in one month.” App. 1499. In another video, Mr. and Ms. Alkazin appeared holding a giant “check” for over \$8.3 million dollars. App. 918. In a May 2015 “live call” to promote Vemma’s new “2&Go” rewards program, Boreyko introduced Alkazin as Vemma’s “number one income earner.” App. 1366-1367.

Defendant Alkazin’s statements about the Vemma business opportunity imply,<sup>4</sup> or

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<sup>3</sup> See *Webster v. Omnitrition Int’l*, 79 F. 3d 776, 788 (“Misrepresentations, knowledge and intent follow from the inherently fraudulent nature of a pyramid scheme as a matter of law”).

<sup>4</sup> See *FTC v. Figgie Int’l*, 994 F.2d 595, 604 (9th Cir. Cal. 1993) (“[N]othing in statute or case law which protects from liability those who merely imply their deceptive claims.”)

in some instances directly state,<sup>5</sup> that Affiliates can achieve the same level of success that Defendant Alkazin achieved. In a [businessforhome.org](http://businessforhome.org) interview, Defendant Alkazin stated not only that he and his wife had “never been as financially successful” as they were with Vemma, but that Vemma provided “tremendous long term income for those who want to earn the big money.” App. 915.<sup>6</sup> Substantially the same message was found in the March 2014 version of the Roadmap for Success, which told Affiliates that all they needed to know to promote the business opportunity was that Vemma provides “tremendous immediate income” and “amazing long term income.” App. 1591.<sup>7</sup> The Roadmap repeated the mantra found in many Vemma materials: that success was limited only by the affiliate’s efforts, commitment, or “ability to dream.”<sup>8</sup> These statements, as well as others in the preliminary injunction record, document a consistent effort to convince prospects that they could obtain a high level of financial success if they only

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<sup>5</sup> “What’s happened for us [Vemma leaders] can happen for you.” App. 1500. “I’m going to explain how the Vemma Business Opportunity could make a positive change in your life, in fact, how Vemma could make your dreams come true. It’s worked for our family, and it can work for yours.” App. 1423.

<sup>6</sup> Defendant Alkazin characterizes this interview as “outdated” because it was dated October 29, 2011 (Doc. 250 at 6), but it was still available to the public when FTC investigator Matthew Thacker captured it on July 20, 2015 (App. 18). It was also consistent with later representations and shows the systematic nature of Defendant Alkazin’s conduct. The 2011 video entitled “Vemma Business Vemma Presentation With Top Leader Tom Alkazin,” which was captured in 2014 or 2015 (App. 23), is relevant for the same reasons.

<sup>7</sup> The 2015 version of the Roadmap submitted by Defendant Alkazin revised this language to state that Vemma provided “the opportunity to earn part-time or full-time income,” and “the opportunity for amazing long term income.” Doc. 75-1. These claims were similarly false and deceptive for the vast majority of Affiliates.

<sup>8</sup> App. 1571-1572 (“Your income will match your efforts and commitment because you are in control.” “The Roadmap [. . .] removes all mystery and doubt because these principles are a proven pathway to success.” “You can build your Vemma business as big as you can dream.” All of these statements are also found in the 2015 version of the Roadmap, except that the 2015 Roadmap states: “Depending on how hard you are willing to work, you can build your Vemma business as big as you can dream.” Doc. 75-1, at 8-9.



“dream” big enough. Mr. Alkazin made these claims even though he was aware, through his familiarity with Vemma’s income disclosure statements, that the vast majority of Affiliates made little money. Deposition of Tom Alkazin (“Alkazin Depo,” attached as Ex. A), 182:1-4; 183:10-17.<sup>9</sup>

In addition to his own direct participation in promoting the Vemma scheme with deceptive earnings claims, Defendant Alkazin implicitly endorsed and helped disseminate deceptive earnings claims by others. He supported, promoted and shaped the “Young People Revolution” (“YPR”) campaign, which generated came some of Vemma’s most egregious income claims. The YPR originated from successful recruitment efforts on college campuses by Mr. Alkazin’s downline, including his son Brad and Alex Morton. Deposition of Benson K. Boreyko (“Boreyko Depo,” attached as Ex. B), 120:20 to 121:7; Ex. A, 61:4-14.<sup>10</sup> Alkazin helped develop and train YPR leaders. *Id.*, 71:14-21; 71:24 to 72:9. He promoted the YPR movement by featuring YPR leaders who had reached a certain rank on his website, [myroadmaptosuccess.com](http://myroadmaptosuccess.com). *Id.*, 70:7-11. He also developed YPR-focused live events, choosing discussion topics<sup>11</sup> and selecting the speakers.<sup>12</sup> Even after being provided Alex Morton’s “Zero to Sixty” video<sup>13</sup> on January 1, 2013,<sup>14</sup> he

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<sup>9</sup> The deposition transcripts cited in this Reply have not been signed by the witnesses. On information and belief, the transcripts were mailed to Mr. Boreyko and Mr. Alkazin on June 22 and 23, respectively, with 30 days to sign.

<sup>10</sup> While Mr. Alkazin characterized Brad Alkazin’s recruitment efforts at Arizona State University as only one part of YPR (Alkazin Depo, 60:9-16), he agreed that Brad Alkazin was the “top leader” of YPR “based upon genealogy and him being the upline.” *Id.*, 45:19 to 46:3.

<sup>11</sup> *Id.*, 91:12 to 94:4, Depo Ex. 12 (selecting topics for 2014 “YPR Kickoff”).

<sup>12</sup> *Id.*, 66:5 to 67:18 (conveying Brad Alkazin’s request to have mostly YPR speakers at Verve Leadership Academy event).

<sup>13</sup> See App. 1814, Doc. 9 at 18-19, fn 88 (“If you say what we say and do what we do, you get what we have every single time.”)

<sup>14</sup> Mr. Alkazin admitted to receiving the edit by email but testified he did not recall whether he opened it. Alkazin Depo, 84:16 to 85:18. Mr. Boreyko testified that he believed Mr. Alkazin would have received a copy of the final video as part of Vemma’s general dissemination of materials. Boreyko Depo, 109: 8-17. He also testified that

selected Mr. Morton to speak at events and assisted him with presentations.<sup>15</sup> In short, Alkazin developed and promoted representatives of the YPR movement even after he knew they were making outlandish and false income claims.

### **Pyramid Marketing**

As he points out in his response, Mr. Alkazin has over 40 years of experience in the MLM industry. Doc. 248, at ¶3. His involvement began when he was an Amway distributor along with Defendant Boreyko's parents. Alkazin Depo, 12:22 to 13:2. Throughout that time period, he has always known that there are critics who believe that multi-level marketing schemes can easily turn into pyramid schemes. *Id.*, 165:1-16. He was also aware of numerous news articles and publications that accused Vemma of being a pyramid scheme well before the FTC's action. *Id.*, 165:17-25. He was also aware of the Italian Competition and Market Authority's investigation of Vemma while it was occurring in 2013 and 2014, though he claimed not to have known the specifics of it beyond that it involved the compensation plan. *Id.*, 178: 19 to 179:9.

Despite Mr. Alkazin's familiarity with pyramid schemes in general and the specific pyramid accusations against Vemma, he nonetheless promoted the core elements of a pyramid scheme by encouraging affiliates to purchase affiliate packs and sign up for auto-delivery of products in order to qualify for bonuses, and recruiting others to do the same. This occurred both within his promotion of the "2&Go" program and outside of it.<sup>16</sup>

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Vemma distributed videos by emailing them to affiliates, placing them on YouTube, and promoting them on Twitter and Facebook. *Id.*, 85:13 to 86:7. See also App. 855 ([myroadmaptosuccess.com](http://myroadmaptosuccess.com) includes link to "follow" Mr. Boreyko on Facebook and Twitter).

<sup>15</sup> See Alkazin Depo, 66:6 to 67:2, Depo Ex. 6 (selecting Morton as speaker for January 2014 Verve Leadership Academy event); 87:18 to 88:20, Depo. Ex. 10 ("Next Level" talk in or after July, 2013); 89:2 to 90:9, Depo. Ex. 11 (March 2015 "Diamond Event").

<sup>16</sup> See, e.g., both the March 2014 version of the Roadmap (App. 1596, 1606), and the 2015 version submitted by Defendant Alkazin. (Doc. 75-1, at page 31). See also App. 1424:5-22, 1428: 8-20, 1832; App. 1102:14-1103:11, 1800.



As to the “2&Go” program, Vemma’s most explicit pyramid-marketing campaign, Defendant Alkazin seeks to minimize his involvement. Although the discovery period is still open, the FTC will assume for the sake of argument that Defendant Alkazin did not create or participate in the first draft of the program. However, as stated in his declaration, he reviewed the program before its launch and provided input. Doc. 248, at ¶ 20. In fact, his input included rejecting a suggestion to change a pyramid-type diagram in the program’s brochure to a bracket-type diagram, which Vemma proposed in order to make the program look less like an illegal pyramid scheme. Doc. 248-1, at 6-7. After the 2&Go plan was finalized, he promoted it at Vemma’s June 2015 convention that was videotaped and disseminated to its Affiliates. Boreyko Depo, 114:6 to 115:13, Depo. Ex. 8; App. 1822. Mr. Alkazin also discussed the program in a May 2015 “live call” (App. 1366: 21 to 1369:21, 1825) and at another live presentation in Carlsbad, California in August. Alkazin Depo, 145:8 to 146:2. He was scheduled to do presentations in Toronto and Charlotte, North Carolina had the FTC not filed its action. *Id.*, 147: 17 to 148:3. He included a link to a one-page presentation of “2&Go” on [myroadmaptosuccess.com](http://myroadmaptosuccess.com) and offered 2&Go pads for sale. App. 869.

More generally, Defendant Alkazin was well familiar with Vemma’s compensation plan. He taught it to other affiliates on many occasions. Alkazin Depo, 54:17-24. He provided input on features of the compensation plan, including caps on bonus levels (*Id.*, 46:20 to 47:24, Depo. Ex. 3) and new ranks. *Id.*, 48:4 to 49:8, Depo. Ex. 4.

In summary, while Defendant Alkazin may not have had final control over Vemma’s compensation or marketing operations, he participated significantly by leveraging his success and credibility as Vemma’s top earner to promote the pyramid scheme and train others to do the same.

**B. Defendant Alkazin Should be Enjoined Under Section I.A of the Order Because His Conduct and the Nature of his Wrongs Show Likelihood of Recurrence and Future Harm**

As noted by Defendant, “[p]ast wrongs are not enough for the grant of an injunction,” but a “cognizable danger of recurrence” is sufficient to obtain such an order. Doc. 250 at 11. Defendant attempts to minimize the role of past wrongs in determining the propriety of injunctive relief, but as reaffirmed in *FTC v. Sharp*, 782 F. Supp. 1445, 1454 (D. Nev. 1991), past wrongs are integral to determining the likelihood of, as well as the potential harm that could result from, recurrence:

Past unlawful conduct may be considered in the determination of likelihood of future violations. . . . In drawing the inference from past violations that future violations may occur, the Court should look at the "totality of circumstances, and factors suggesting that the infraction might not have been an isolated occurrence are always relevant." . . . [W]hen the violation has been predicated on upon systematic wrongdoing, rather than isolated occurrences, a court should be more willing to enjoin future conduct. . . .

*C.F.T.C. v. Co Petro Mktg.*, 502 F. Supp. 806, 818 (C.D.Cal. 1980), *aff'd*, 680 F.2d 573 (9th Cir. 1981) (quoting *C.F.T.C. v. Hunt*, 591 F.2d 1211, 1220 (7th Cir.), *cert. denied*, 442 U.S. 921, 61 L. Ed. 2d 290, 99 S. Ct. 2848 (1979)).

As shown in the factual record before the Court, Defendant Alkazin’s participation in deceptive income claims and pyramid marketing, both direct and implied, was comprehensive, long-standing, and highly profitable. There is “a cognizable danger” that, if not enjoined, he will resume the conduct with a different company. The Court should enjoin Defendant Alkazin as requested in the FTC’s proposed Order (Doc. 135.1) to prevent further harm to consumers.

**IV. CONCLUSION**

For the foregoing reasons, the FTC respectfully requests the Court grant the FTC’s motion and modify the Order to apply the injunctive provisions of Section I to Defendant

Tom Alkazin.

Dated: July 22, 2016.

Respectfully submitted,

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/s/ Jason C. Moon

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**CERTIFICATE OF SERVICE**

I certify that on July 22, 2016, Plaintiff Federal Trade Commission electronically transmitted the attached Document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Filing to all CM/ECF registrants including:

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**DEPOSITION OF TOM ALKAZIN**

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF ARIZONA  
3

4   Federal Trade Commission;                   ) No. CV-15-01578-PHX-JJT  
5                   Plaintiff                   )  
6                   v.                   )  
7   Vemma Nutrition Company, et al. )  
8                   Defendants.                   )

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14                   The deposition of TOM ALKAZIN was taken on  
15   Thursday, June 9, 2016, commencing at 8:31 a.m., at the  
16   office of Glennie Reporting Services, LLC, 7330 North  
17   16th Street, Suite A100, Phoenix, Arizona, before  
18   Carolyn T. Sullivan, RPR, Arizona Certified Reporter No.  
19   50528.

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24  
25



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6/9/2016

1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFF (FEDERAL TRADE COMMISSION):

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21

22 ALSO PRESENT:

23 Bethany Alkazin

24

25



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1 A. No.

2 Q. At the time that the TRO was entered last  
3 summer in this matter, were you a high ranking affiliate  
4 with Vemma Nutrition Company?

5 A. I was.

6 Q. Do you still hold a position as an affiliate  
7 with Vemma?

8 A. I do.

9 Q. All right. So you're an active affiliate as we  
10 sit here today?

11 A. I am.

12 Q. Do you hold any positions in any other  
13 multi-level marketing company as we sit here today?

14 A. I do not.

15 Q. Do you have any ownership interest in any other  
16 multi-level marketing company as we sit here today?

17 A. I do not.

18 Q. All right. I want to talk again a little bit  
19 about your history with Mr. Boreyko. And I apologize,  
20 some of this is going to be duplicative, but I'd like to  
21 hear your account of it.

22 So you have known BK since he was 17 years  
23 old?

24 A. Yes.

25 Q. And you and his parents were both Amway

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1 distributors at the same time?

2 A. Correct.

3 Q. And then you were also participants in another  
4 MLM with his family after the two families departed from  
5 Amway?

6 A. We were.

7 Q. And which company was that?

8 A. Matol Botanical.

9 Q. And how long did you hold a distributorship  
10 with that company?

11 A. To the best of my knowledge, around seven  
12 years.

13 Q. Do you know -- can you give me a time frame of  
14 what years we're talking about that you were involved  
15 with that company?

16 A. As I recall, it was 1988 to 1994.

17 Q. Were you within the Boreyko family's downline  
18 or were they within yours or is there a relationship  
19 there?

20 A. In which company?

21 Q. The botanical company.

22 A. We were in their downline, yes.

23 Q. Now, did Mr. Boreyko hold a position with that  
24 company or was it just his parents?

25 A. Are you referring to BK Boreyko?

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1 Q. How far away is that from your house?

2 A. Approximately ten minutes.

3 Q. Okay. Have you had -- have your families  
4 gotten together at either location out in Carlsbad?

5 A. We have.

6 Q. During those occasions, have you discussed  
7 company matters with Mr. Boreyko?

8 A. I'm sure we discussed business on occasion.

9 Q. Okay. I know you testified earlier that  
10 Mr. Boreyko would communicate with his leaders as a group  
11 about matters related to the company.

12 Do you recall specific instances where he  
13 sought your advice or input about matters related to  
14 Vemma?

15 A. I'm sure we had conversations related to the  
16 business, yes.

17 Q. Do you specifically recall what topics that you  
18 spoke about?

19 A. I don't know. Based on what time frame? I  
20 don't recall any specifics. It may have been events or  
21 something of that nature.

22 Q. Let's talk about the compensation plan. So my  
23 understanding is that the compensation plan -- Vemma's  
24 compensation plan changed a few times over the years,  
25 right?



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1 A. There were modifications to the plan, yes.

2 Q. Do you recall having any conversations with  
3 Mr. Boreyko about the compensation plan around those  
4 times that the plan was changing?

5 A. I don't recall specifics, but I'm sure we did.

6 Q. And why do you believe that that more than  
7 likely happened?

8 A. Because his management style was, again, to  
9 include all the leaders before any changes were made. I  
10 was one of the leaders.

11 Q. Did he ever reach out to you aside from that  
12 process, on a personal level, to discuss the compensation  
13 plan?

14 A. He may have asked my opinion. He was in the  
15 habit of talking to all the leaders individually, so I'm  
16 sure he did.

17 Q. Do you ever -- I asked you a question earlier  
18 that was focused on the 2004 time period. My next  
19 question focuses on the 2012 to 2015 time period.

20 During that time period, do you recall ever  
21 discussing with Mr. Boreyko the 120 QV qualification  
22 requirement?

23 A. The 120 QV was in place, so we didn't have any  
24 discussions to the best of my knowledge specifically  
25 about that. That was already in place.

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1 movement," right?

2 A. Based upon genealogy and him being the upline,  
3 he would have been considered the top leader.

4 Q. But are there others that would have earned  
5 more than him?

6 A. I wouldn't know that information.

7 Q. And I'm going to ask you some more questions  
8 here about YPR in just a moment.

9 Were there other affiliates who you believe  
10 would have been more appropriately considered the top  
11 leader in the YPR movement?

12 A. Alex Morton was considered to be one of the top  
13 leaders in the YPR movement.

14 Q. Okay. And Alex Morton was within Brad's  
15 downline?

16 A. Correct.

17 Q. And Brad was within your downline?

18 A. Correct.

19 (Exhibit 3 was marked.)

20 Q. BY MR. MOON: Mr. Alkazin, if you would take a  
21 moment to read the email that's been marked as Exhibit  
22 No. 3. And I'm sure you know this, but you'll have to  
23 read it from the bottom up.

24 A. Bottom up, right.

25 Okay.

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1 Q. Do you recall this email exchange?

2 A. Having read it now, I do, yes.

3 Q. And so you were expressing concerns about the  
4 cap that had been placed on your compensation; is that  
5 right?

6 A. Correct.

7 Q. And then BK responds: "I think that's why they  
8 call it a cap."

9 He goes on to talk about it. And then you  
10 respond to him, essentially, that you want to have  
11 further discussions with him about motivating high-level  
12 affiliates, basically; is that right?

13 A. Correct.

14 Q. And to you know -- so this was an occasion in  
15 which you were expressing an opinion to Mr. Boreyko about  
16 the compensation plan, specifically on the issue of caps  
17 for bonuses?

18 A. Correct.

19 Q. And do you recall whether or not Mr. Boreyko  
20 implemented any changes based on your -- based on these  
21 discussions?

22 A. Did not.

23 Q. He did not change the caps?

24 A. Not that I recall. Not at that time, no.

25 Q. Do you recall any other occasions in which you

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1 engaged with him in discussions about caps to bonuses?

2 A. I don't outside of this. At this point in  
3 time, I don't.

4 MR. MOON: I'm going to ask the court  
5 reporter to mark Exhibit 4.

6 (Exhibit 4 was marked.)

7 Q. BY MR. MOON: This one is shorter, fortunately.  
8 If you take a minute to read Exhibit 4, please.

9 A. Okay.

10 Q. So do you recall this email exchange?

11 A. I do now, yes.

12 Q. And your initial email says: "Hey Bro. Been  
13 trying not to bother you with all you've got going on  
14 your plate, but are we doing anything with new levels?"

15 Do you know what you were referring to about  
16 new levels?

17 A. I do.

18 Q. What was that?

19 A. That from a recognition point of view, Bethany  
20 and I had achieved the top level in Vemma and wanted to  
21 continue to continue our growth, recognition being a key  
22 component and goals being a key component. There was no  
23 place else to go. So that's what that was discussing.

24 Q. Do you remember what rank you had achieved at  
25 the time this email was sent?

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1 A. I don't recall. I'm guessing pinnacle,  
2 perhaps, but I'm not positive.

3 Q. Did Vemma subsequently create new levels?

4 A. They did.

5 Q. What new levels did they create?

6 A. I believe it was star pinnacle, royal pinnacle,  
7 and legend, I believe, but I'm guessing. I don't recall  
8 exactly.

9 Q. And did you and Mrs. Alkazin subsequently go on  
10 to achieve those levels?

11 A. We achieved the star pinnacle level. That was  
12 the highest level we achieved.

13 Q. Did this change in the levels enable any other  
14 affiliates to advance in rank that you know of?

15 A. Did it enable them?

16 Q. Yes. Was anybody else affected by this so that  
17 they had new levels that they could move into?

18 A. Those new levels would have been open to  
19 anyone.

20 Q. Did anybody other than you and Mrs. Alkazin  
21 achieve those levels?

22 A. To my knowledge, we were the only ones that had  
23 hit the star pinnacle level.

24 Q. Do you remember any other instances in which  
25 you provided input to Mr. Boreyko about the levels or

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1           A.     When this was written, I don't know what was  
2     already in effect or what was being proposed going  
3     forward.

4           Q.     And do you know -- you were proposing in this  
5     email that 17-year-olds be allowed to participate so that  
6     high school seniors could still be an affiliate?

7           A.     That's what it says.

8           Q.     And do you know if that suggestion was ever  
9     adopted?

10          A.     I don't believe it was, but I'd be guessing. I  
11     don't recall.

12          Q.     Did you have minors -- which I am going to  
13     define for the purposes of this question as people under  
14     the age of 17. Did you have minors in your downline?

15          A.     I believe there were through Brad's  
16     organization, yes.

17          Q.     Were you involved in training other Vemma  
18     affiliates on the compensation plan?

19          A.     The compensation plan was a part of training  
20     that we did at many events.

21          Q.     I mean, would you actually provide training  
22     where you would attempt to explain to affiliates the  
23     provisions of the compensation plan?

24          A.     Yes.

25          Q.     And what sort of formats would that training

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1 THE WITNESS: I do not know.

2 Q. BY MR. MOON: Mr. Boreyko testified yesterday  
3 that he thought that Brad Alkazin or Alex Morton had come  
4 up with the term. Do you know whether or not that is  
5 true?

6 A. I know that Brad and Alex adopted it. I don't  
7 know who actually came up with the idea or who came up  
8 with those three letters. I do not know.

9 Q. So the youth-oriented marketing effort that was  
10 subsequently referred to as YPR, do you agree that that  
11 began with your son's recruiting efforts at Arizona State  
12 University?

13 MR. BEAUCHAMP: Objection.

14 THE WITNESS: The YPR movement began with  
15 people who entered Vemma, some of which were at Arizona  
16 State University.

17 Q. BY MR. MOON: Well, kind of help me understand.  
18 Can we agree that -- let's break it down as small as we  
19 can. Can we agree that your son Brad Alkazin was  
20 presenting the Vemma opportunity to other people at  
21 Arizona State University?

22 A. Yes. That's true.

23 Q. And he had some success with recruiting  
24 affiliates at Arizona State?

25 A. He did.

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1 Q. And subsequently, his -- and was everybody that  
2 was recruited at Arizona State within his organization?

3 A. I don't know for a fact if that's the case.

4 Q. And he subsequently signed up Alex Morton,  
5 correct?

6 A. He did not personally sign up Alex Morton.

7 Q. Do you know who signed up Alex Morton?

8 A. To the best of my knowledge, it was a gentleman  
9 by the name of Marty Wewerka.

10 Q. Was Marty Wewerka within Brad's organization?

11 A. He was.

12 Q. And so, therefore, would Alex Morton have been  
13 within Brad's downline?

14 A. He would be.

15 Q. And he would have been within your downline as  
16 well?

17 A. Yes, correct.

18 Q. So, eventually, did Brad's organization expand  
19 to other campuses around the country?

20 A. The marketing that Brad did was never limited  
21 to campuses. But did young people from other  
22 universities join? Yes, they did.

23 Q. Did Brad himself -- and I apologize for calling  
24 him by his first name. I'm just trying to distinguish  
25 him from you.

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1 not specifically aimed at YPR.

2 Q. Were you involved in putting together the Verve  
3 Leadership Academy events?

4 A. I was not.

5 (Exhibit 6 was marked.)

6 Q. BY MR. MOON: Take a moment to read Exhibit  
7 No. 6, Mr. Alkazin.

8 A. Okay.

9 Q. Do you recall this email communication?

10 A. I do now, yes.

11 Q. So the subject matter is VLA Speakers List; is  
12 that correct?

13 A. Yes.

14 Q. And does VLA stand for Verve Leadership  
15 Academy?

16 A. It does.

17 Q. So does it appear that on November 30th, 2013,  
18 that you wrote an email to BK, telling him: "Here are  
19 speakers that Brad feels would do the best job"?

20 A. Yes. I see that.

21 Q. And you provided a list of speakers  
22 specifically, correct?

23 A. I did.

24 Q. And one of them was your son Brad Alkazin,  
25 correct?



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1 A. Correct.

2 Q. And another one was Alex Morton?

3 A. Correct.

4 Q. And before we talk about those, generally,  
5 let's go to the end of the email.

6 "Brad feels it should be all YPR, no OPR. I  
7 can see his point. I agree."

8 In the context of this email, what does it  
9 mean that it should be all YPR, not OPR?

10 A. I was conveying, based on BK's request for  
11 Brad's suggestions on speakers, that Brad felt that most  
12 people under the age of 30 should be on stage.

13 Q. And that's what you meant by the term YPR?

14 A. Yes.

15 Q. And OPR, was that -- what does that mean?

16 A. That was me.

17 Q. Old person's revolution?

18 A. Yeah, basically.

19 Q. All right. And you were agreeing with Brad at  
20 that point, were you not, that it should be all YPR  
21 speakers?

22 A. That the speakers were. The event was -- as I  
23 said before, the event was open to any Vemma affiliate.

24 Q. Okay. So Brad Alkazin, was he under 30 at that  
25 point?

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1 Leadership Academy by providing a speaker list to  
2 Mr. Boreyko, correct?

3 MR. BEAUCHAMP: Objection.

4 THE WITNESS: I did not sponsor the event or  
5 pay for the event, but I provided input to BK on who I  
6 thought the speakers should be.

7 Q. BY MR. MOON: Did you also post biographies for  
8 some of these YPR leaders on your myroadmaptosuccess.com  
9 website?

10 A. Based upon their rank, if they had achieved a  
11 certain rank, we published their story, yes.

12 Q. And did you create those stories yourself?

13 A. I did not.

14 Q. Who created those stories?

15 A. The writer, Les Maness, that I mentioned  
16 before.

17 Q. Did you review the stories before they were  
18 published on your website?

19 A. I did not review them all, no.

20 Q. Did you review any of them?

21 A. I reviewed some. And, ultimately, they were  
22 submitted to Vemma Compliance for review as well.

23 Q. And when you say "ultimately," what do you mean  
24 "ultimately"?

25 A. In the time frame of probably 2014.

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1 MR. BEAUCHAMP: Maybe now is a good time to  
2 take a break?

3 MR. MOON: Sure.

4 MR. BEAUCHAMP: If you're in the middle of  
5 something...

6 MR. MOON: I'm going to be in the middle of  
7 something for a few hours, so let's take a break.

8 (A recess was taken from 10:30 a.m. to  
9 10:40 a.m.)

10 (Exhibit 7 was marked.)

11 Q. BY MR. MOON: Mr. Alkazin, if you could take a  
12 minute to read Deposition Exhibit No. 7, please.

13 A. Okay.

14 Q. Mr. Alkazin, do you agree that you personally  
15 took steps to direct the YPR movement?

16 A. I took steps to help the young leaders within  
17 the organization develop. That was part of our role as  
18 upline and as the experienced leaders.

19 Q. So you provided support for the young recruits  
20 that were within your downline who were attempting to  
21 recruit other prospects into the YPR movement?

22 MR. BEAUCHAMP: Objection.

23 THE WITNESS: What do you mean by "support"?

24 Q. BY MR. MOON: Well, that's a term that you've  
25 used in your materials. You believe it's important for



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1 uplines and support their downline, correct?

2 A. Correct.

3 Q. And when you express that concept, in your  
4 mind, what does it mean for an upline to support a  
5 downline?

6 A. In my mind, it means training, teaching them  
7 the basics of the business in all aspects, how to grow  
8 individually as young men and women in this particular  
9 case of this age demographic.

10 Q. So let's talk about this email for a second.  
11 Do you recall this email exchange?

12 A. I do.

13 Q. And do you recall -- this email was an email  
14 from you to YPR ambassador leaders inviting them to what  
15 you were calling a YPR Ambassador Summit Meeting,  
16 correct?

17 A. Correct.

18 Q. And did that meeting actually occur?

19 A. It did.

20 Q. Where did that occur?

21 A. At the Sheraton Hotel in Carlsbad.

22 Q. Do you know what -- did it actually occur on  
23 the date that was mentioned in this email, September  
24 30th?

25 A. I don't recall, but I would assume so.

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1 Q. But you don't remember specific instances where  
2 you had to address that issue for specific affiliates?

3 A. I do not.

4 Q. Alex Morton had a high profile within the YPR  
5 movement, correct?

6 A. He did.

7 Q. And did you have any system in place to monitor  
8 the public representations that Alex Morton was making  
9 about the Vemma opportunity?

10 A. I had no systems in place to monitor that.

11 Q. And nobody whose job it was to check You Tube  
12 or Google looking for stuff related to Alex Morton?

13 MR. BEAUCHAMP: Objection.

14 THE WITNESS: No.

15 (Exhibit 8 was marked.)

16 Q. BY MR. MOON: Take a moment to look at  
17 Deposition Exhibit No. 8, Mr. Alkazin.

18 A. Okay.

19 Q. Do you recall this particular email  
20 transmittal?

21 A. Only in seeing it now.

22 Q. So in this particular email, it looks like  
23 somebody named Steven Prevatt transmitted an edit of  
24 something called Zero to Sixty Training to BK Boreyko?

25 A. I see that.

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1 Q. And then it looks like somebody again sends  
2 a -- somebody named Joe Umali sends to Mr. Boreyko an  
3 email that's got subject forward: Zero to Sixty Training  
4 Video. And then there appears to be a You Tube link in  
5 there; is that correct?

6 A. Yes.

7 Q. And then Mr. Boreyko forwarded that email to  
8 you and to Brad.

9 A. Yes.

10 Q. And does that refresh your recollection whether  
11 or not you ever saw the Zero to Sixty Training video?

12 A. No, it does not. I received the email,  
13 obviously. I may have clicked on the link, but I don't  
14 recall.

15 Q. So you don't know whether or not this was --  
16 you don't recall whether or not you actually clicked on  
17 the link?

18 A. I don't recall.

19 (Exhibit 9 was marked.)

20 Q. BY MR. MOON: If you take a moment to look at  
21 Deposition Exhibit No. 9, Mr. Alkazin.

22 A. Okay.

23 Q. Do you recall this email?

24 A. I do now, seeing it now.

25 Q. Does it appear that Alex Morton was

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1 So as I recall, Alex was asking my opinion on his talk,  
2 and I was asking Lisa to put that into a PowerPoint form.

3 Q. Do you remember what specific presentation this  
4 email chain was about, what event or opportunity was  
5 going on at that time?

6 A. I do not. Obviously, an event somewhere in the  
7 early part of January, according to the date.

8 Q. Were there other occasions other than this one  
9 that you helped Alex Morton edit or formulate his  
10 presentation?

11 A. Not that I recall, unless it was an event that  
12 he was speaking. He was speaking at an event that I  
13 hosted. We wanted all of our speakers to make sure that  
14 PowerPoints -- that they could be readable, that they had  
15 content -- a lot of the young people were just all over  
16 the place in terms of ideas. And I wanted to try to help  
17 them put that content in some form that was teachable.

18 (Exhibit 10 was marked.)

19 Q. BY MR. MOON: Take a moment to read deposition  
20 Exhibit No. 10, please, sir.

21 A. Okay.

22 Q. Do you recall this particular email exchange?

23 A. Only as I see it now.

24 Q. Do you know -- was this another example of Alex  
25 Morton transmitting presentation content to you for

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1 comment?

2 A. It appears it was, yes.

3 Q. He actually makes the statement: "Make  
4 corrections where you see fit."

5 Do you see that?

6 A. Yes.

7 Q. Do you know -- "Next level talk." Do you know  
8 what that was, what that's referring to?

9 A. I do.

10 Q. What is that?

11 A. That is the leadership weekend I referred to  
12 earlier, a two-day event that we would do annually where  
13 we had outside speakers as well as leadership speakers.  
14 It was a training event for affiliates.

15 Q. Did you have input on selecting the speaker  
16 list for those events?

17 A. We hosted the events, so yes.

18 Q. And did you specifically choose Alex Morton as  
19 the speaker for this next level talk?

20 A. Yes, I did.

21 Q. Do you know whether or not you made any  
22 corrections to this content?

23 A. I don't recall.

24 MR. MOON: I'm going to hand the court  
25 reporter another exhibit.



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1 (Exhibit 11 was marked.)

2 Q. BY MR. MOON: If you take a moment,  
3 Mr. Alkazin, to read deposition Exhibit No. 11.

4 A. Okay.

5 Q. Do you recall this email exchange?

6 A. Only in reading it now.

7 Q. Is this another example of Alex Morton  
8 providing you with content of a presentation and asking  
9 for your input?

10 A. This was Alex submitting ideas that he had put  
11 together and forwarding them to myself and to Lisa  
12 Schuster to formulate into a PowerPoint for a training  
13 event.

14 Q. Okay. And it makes reference to the Diamond  
15 Event. What was the Diamond Event?

16 A. That was a leadership weekend that we hosted in  
17 I believe it was March of 2015.

18 Q. And who was the target audience for that  
19 particular event?

20 A. This was open to diamonds and above in our  
21 organization.

22 Q. And do you know whether or not you or  
23 Mrs. Schuster did, in fact, make edits to this material?

24 A. I would assume that she did. That was her job.

25 Q. Do you know whether or not you selected the

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1 speakers for that event?

2 A. Bethany and I hosted that event, so we would  
3 have selected the speakers.

4 Q. And so you would have selected Alex Morton for  
5 that event?

6 A. Yes.

7 Q. This email is dated February 24th, 2015,  
8 correct?

9 A. Yes, it is.

10 Q. Do you believe this was before or after you had  
11 the conversation with Alex Morton in which you determined  
12 that he was uncoachable?

13 A. I don't recall. I don't recall exactly when he  
14 and I had that meeting.

15 Q. In a situation like this where Alex would have  
16 sent content to you and Ms. Schuster for editing, would  
17 you yourself have reviewed the final product before it  
18 was presented?

19 A. The final PowerPoints, yes, I would review  
20 them.

21 Q. So she would make the actual physical editing,  
22 but then you would do the final review of them?

23 A. Yes. It was our event, so we would do that.

24 Q. And that's a good point. For any event that  
25 you yourself sponsored, would you review all of the



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1 content before it was distributed during the event or  
2 presented during the event?

3 A. If it was our event that we sponsored and  
4 promoted, yes, I would do that.

5 Q. Now, when you were -- these events that you  
6 promoted, were they for people -- exclusively for people  
7 in your downline or also people outside of the downline?

8 A. It was open to anyone.

9 Q. But there might be restrictions based on rank  
10 for some of them?

11 A. In the last example, yes.

12 (Exhibit 12 was marked.)

13 MR. MOON: I've got basically two more  
14 emails to go, and then it would be a good point for a  
15 lunch break.

16 THE WITNESS: Okay.

17 Q. BY MR. MOON: So do you recall this email  
18 exchange?

19 A. After reading it now, I do.

20 Q. And this was in reference to one of the YPR  
21 kickoff events that we've already discussed?

22 A. Yes, correct.

23 Q. Now, would you consider a YPR kickoff event an  
24 event that you would have sponsored and promoted?

25 A. I would have promoted it, but I -- can you

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1 define "sponsor"?

2 Q. Well, would you have paid for it?

3 A. No, I would not. My son Brad secured the  
4 venue, collected receipts for the event and so on.

5 Q. Then let's move on to the concept of promoting.  
6 Would you have made efforts in your organization to  
7 promote the event?

8 A. We promote all events, yes.

9 Q. Now, you yourself, in previous testimony,  
10 you've used the word "sponsor," so I want to make sure  
11 we're speaking the same language. When you use the term  
12 "sponsor" an event, what are you referring to?

13 A. When I say "sponsor" an event, I mean I secure  
14 the venue, sign the contract, am responsible for paying  
15 for the event, collecting ticket receipts, if there are  
16 any, that sort of thing.

17 For example, the VLA events, I did not  
18 sponsor those events.

19 Q. So in this email exchange, Stu Massengill is  
20 asking Mr. Boreyko whether there are any specific  
21 requirements or topics that he should be covering,  
22 correct?

23 A. Yes.

24 Q. And Stu Massengill was a YPR leader within your  
25 organization?

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1 A. Yes, he was.

2 Q. And it appears that Mr. Boreyko sends an email  
3 on to Brad saying: "Are you and Tom working on power  
4 talk topics?"

5 Correct?

6 A. Yes.

7 Q. What's a power talk?

8 A. I'm not sure what he refers to there. I'm  
9 assuming topics. He coined it to be a power talk. I'm  
10 not sure.

11 Q. So you're not sure what the term "power talk"  
12 refers to?

13 A. No, I'm not.

14 Q. And then did you respond: "On it tomorrow,  
15 sending everyone their topics. 10 minutes each?"

16 A. Yes.

17 Q. So did you and Brad actually prepare a list of  
18 topics for the speakers for this event?

19 A. I'm assuming we did.

20 Q. Do you recall whether or not -- if that  
21 occurred, would it be in the form of an outline or script  
22 or how would that input be provided?

23 MR. BEAUCHAMP: Objection.

24 THE WITNESS: How would my input be  
25 provided? It would be a topic sent to the leader to



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1 prepare their content.

2 Q. BY MR. MOON: And would you actually suggest  
3 content within the topic to the leaders?

4 A. Only if the leader needed help.

5 Q. If the leader did request your help, you would  
6 help them in preparing the material?

7 A. That was our job for any leader, whether they  
8 were a YPR leader or OPR leader or anybody.

9 Q. In terms of corporate material that was  
10 prepared by Vemma -- there's a possibility I may have  
11 asked you this before, but I'm going to ask it again.

12 Do you recall any occasions in which you  
13 were asked for input on corporate marketing material  
14 since 2012?

15 A. I do not recall. It's possible, but I don't  
16 recall.

17 Q. I think in your request for admissions, you may  
18 have mentioned that you had reviewed the Vemma flipbook.  
19 Do you recall that?

20 A. I do.

21 Q. Tell me what that process was. What did you do  
22 to review the Vemma flipbook?

23 A. To the best of my knowledge, Lauren Boreyko was  
24 heading that, the development of that project, and she  
25 would submit content to myself and other leaders for

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1 ideas in training that I do.

2 Q. So you use the PowerPoint as sort of your  
3 signpost on what to say in the presentation?

4 A. Correct.

5 Q. So the Vemma training convention, did that  
6 occur in June of 2015?

7 A. That's correct.

8 Q. And subsequent to that, did you give any  
9 additional presentations on the Two & Go program?

10 A. I did.

11 Q. Can you describe those for me?

12 A. I did one event on August 1st in San Diego.

13 Q. Tell me about that. What was the context of  
14 that event?

15 A. It was a -- as I described earlier, it was one  
16 of the half-day training programs that we did that we  
17 periodically did. And part of agenda that day was  
18 teaching on the Two & Go program.

19 Q. Now, did you use the same materials that you  
20 had used in the convention or different materials?

21 A. I don't recall.

22 Q. Did you use a PowerPoint?

23 A. I'm sure I did. I usually teach from  
24 PowerPoint.

25 Q. And did you say this was in San Diego that this



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1 happened?

2 A. Carlsbad, yes.

3 Q. So other than the June convention and the  
4 August presentation at Carlsbad, do you remember making  
5 any other live presentations about the Two & Go program  
6 before the FTC filed its action?

7 A. I don't believe so.

8 Q. Did you participate in the preparation of any  
9 written materials describing the Two & Go program?

10 A. For the company?

11 Q. Well, either way, for the company or for your  
12 own use within your network.

13 A. I'm sorry. Can you repeat the question,  
14 please.

15 Q. Did you prepare any written materials  
16 describing the Two & Go program?

17 A. I did not. I did not, no.

18 Q. Other than the company's videotaping of your  
19 presentation at the June convention, do you know whether  
20 or not you were featured in any video presentations  
21 discussing the Two & Go program?

22 A. Other than that presentation?

23 Q. Yes.

24 A. Not to my knowledge.

25 Q. And you were on the May live call with BK that

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1 discussed the Two & Go program, correct?

2 A. I believe that's correct.

3 Q. And do you recall Mr. Boreyko saying in that  
4 call that you and the other leaders were intimately  
5 involved in the creation of the Two & Go program?

6 MR. BEAUCHAMP: Objection.

7 Go ahead.

8 THE WITNESS: I recall that he said that.

9 Q. BY MR. MOON: And can you think of any  
10 involvement that you had other than what we've covered  
11 today in the emails that would lead Mr. Boreyko to  
12 portray it as if you were intimately involved in the  
13 creation of the program?

14 A. I do not agree with his statement that I was  
15 intimately involved other than commentary, as I've stated  
16 before.

17 Q. Okay. Were there other trainings that were  
18 already scheduled for the rest of the year had the FTC  
19 not filed its action?

20 A. To the best of my knowledge, we had two  
21 scheduled.

22 Q. And what were those supposed to be?

23 A. This event entitled Stepping Into Leadership.

24 Q. The event in Toronto?

25 A. The event in Toronto.

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1                   And I believe we were looking at doing one  
2     in Charlotte, North Carolina, though that had not been  
3     confirmed.

4           Q.     Can you think of any other occasions than the  
5     ones we've already talked about today where you were  
6     training other affiliates on the Two & Go program?

7           A.     I don't recall.

8           Q.     So, Mr. Alkazin, the Two & Go program  
9     emphasized that affiliates needed to be -- to purchase an  
10    affiliate pack to be eligible for the bonuses described  
11    in the program, correct?

12           MR. BEAUCHAMP: Objection.

13           THE WITNESS: The Two & Go program was an  
14    illustration of what could happen to an affiliate's  
15    income if they utilized the affiliate pack.

16           Q.     BY MR. MOON: And that program advised  
17    affiliates to not only purchase the affiliate pack but to  
18    recruit other affiliates who themselves would purchase  
19    the affiliate pack, correct?

20           MR. BEAUCHAMP: Objection.

21           THE WITNESS: That illustration showed that  
22    as what would happen, yes.

23           Q.     BY MR. MOON: And then the Two & Go program  
24    also advocated that affiliates be on their 120 QV  
25    auto-ship so they could qualify for bonuses, correct?

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1 Q. Well, are you aware that there are -- well,  
2 let's take away the word "network" marketing. Let's  
3 focus on multi-level marketing.

4 Are you aware that there are voices out  
5 there that take the view that multi-level marketing  
6 programs can easily turn into pyramid schemes?

7 A. I'm aware that there are voices out there that  
8 have that opinion.

9 Q. And when did you first become aware of that  
10 topic of discussion?

11 A. The first time I entered network marketing 40  
12 years ago.

13 Q. So that's been a line of criticism that you  
14 have heard being made ever since you first got involved  
15 with network marketing?

16 A. Correct.

17 Q. And were you aware that there were people who  
18 were accusing Vemma of being a pyramid scheme before the  
19 FTC action was filed?

20 A. I was aware of the media articles and  
21 publications that came out, if that's what you're  
22 referring to. I was aware of that.

23 Q. And some of those publications introduced the  
24 theme that Vemma might be a pyramid scheme?

25 A. They did.

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1 Q. And do you think that you were aware of that  
2 article before the FTC action was filed?

3 A. Yes.

4 Q. And then, lastly, the Rolling Stone article  
5 from October of 2014. Do you recall that article?

6 A. I do.

7 Q. Now, that article specifically profiled Alex  
8 Morton, correct?

9 A. Correct.

10 Q. And did you become aware of that article around  
11 the time that it was published in October 2014?

12 A. Yes.

13 Q. Did you become aware of any of these articles  
14 before they were published?

15 A. No.

16 Q. Did you play any role in preparing the  
17 company's response or comment on any of these articles?

18 A. No, I did not.

19 Q. Okay. I want to talk about the Italian  
20 Competition and Market Authority's investigation of Vemma  
21 Italia.

22 And I'll represent to you that investigation  
23 started in around June of 2013, and a decision was issued  
24 in March of 2014.

25 Were you aware of that investigation?



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1 A. Only that there was an investigation. I did  
2 not know any of the specifics of it, though.

3 Q. Okay. And were you aware of that investigation  
4 during that time period that it was actively going on?

5 A. Yes.

6 Q. Did you have any -- so you said you didn't know  
7 the details of it?

8 A. I knew there was a compensation plan issue, but  
9 I didn't know anything beyond that.

10 Q. Did you know anything about the topics of  
11 concern that the Italian authorities were looking at?

12 A. I don't recall that I did.

13 Q. Did you have any involvement with formulating a  
14 response to the investigation?

15 A. No, I did not.

16 Q. To your knowledge, was there any changes made  
17 to Vemma's U.S. program that came about as a result of  
18 the Italian investigation?

19 A. Not that I can recall.

20 Q. You mentioned a moment ago that you had the  
21 ability through your Back Office to see your total  
22 accounts of individuals in your downline broken down by  
23 customer and affiliate, correct?

24 A. Correct.

25 Q. Did your Back Office give you the opportunity

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1 Q. Okay. So let's talk about the Vemma income  
2 disclosures for a moment. So we've talked about the  
3 Vemma disclosures from 2013 and 2014. Did you have any  
4 involvement in preparing those income disclosure  
5 statements?

6 A. I did not.

7 Q. But were you aware -- after those were  
8 publicized, were you aware of the contents of those  
9 income disclosure statements before the FTC action?

10 A. I was.

11 Q. The income disclosure statements would state  
12 what percentage of active affiliates had achieved various  
13 ranks; is that right?

14 A. That's correct.

15 Q. Did you have access to any sort of similar  
16 information for your own downline as to what percentage  
17 of people in your downline had achieved certain ranks?

18 A. I did not.

19 Q. Did you ever request that information from  
20 Vemma?

21 A. Other than the report that I just mentioned to  
22 you that we used for a communication database of diamonds  
23 and above, I had no knowledge of percentages.

24 Q. Did you ever -- did you have the means to  
25 determine whether or not people in your organization were

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1 making more in commissions than they were spending for  
2 product?

3 A. I'm sorry. Can you repeat the question.

4 Q. Did you have any means to determine whether the  
5 people in your organization were making more in  
6 commissions than they were spending on Vemma products?

7 A. I have no way of knowing that.

8 Q. Did you ever ask Vemma for that information?

9 A. No, I did not.

10 Q. But you had information from Vemma's disclosure  
11 statements generally as to what percentage of affiliates  
12 company wide fell into certain rank categories, correct?

13 A. Just from reading the disclosure.

14 Q. And the disclosures also would state what the  
15 typical income was associated for each of those ranks,  
16 correct?

17 A. That's correct.

18 Q. All right. This is going to be my last subject  
19 matter, so good news for everybody.

20 Did you do any -- did Vemma put out any  
21 training material teaching their affiliates how to deal  
22 with objections that Vemma was a pyramid?

23 A. Did Vemma put out anything in general to the  
24 entire organization?

25 Q. Yes. To affiliates to address objections that

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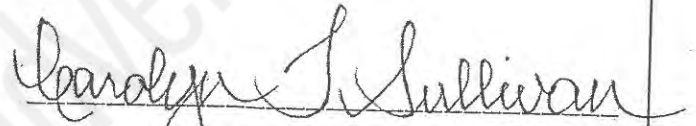
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CASE TITLE: FTC v. VEMMA NUTRITION COMPANY, et al.

DEPOSITION DATE: JUNE 9, 2016

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the steno notes transcribed by me on the above cause before the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA to the best of my knowledge and belief.

DATED: JUNE 20, 2016

  
CAROLYN T. SULLIVAN, RPR



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1 WITNESS: TOM ALKAZIN

2 DATE: June 9, 2016

3 CASE: FTC v. VEMMA NUTRITION COMPANY, et al.

4 Please note any errors and the corrections thereof on  
5 this errata sheet. The rules require a reason for any  
6 change or correction. It may be general, such as "To  
7 correct stenographic error," or "To clarify the record,"  
8 or "To conform with the facts."

9 PAGE LINE CORRECTION REASON FOR CHANGE

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## OFFICIAL TRANSCRIPT PROCEEDING

### FEDERAL TRADE COMMISSION

**MATTER NO.** X150057

**TITLE** FTC v. VEMMA NUTRITION COMPANY, et al.

**PLACE** GLENNIE REPORTING SERVICES, LLC  
7330 N 16<sup>th</sup> STREET  
PHOENIX, AZ

**DATE** JUNE 8, 2016

**PAGES** 1 THROUGH 204

**DEPOSITION OF BENSON BOREYKO**

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF ARIZONA

3  
4 Federal Trade Commission, ) No. CV-15-01578-PHX-JJT  
5 Plaintiff, )  
6 v. )  
7 Vemma Nutrition Company, et al., )  
8 Defendants. )  
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— — — — —  
The deposition of BENSON K. BOREYKO was  
taken on Wednesday, June 8, 2016, commencing at  
8:35 a.m., at the office of Glennie Reporting Services,  
LLC, 7330 North 16th Street, Suite A100, Phoenix,  
Arizona, before Carolyn T. Sullivan, RPR, Arizona  
Certified Reporter No. 50528.  
— — — — —

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21 Bethany Alkazin

22 Peter Reilly

23

24

25

Boreyko

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1 Can you walk me through the process that  
2 they would go through. Who would you give it to and how  
3 would it be processed?

4 A. I would draft it, email it to someone there. I  
5 don't know if it was Allison and Michelle, but somebody  
6 in that department. They would review it actually days  
7 later, strike what needs to be striked, leave what needs  
8 to be left, and we'd go into introduction.

9 Q. So when Vemma developed new corporate marketing  
10 material, was it Vemma's objective to get that material  
11 in as many hands as possible?

12 A. Like a brochure and stuff?

13 Q. Let's talk about -- a video. Let's talk about  
14 your May live call that you did. When material is  
15 prepared like that, is there a protocol that Vemma goes  
16 through to try to disseminate that material to its people  
17 that are in its database?

18 A. Yes.

19 Q. And what would that process be?

20 A. We would email it to the affiliates. We would  
21 put it on the Vemma You Tube channel. And I believe  
22 that's the extent of it.

23 Q. Would you tweet about new videos?

24 A. Oh, yes.

25 Q. Or did Vemma have a Facebook page?

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1 A. Yes. Still does.

2 Q. And did Vemma use the Facebook page to announce  
3 new materials?

4 A. They would post, yes.

5 Q. And then Vemma News, would that also make a  
6 reference to new material?

7 A. That's the email that would go out.

8 Q. Oh, okay.

9 Was there anybody with Vemma who tried to  
10 calculate how many people actually received new  
11 promotional material?

12 MR. BEAUCHAMP: Objection.

13 THE WITNESS: We would get reports on open  
14 rates for emails. That gives us an idea who's paying  
15 attention. Other than that, it's kind of hard. You put  
16 it out there, and you don't know if they're going to  
17 listen or watch.

18 Q. BY MR. MOON: So when you say "open rates," you  
19 mean you can determine how many people actually clicked  
20 on the email and opened it up?

21 A. Correct.

22 Q. And then let's say that a video is disseminated  
23 on Facebook, did the company attempt to track how many  
24 people had actually seen the video?

25 A. It will show you views on there. It's pretty

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1 Q. Do you know if Mr. Alkazin was given a preview  
2 of your Halftime Report video before it was disseminated?

3 A. Not that I'm aware of.

4 Q. Do you know if Mr. Alkazin would have been  
5 provided a copy of Vemma Success With Alex Morton before  
6 it was disseminated?

7 A. I don't recall that.

8 Q. Alex Morton's Zero to Sixty video that he  
9 prepared. Are you familiar with that?

10 A. I am.

11 Q. Do you know if that was given to Mr. Alkazin  
12 before it was disseminated?

13 A. I'm not aware of that.

14 Q. Do you know if he was given a copy after it was  
15 disseminated?

16 A. I think everybody was given a copy after it was  
17 disseminated.

18 Q. As part of the general dissemination?

19 A. Yes.

20 Q. I'd like to talk about the Two & Go program.

21 The court reporter has handed you what we  
22 have marked as deposition Exhibit No. 7. If you want to  
23 take a chance to look at that for a minute.

24 Do you recognize that as a copy of the Two &  
25 Go brochure?

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1 Q. Mr. Alkazin did produce a video that  
2 specifically promoted Two & Go, correct?

3 MR. BEAUCHAMP: Objection.

4 THE WITNESS: He spoke at our convention,  
5 and that talk was videotaped, correct.

6 Q. BY MR. MOON: Okay. Do you remember an email  
7 going out called "Tom Alkazin Wants to Help You" to the  
8 affiliates that made reference to a Two & Go video?

9 A. Can you show me the email? I don't recall.

10 Q. Sure.

11 (Exhibit 8 was marked.)

12 Q. BY MR. MOON: Mr. Boreyko, I'm showing you what  
13 the court reporter has marked as deposition Exhibit  
14 No. 8. Does that appear to be a screenshot from Vemma  
15 News?

16 A. Yes, it does.

17 Q. And Vemma News is essentially your, I guess,  
18 mostly email service that goes out, notifying affiliates  
19 of developments?

20 A. And mobile app.

21 Q. And it references a new Two & Go 60 and 60 Days  
22 To Go training video featuring Tom Alkazin?

23 A. Correct.

24 Q. Is that the video you were referencing before  
25 that was a video of a live presentation?

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- 1 A. Tom did not produce this. We produced this.
- 2 Q. So what was the occasion for the video? What
- 3 was going on that was videoed?
- 4 A. It was our annual convention.
- 5 Q. So Mr. Alkazin gave a talk about Two & Go at
- 6 the annual convention?
- 7 A. That's correct.
- 8 Q. And you -- Vemma videotaped that talk?
- 9 A. That's correct.
- 10 Q. And announced it through Vemma News?
- 11 A. That's correct.
- 12 Q. Would this have been June time frame 2015?
- 13 A. I believe that's correct.
- 14 Q. The sentence -- let's look at the sentence that
- 15 says: "New Two & Go Action Plan is a game changer."
- 16 And under that, it says: "Vemma Star
- 17 Pinnacle Tom Alkazin trained thousands of Affiliates at
- 18 Vemma Training Convention."
- 19 So is that referring to the fact that there
- 20 were thousands of affiliates at the convention that he
- 21 gave the talk to?
- 22 A. That's correct.
- 23 Q. Do you know of any other events that
- 24 Mr. Alkazin did to promote Two & Go between the annual
- 25 convention and when the TRO was entered?

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1           A.       When you say -- you mean events on high school  
2       campuses?

3           Q.       They would attempt to recruit affiliates,  
4       whether it's in the form of an event or person to person.  
5       I'm not trying to distinguish that. But they did recruit  
6       on college campuses and high school?

7                   MS. WEBER: Form.

8                   MR. SALANGA: Form.

9           THE WITNESS: The affiliates would recruit  
10       anywhere. But did it happen on high school campuses and  
11       college campuses? I'm assuming it could have. I don't  
12       know any specific circumstances of that, but it could  
13       have, yes.

14          Q.       BY MR. MOON: Well, the company received  
15       criticism in the media and from critics of your company  
16       in general for the fact that they were recruiting on  
17       college and high school campuses, right?

18          A.       These were affiliates doing it. It wasn't the  
19       company doing it, but that's correct.

20          Q.       Well, we'll talk about that some more. But let  
21       me ask this way: What is your understanding of the  
22       origins of the YPR movement?

23                   MS. WEBER: Objection.

24                   THE WITNESS: I don't understand the  
25       question. What were the origins? How did it start?



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1 Q. BY MR. MOON: Yes.

2 A. Brad Alkazin enrolled Alex Morton, and Alex  
3 Morton had a circle of influence with young people and  
4 began talking to them about the concept.

5 Q. And that was at Arizona State University that  
6 that was happening?

7 A. I believe he was going to school there, yes.

8 Q. And do you know what time period this began to  
9 occur?

10 A. I would be guessing. If I were going to --  
11 well, I don't want to guess. I'm not sure.

12 Q. And at some point in time, Vemma's policies  
13 permitted affiliates to recruit minors, right?

14 A. With parental notarized permission, correct.

15 Q. How old did you have to be during that time  
16 period to be an Vemma affiliate?

17 A. 14 to 17.

18 Q. And then, subsequently, at some point, the  
19 policy was changed to where you had to be at least 17?

20 A. At least 18.

21 Q. So your company, Vemma Nutrition Company,  
22 supported the Young Persons Revolution with your  
23 marketing materials, correct?

24 A. We did.

25 Q. You produced marketing material, both written



CERTIFICATE OF REPORTER

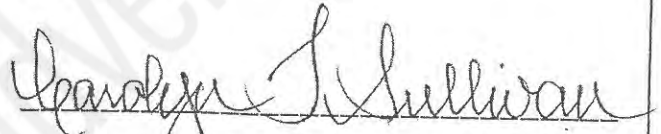
DOCKET/FILE NUMBER: CV-15-01578-PHX-JJT

CASE TITLE: FTC v. VEMMA NUTRITION COMPANY, et al.

DEPOSITION DATE: JUNE 8, 2016

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the steno notes transcribed by me on the above cause before the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA to the best of my knowledge and belief.

DATED: JUNE 20, 2016

  
CAROLYN T. SULLIVAN, RPR

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1 CERTIFICATE OF WITNESS

2

3

4 I hereby certify that I have read and examined  
5 the foregoing transcript, and the same is a true and  
6 accurate record of the testimony given by me.

6

7 Any additions or corrections that I feel are  
8 necessary, I will attach on a separate sheet of paper to  
9 the original transcript.

9

10

\_\_\_\_\_  
BENSON K. BOREYKO

11

12

13 I hereby certify that the individual  
14 representing himself/herself to be the above-named  
15 individual, appeared before me this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2016, and executed the above  
17 certificate in my presence.

16

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\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR

19

20

21 MY COMMISSION EXPIRES:

22

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1 WITNESS: BENSON K. BOREYKO

2 DATE: June 8, 2016

3 CASE: FTC v. VEMMA NUTRITION COMPANY, et al.

4 Please note any errors and the corrections thereof on  
5 this errata sheet. The rules require a reason for any  
6 change or correction. It may be general, such as "To  
correct stenographic error," or "To clarify the record,"  
or "To conform with the facts."

7 PAGE LINE CORRECTION REASON FOR CHANGE

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