

Keith Beauchamp (012434)  
 Marvin C. Ruth (024220)  
**COPPERSMITH BROCKELMAN PLC**  
 2800 North Central Avenue, Suite 1200  
 Phoenix, Arizona 85004  
 T: (602) 381-5490  
 F: (602) 224-6020  
 kbeauchamp@cblawyers.com  
 mruth@cblawyers.com

*Attorneys for Defendant Tom Alkazin and  
 Relief Defendant Bethany Alkazin*

UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA

Federal Trade Commission,	)	No. 2:15-cv-01578-JJT
	)	
Plaintiff,	)	<b>TOM ALKAZIN'S RESPONSE TO</b>
	)	<b>FTC'S MOTION TO CLARIFY OR</b>
v.	)	<b>RECONSIDER PRELIMINARY</b>
	)	<b>INJUNCTION AS TO DEFENDANT</b>
Vemma Nutrition Company, <i>et al.</i> ,	)	<b>TOM ALKAZIN</b>
Defendants.	)	

In accordance with this Court's Order (Doc. 240), Tom Alkazin hereby responds to the FTC's Motion to Clarify or Reconsider Preliminary Injunction as to Defendant Tom Alkazin ("Motion") (Doc. 135). Mr. Alkazin's Response is supported by the attached exhibits and the separately filed Declaration of Tom Alkazin (Doc. 248) and Declaration of Marvin Ruth (Doc. 249).

The FTC's Motion asks the Court to reconsider its decision not to enjoin Mr. Alkazin with respect to Section I.A and Sections I.B to I.E of the Preliminary Injunction Order entered September 18, 2015 (Doc. 118).

For Section I.A, the FTC argues that notwithstanding this Court's finding that Mr. Alkazin lacked control over Vemma, he should nonetheless be jointly and severally liable with Vemma "for the operation of an illegal pyramid scheme based on his own direct participation in the pyramid scheme marketing." (Motion at 8). The FTC notes that the

1 Court's Injunction Order accepted the FTC's assertion that Mr. Alkazin "helped create"  
2 the Two & Go program and promoted it, and goes on to argue that this amounts to  
3 participation sufficient to establish liability for operation of the company-wide pyramid.  
4 But the FTC did not prove that Mr. Alkazin helped create the Two & Go program, and  
5 there is indisputable evidence that he did not do so. Moreover, the cases cited by the  
6 FTC make clear that Mr. Alkazin's conduct (even accepting as true the inaccurate  
7 assertions of the FTC) would be insufficient to make him responsible for Vemma's  
8 operation of a pyramid.

9 For Sections I.B through I.E, the FTC points to the Court's finding that the FTC was  
10 likely to succeed on its claim that Mr. Alkazin made deceptive income claims, then argues  
11 that this finding provides a basis to enjoin Mr. Alkazin. But even the findings made by this  
12 Court did not (and do not) support entry of an injunction as to Mr. Alkazin because: the  
13 evidence relied on by the FTC was dated; Mr. Alkazin was not engaged in ongoing  
14 misconduct; and Mr. Alkazin has no history of misconduct. Moreover, if the Court is  
15 inclined to revisit its Order regarding Mr. Alkazin, it should instead clarify that he did not  
16 make income misrepresentations.

17 The FTC's Motion should be denied.

## 18 **I. Background**

19 At the preliminary injunction hearing, the FTC elected to focus its presentation on  
20 Vemma and Mr. Boreyko. It did not reference either of the two video/audio presentations  
21 involving Mr. Alkazin. The FTC did not ask a single question about Mr. Alkazin of any  
22 witness. The only witness who uttered Mr. Alkazin's name was Bonnie Patten. She  
23 conceded that the July 2014 *Roadmap to Success*, quoted by the FTC as an income  
24 misrepresentation (*see* Complaint ¶ 36), was superseded by two more recent versions (neither  
25 of which contain the statement quoted by the FTC in its Complaint). (09/15/15 Tr. at 69).

26 Although the Court permitted testimony by declaration at the hearing, the Declaration  
27 of FTC investigator Mathew Thacker said little about Mr. Alkazin except to provide  
28

1 foundation for the limited materials that related to him.<sup>1</sup>

2 Mr. Alkazin was present at the hearing, but the FTC did not call him to testify.  
3 Because the FTC adduced no testimony about Mr. Alkazin, and in light of the hearing time  
4 constraints, he was not called to testify by his counsel. Had the FTC called him, or asked  
5 questions of other witnesses about him, Mr. Alkazin would have testified consistent with the  
6 content of his Declaration filed herewith. (*See* Doc. 248). That Declaration confirms and  
7 expands on points made in Mr. Alkazin's Opposition to the FTC's Application for  
8 Preliminary Injunction, and the Declaration is incorporated here by reference.

9 The FTC made no effort to show it had reason to think Mr. Alkazin would violate the  
10 law in the absence of an injunction from this Court directing him not to do so. Had the FTC  
11 attempted to do so, Mr. Alkazin would have testified that after more than 40 years in the  
12 direct sales industry, he has never been accused of misconduct by any federal or a state  
13 regulator, and has never been sued (apart from this case). (Alkazin Decl. ¶ 3). He is unaware  
14 of any Vemma affiliate or potential affiliate complaining that he made misrepresentations or  
15 omissions regarding the business opportunity. (*Id.*)

16 Mr. Alkazin did not focus on selling the business opportunity to affiliates to the  
17 exclusion of selling the product to customers. Many of the presentations he gave in the 2013-  
18 2015 period made no income claims at all. (*Id.* ¶ 11). He believed, and taught others, that  
19 customers are vital to the success of the company and its affiliates. Consistent with this  
20 emphasis, he made substantial retail sales of Vemma products from his home office, selling  
21 about \$130,000 in Vemma products (mostly in amounts of \$75 or less) from his home in the  
22 2.5 year period prior to August, 2015, when the FTC filed suit. (*Id.* ¶ 10).

---

23  
24 <sup>1</sup> Along with its Complaint, the FTC filed an excerpt recorded by Mr. Thacker at a "Super  
25 Saturday Business Opportunity" in Pleasanton, CA on February 7, 2015. (App. 1030-  
26 1046). Mr. Thacker's Declaration inaccurately and without foundation stated that the  
27 event was "hosted by Alkazin" (Thacker Decl. at ¶ 36; *compare with* Thacker Depo. at  
28 188:3-7 (only basis to say Alkazin hosted was Thacker's recollection that Vemma  
website said so). There are no materials indicating Tom hosted that event, and in fact he  
did not. (Alkazin Decl, ¶ 12.) Although the FTC complains about statements made by  
others at the event, it does not complain about the statements made by Mr. Alkazin.

1 It is undisputed that Mr. Alkazin was not an employee, officer or owner of Vemma.  
 2 He did not have access to Vemma's financial, sales and operational data or to management  
 3 reports or other company-wide sales and commission data. He was not involved in preparing  
 4 Vemma's annual income disclosure statements. He did not author Vemma's marketing plans.  
 5 He did not structure or have control over Vemma's compensation model for affiliates. He  
 6 had no role in drafting Vemma's affiliate agreements. (*Id.* ¶ 15); (Boreyko Decl., Ex. 1  
 7 hereto, at ¶¶ 7-9) Instead, Vemma was operated by its staff of more than 100 employees,  
 8 including Compliance, Marketing and Information Technology departments. (Boreyko Decl.,  
 9 Ex. 1 hereto, at ¶ 6); *see generally* Declaration of Brad Wayment (Doc. 131) and Declaration  
 10 of Allison Tengan (Doc. 78-1).

11 There was no need for Mr. Alkazin to come forward with evidence on these issues at  
 12 the hearing, because the FTC made no effort to prove he participated in or controlled  
 13 Vemma's operations in any of these conventional ways.

## 14 **II. The FTC's Request to Expand "Participant" Liability Should Be Denied.**

15 In its Motion, the FTC argues that Mr. Alkazin should be preliminarily enjoined (and  
 16 ultimately found jointly liable with Vemma for approximately \$456 million in alleged  
 17 pyramid damages!) because of his "direct participation in the pyramid scheme." (Motion at  
 18 8.) Notwithstanding Mr. Alkazin's lack of involvement in the actual business operations that  
 19 dictated whether Vemma was or was not a pyramid, the FTC seeks to impose this draconian  
 20 result because he (i) supposedly "helped create" the Two & Go program, (ii) appeared in a  
 21 video explaining that program, (iii) and appeared in an interview on a third-party website in  
 22 2011 where he supposedly "discusses his success in Vemma, never mentions selling a  
 23 product, and instead, focuses on recruiting others who want to participate in the business  
 24 opportunity." (Motion at 8). The FTC is wrong on the facts (which it has not proved in any  
 25 in any event) and wrong on the law.

### 26 **A. Mr. Alkazin did not create Two & Go**

27 In May 2015, a few months before the FTC filed this action, Vemma introduced a  
 28 new program branded Two & Go. The FTC alleges that Mr. Alkazin helped create the

Two & Go program. Its allegation is based on the following offhand statement made by Mr. Boreyko when introducing Mr. Alkazin and Ms. Ruth Elliot on a Vemma Live conference call in May 2015 at which the Two & Go program was discussed: “[you] and Ruth [Elliott] and a lot of our ambassadors were intimately involved in the creation of this program.” (See App 1367). The audio transcript containing this statement by Mr. Boreyko was hearsay, at least for purposes of using it against Mr. Alkazin to prove the truth of the matter asserted. It was not contained in a testimonial declaration. The FTC did not ask Mr. Boreyko or Mr. Alkazin about this at the hearing.<sup>2</sup>

If the FTC had asked, Mr. Boreyko and Mr. Alkazin would have explained that Mr. Alkazin was not meaningfully involved in creation of the Two & Go program. (Alkazin Decl. ¶ 16-21); (Boreyko Decl., Ex. 1 hereto, at ¶ 19-20). The Two & Go program was created by Vemma based on a concept was already in use by a competitor. (Boreyko Decl., Ex. 1, at ¶ 19). Beginning in approximately December 2014, Vemma researched the competitor’s concept and retained a consultant to craft a similar program for Vemma. Various Vemma employees further developed the program in-house. (*Id.*)

Numerous internal email communications relating to the creation of the Two & Go program in the period December 2014 through May 2015—none of which include Mr. Alkazin—confirm the point. (See Ex. 1 to Declaration of Marvin Ruth filed herewith) (compilation of emails).

Eventually, after Vemma had put the program together, Mr. Boreyko sent an email to a dozen Ambassador-level Vemma distributors (including Alkazin) on March 18, 2015, asking for input regarding the Two & Go brochure *that was already in existence*. (Alkazin Decl. ¶ 19 and Ex. A thereto).<sup>3</sup> Boreyko also sent an email on April 23, 2015 to

<sup>2</sup> Even if admitted into evidence, the statement merely says that “other” Ambassadors, Ms. Elliott and Mr. Alkazin all were involved, with no explanation of what they did.

<sup>3</sup> Mr. Alkazin responded with two emails, suggesting (a) that the bonus structure could be simplified to avoid confusing participants, (b) the program name made more sense as “Two *and* Go” rather “Two to go,” and (c) correcting a typographical error. (*Id.* ¶ 20). Vemma did not adopt all of his minor comments. Numerous other individuals on that

1 all Elite-level distributors, *of which there were hundreds*, requesting feedback on  
 2 Vemma's Two & Go program before it went final. (Alkazin Decl. ¶ 21 and Ex. D thereto).

3 As these documents make clear, Vemma created the Two & Go program with its  
 4 own management team and the help of a paid consultant based on a similar concept used  
 5 by a competitor. Vemma had planned the program and drafted the marketing brochure  
 6 before Mr. Alkazin was even asked to comment, and comments were solicited from  
 7 hundreds of affiliates in addition to Mr. Alkazin.

8 In sum, the FTC did not try to prove at the hearing that Mr. Alkazin created the  
 9 Two & Go program, and it would not have succeeded (had it tried) because the evidence  
 10 proves the opposite.

11 **B. Appearing in a training video does not constitute participation in a**  
 12 **pyramid scheme.**

13 Mr. Alkazin did participate in a video training presentation of the Two & Go  
 14 program, using a PowerPoint which Vemma's Marketing department developed and its  
 15 Compliance Department and lawyers approved. Mr. Alkazin had no reason to think the  
 16 program was unlawful, and good reason to think it was not, since Vemma's counsel and  
 17 Compliance Department approved the program and its marketing materials. (Ex. B, Decl.  
 18 of Michelle Lottner, at ¶¶ 18-20).<sup>4</sup> As explained in section II.D. below, appearing in  
 19 good faith in a training video vetted by counsel does not give rise to participant liability  
 20 for operation of a pyramid scheme.

21 **C. The 2011 "Top Earner" Interview is outdated and lawful**

22 The FTC asserts that Mr. Alkazin is liable as a "participant" because "in a  
 23 'Vemma Top Earner Interview,' Tom Alkazin supposedly discussed his success in

24 \_\_\_\_\_  
 25 email chain made their own suggestions to Mr. Boreyko. (See Ex. 2 to Declaration of  
 Marvin Ruth filed herewith) (compilation of emails).

26 <sup>4</sup> The Two & Go video with Mr. Alkazin includes disclaimers and disclosures *when*  
 27 *Alkazin is discussing* the manner in which affiliates can earn bonuses, and points potential  
 28 customers to the Vemma website to view "generally expected results," which again,  
 would include the Disclosure Statement.



1 Vemma, never mentioned selling a product, and instead, focused on recruiting others who  
2 want to participate in the business opportunity.” (Motion at 8.)

3 Although the FTC does not mention it, that interview took place more than four  
4 years ago, on October 29, 2011, and can hardly support a request for injunctive relief in  
5 2015 (or 2016). The interview was available only on an obscure third-party website,  
6 [www.businessforhome.org](http://www.businessforhome.org), which is not owned by or affiliated with Mr. Alkazin.  
7 (Alkazin Decl. ¶¶ 23-24)

8 Contrary to the FTC’s accusations, Mr. Alkazin never specifically discusses his  
9 wealth or his Vemma earnings, stating only, in the most generic terms possible, that “we  
10 have never been more successful financially than what we have right now with  
11 VEMMA.” (App. 0915.) To the extent the FTC is relying on the introductory  
12 paragraphs to the interview, Mr. Alkazin did not provide such information during the  
13 interview, and he disputes the accuracy of it. (Alkazin Decl. ¶ 25)

14 Finally, the interview does not focus on “recruiting.” Instead, even a cursory  
15 review of the interview reveals that it was about Tom’s backstory and general  
16 information on the direct sales industry. (App. 914-915.) The FTC’s reliance on this old  
17 interview to demonstrate “participation” in the operation of Vemma underscores the  
18 weakness of its claims against Mr. Alkazin.

19 **D. Even if the FTC proved Mr. Alkazin did what it claims, his actions**  
20 **would not constitute actionable “participation” under the FTC’s cases.**

21 It would break new ground to hold Mr. Alkazin responsible as a “participant” for  
22 Vemma’s purported status as a pyramid where he was not officer, director, shareholder,  
23 or even employee, and thus did not meaningfully participate in its operation. At most, he  
24 offered limited comments on a marketing plan Vemma had already developed and spoke  
25 at Vemma events, as did dozens of others.

26 A review of the FTC’s best cases regarding individual liability for “participation” in  
27 a company’s Section 5(a) violations illustrates that “participant” liability does not extend  
28 to Mr. Alkazin. The FTC’s five best cases are found in its Motion for Reconsideration at

1 page 7. Four of the five cases were really more about control than participation, because  
2 the individual defendants were officers/employees. We address each case in turn:

3 In *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D. Minn. 1985), consumers  
4 bought equipment from Kitco to manufacture plastic specialty items for re-sale to third  
5 parties. Kitco represented it had contracts with those third parties to provide a ready  
6 market for the consumers' finished goods. The two individual defendants found to have  
7 "participated" in the illegal scheme were directly associated with the company. One,  
8 Snelling, held himself out as the company's president. The other, Farkas, was a principal  
9 in the company who directed, controlled, and formulated the company's business practices.

10 Farkas and Snelling placed misleading ads in newspapers to lure customers; they  
11 created brochures falsely stating that the business was highly profitable; and they made  
12 explicit and false claims regarding profits that could be made. The brochures contained  
13 purported references from other businesses that were simply made up. To reinforce the  
14 false claim that the company could provide ongoing contract work, Snelling provided  
15 phony purchase orders from a sham company, signed by him using a fake name. Snelling  
16 and Farkas personally and frequently contacted interested buyers and repeated these false  
17 statements.

18 In *FTC v. National Urological Group, Inc.*, 645 F. Supp. 2d 1167 (N.D. Ga. 2008),  
19 the FTC brought an action against three dietary supplement companies for making deceptive  
20 and unsubstantiated health claims, as well as the companies' officers and shareholders, and  
21 an endorsing physician who actively and knowingly peddled false information regarding the  
22 products. The directors and officers were all found liable on the basis of control.

23 The doctor, *who did not contest his individual liability for the corporate*  
24 *defendants' wrongs and instead simply joined in arguing that no violations occurred*, was  
25 found liable for participating in the scheme on the grounds that he (a) "helped develop  
26 the products, reviewed the substantiation regarding the ingredients in the products, []  
27 reviewed and edited the advertisements before they were disseminated," (b) "allowed  
28 himself to be called "Chief of Staff" and "Medical Director" in the advertisements," (c)



1 “knew that no clinical trials had ever been conducted on the products” notwithstanding  
2 his representation to the contrary, and (d) was “aware that none of the studies that he  
3 reviewed were conducted on any of the products sold by the defendants” notwithstanding  
4 his assertions to the contrary. In short, the doctor was paid a fee for developing and  
5 advertising the product and blatantly lied about the product’s qualities and testing.

6 In *FTC v. Money Now Funding, LLC*, No. 2:13-1583-ROS (D. Ariz. July 15,  
7 2015), the company and its various defendants (who defaulted and mounted no defense)  
8 were found to have “lured consumers” to purchase products by which the customers  
9 could earn commissions by referring small businesses seeking loans to the company. The  
10 individual defendants, who were all employees of the offending corporations, fell into  
11 two camps: (1) “reloaders,” who contacted customers and purported to sell them “leads”  
12 to small businesses seeking loans, but who in actuality, sold customers a “a random list of  
13 names and email addresses” and (2) “factoring” defendants who used fictitious names to  
14 set up straw credit card processing merchant accounts in furtherance of the scheme, and  
15 who, in addition to being employees, were also each the principal of the shell business.  
16 Thus, while many of the defendants were found liable on the basis of their participation  
17 in the scheme, the participation consisted of active employees selling fictitious leads to  
18 victims or setting up fictitious companies to process victim’s credit card information.

19 *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168 (9th Cir. 1997) was  
20 another case that turned on control, not participation. This was a telemarketing operation  
21 in which the defendants, working from a script, contacted potential consumers and told  
22 them that they were guaranteed a prize worth at least \$3,500, but potentially as high as  
23 \$50,000, if the customer made a donation to a particular charity. The scheme was  
24 identical to one run by National Clearing House, the entity’s predecessor, which the FTC  
25 had already shut down due its fraudulent conduct. One of the individual defendants,  
26 Lorin Martin, argued that she could not be held liable because she lacked knowledge of  
27 the misrepresentations made by the company solicitors. The Court disagreed, finding that  
28 Martin was the president of the company and thus had the requisite control over the

1 company. It also found that she was recklessly indifferent to the truth or falsity of the  
2 misrepresentations, where, among other things, she had worked as a solicitor for the  
3 predecessor entity and had filed the company's business license at the direction of  
4 someone she knew was facing criminal charges.

5 In *FTC v. J.K. Publications, Inc.*, 99 F. Supp.2d 1176 (C.D. Cal. 2000), the  
6 individual defendants were both officers of a corporation that had no legitimate business  
7 operations, but instead operated "a fraudulent scheme by which they debited and charged  
8 credit card numbers with the cardholders' authorization. *Id.* at 1203. One, the President,  
9 "actively participated in the unlawful practices, controlled the day-to-day operations of  
10 the corporate defendants, and had actual knowledge of the unlawful practices." *Id.* at  
11 1204. The other defendant was an officer who signed documents on behalf of the  
12 corporation and "actively participated in acts crucial to the success of the [the] billing  
13 scheme," including using her credit to obtain merchant accounts and signing the purchase  
14 agreement for the database from which the card numbers were obtained.

15 In sum, the FTC's best cases for individual liability on the basis of "participation"  
16 involve: (a) a non-employee doctor who personally developed and marketed false health  
17 claims and lied about studies that did not even exist; (b) employees who sold fake leads  
18 and set up fake companies in a scheme to defraud customers; (c) company owners who  
19 created misleading brochures, personally verified misleading information, and forged  
20 purchase orders and lied about non-existent references, (d) company owners who  
21 solicited "charitable" contributions based on promises of false prizes and (e) officers  
22 whose company had no legitimate business purpose and who submitted millions of  
23 dollars in fraudulent credit card charges.<sup>5</sup>

24  
25  
26 <sup>5</sup> See also *FTC v. Five-Star Auto Club, Inc.*, 97 F.Supp.2d 502 (S.D.N.Y. 2000) (where  
27 the court found individual defendant had the "requisite level of participation and/or  
28 control" based specifically on the finding that defendant "was the founder, president  
and sole owner of Five Star... [and] was the moving force behind the wrongful acts and  
practices of the corporation").

Tom Alkazin’s conduct is nothing like the “participation” of the defendants in the FTC’s cases. The facts of this case do not support a conclusion that Tom “participated” in Vemma’s purported pyramid scheme. The FTC’s effort to impose liability would be an unwarranted and substantial expansion of existing law (not to mention unfair and personally devastating to Mr. Alkazin).

**III. The FTC’s Request to Enjoin Mr. Alkazin based on alleged income misrepresentation claims should be rejected**

**A. Even assuming the FTC’s allegations were true, injunctive relief is not warranted.**

The FTC’s Motion for Reconsideration ignores that it was required to prove that violations by Mr. Alkazin were imminent to obtain an injunction, and it failed to do so. Because there was no imminent threat that Mr. Alkazin would violate the statute, the Court properly omitted him from Sections I.B – I.E of the Preliminary Injunction Order. There is no sound basis for the Court to reconsider that decision.

“In deciding whether the FTC has made a ‘proper showing’ of entitlement to injunctive relief, a court must independently assess *whether violations are imminent*.” *F.T.C. v. Merch. Servs. Direct, LLC*, 2013 WL 4094394, at \*1 (E.D. Wash. Aug. 13, 2013) (emphasis added); *see also F.T.C. v. Evans Products Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985) (“The FTC may only seek a temporary restraining order or a preliminary injunction when it believes a person ‘*is violating, or is about to violate*’ any law enforced by the FTC; *the statute does not mention past violations*”) (emphasis added).

As a general rule, “[p]ast wrongs are not enough for the grant of an injunction.” *F.T.C. v. Evans Products*, at 1087; *accord FTC v. Amazon.com, Inc.*, Trade Reg. Rep. ¶ 79,600 (W.D. Wash April 26, 2016) (permanent injunctive relief not warranted, even though liability under FTC Act was found, because there was no cognizable danger of a recurring violation). “The determination that such danger” of a recurring violation “exists must be based on appropriate findings supported by the record.” *United States v. Laerdal Mfg. Corp.*, 73 F.3d 852, 854 (9th Cir. 1995) (internal citation omitted). With all due respect, the record does not support such a finding as to Mr. Alkazin.

1                   **1.     FTC largely cites past conduct**

2           As to Mr. Alkazin, the FTC relied on dated materials that did not suggest any  
3 ongoing or imminent threat, with the sole exception being the FTC's claim that Mr.  
4 Alkazin created the Two & Go program. That assertion was not proved and is in fact is  
5 baseless, as described above.

6           For example, while the FTC makes much of Mr. Alkazin's *Roadmap to Success*,  
7 the FTC's sole citation to the *Roadmap* brochure is outdated and misleading.

8           The FTC asserted that the *Roadmap to Success* included this purported script by  
9 which Mr. Alkazin purportedly advised others to misrepresent expected income earnings:

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

12 (Complaint at ¶ 36; also quoted in the FTC's Memorandum in Support of TRO, at 18.)

13           That language was actually changed *in July 2014* to read:

14           Zac, if I could show you how to invest a small amount of money in your  
15 family's health and that could turn that into part-time or full-time income,  
what would you say?

16 (Doc. 75-1, pp. 31 of 45) (June 2015 Roadmap); (Alkazin Decl. ¶ 6 and Ex. E thereto).

17 Thus, the 2015 Roadmap (and the July 2014 version that preceded it) *did not include any*  
18 *income misrepresentations*.

19           The FTC reached even further into the past for other evidence of income  
20 misrepresentations. For example, the FTC cited an interview of Mr. Alkazin conducted  
21 by Businessforhome.org in 2011. *See* App. 913. Similarly, while the FTC incorrectly  
22 asserts that Mr. Alkazin made misleading income claims in a Vemma video titled The  
23 Vemma Business Presentation with Tom Alkazin (Compl. at ¶ 35, citing App. 1420-30  
24 (tr) & 1832 (recording)), that video was recorded *in 2011*.

25           Once the "substantially outdated" and "stale" evidence is "excised from the  
26 [FTC's] materials, there is little to suggest that the violations alleged in the FTC's  
27 Complaint are likely to recur." *FTC v. Merchant Services Direct, LLC*, 2013 WL  
28 4094394 at \*3 (E.D. Wash. Aug. 13, 2013). Instead, as in *Merchant Services*, the FTC

here “appears to have taken the position that future violations are simply a foregone conclusion.” *Id.* That will not suffice.

## 2. There is no ongoing misconduct to enjoin

Mr. Alkazin voluntarily took down his *Roadmap to Success* website even before the preliminary injunction hearing, removing all materials (including the “Tom Alkazin’s 24-Hour Call” audio recording cited by the FTC). Further, Vemma’s operations are now curtailed and observed by a monitor and the FTC. Finally, neither the five-year-old Vemma Business Presentation with Tom Alkazin nor the Two & Go video remain available through the Vemma back office, which has been enjoined and shut down.

## 3. Mr. Alkazin has no history of misconduct

In assessing whether Mr. Alkazin should be enjoined, the Court may consider his past conduct in determining the likelihood of a future, recurring violation. *FTC v. Sharp*, 782 F. Supp. 1445, 1454 (D. Nev. 1991).

As described above, Mr. Alkazin has no history of misconduct to suggest he will violate the FTC Act going forward. He has never been accused of misconduct by any federal or a state regulator. He submitted materials to Vemma’s Compliance Department for review and approval, relied on their guidance, and accepted their revisions without question.

Here, the FTC did not show a likelihood of recurring violations by Mr. Alkazin, so the Court was correct not to include him in Sections I.B – I.E of the Order (even assuming the accuracy of the FTC’s claim that Mr. Alkazin made income misrepresentations).

## B. The FTC’s evidence of income misrepresentations was inadequate

Alternatively, or in addition, if the Court is inclined to revisit its Order with respect to Mr. Alkazin, it should reconsider its finding that Mr. Alkazin made income misrepresentations.

The FTC’s Complaint (at ¶¶ 35 & 36) and accompanying motion for TRO cite three instances in which Tom allegedly made false income claims. As noted above, the third quotation, in paragraph 36 of the Complaint, is outdated and misleading. The other two statements attributed to Mr. Alkazin do not constitute actionable misstatements.



1                   **1.     Alkazin made no express income claims in his 24-Hour Call or**  
 2                   **the Vemma Business Presentation**

3                   Neither of the two remaining income statements attributed to Mr. Alkazin are  
 4                   misleading. One is the statement in a five-year-old Vemma Business Presentation video  
 5                   available only to affiliates in Vemma’s back office. There, in the context of describing the  
 6                   cycle bonus structure, Tom stated: “we have people earning \$100 to \$200 per week cycle  
 7                   bonus income. We have some earning \$300 to \$500 per week. We have some earning  
 8                   \$1,000 to \$3,000 a week. We have some earning five, ten, fifteen. Imagine this some even  
 9                   more than \$20,000 on a weekly basis. Now, if we’re doing this well after this short amount  
 10                  of time, can you image what the next three to five years hold in store?” (App. 1427-1428.)

11                  The second express income claim attributed to Mr. Alkazin is a similar statement  
 12                  in an undated 24-Hour Business Overview call that “[t]here’s a way to come into Vemma  
 13                  and create immediate cash flow within your first few weeks, even within your first few  
 14                  days. Some people are creating cash flow that amounts to \$500, \$1,000, \$2,000, even  
 15                  \$3,000 in their first few weeks and months in the business.” (App. 1100).<sup>6</sup>

16                  Alkazin’s statements are true – there are affiliates who make these amounts in their  
 17                  first four to eight weeks. He made those statements based on his own discussions with  
 18                  affiliates he was working with. Mr. Alkazin does not state that those amounts are  
 19                  minimum amounts, or expected amounts, or average amounts – merely that “some” people  
 20                  have reached those goals. Any reasonable person viewing the statement that “some”  
 21                  people make these amounts would understand Mr. Alkazin is not warranting or promising  
 22                  that they will make those amounts or even that most people make these amounts.

23                  \_\_\_\_\_  
 24                  <sup>6</sup> The FTC’s mischaracterization of Tom’s 24-Hour Business Overview call  
 25                  demonstrates the FTC’s use of selective quotations taken out-of-context. While Mr.  
 26                  Alkazin does address the potential income that can be earned with Vemma during his  
 27                  overview of the company (App. 1110 – Transcript; App. 1800 – Video), he does so only  
 28                  after discussing the history of the company (App. 1097) and the product and its  
 nutritional value (App. 1098-99). He also “suggests” that customers who are not  
 interested in the business venture, “at the very least . . . make a great decision for your  
 health” and purchase the product for *personal* use. (App. 1101:5-14).



1        These statements are not concrete promises or representations as to what  
2 consumers could expect to earn with Vemma. Under existing case law, liability for  
3 income misrepresentations typically involves express income claims that are direct,  
4 specific, and false. For example, in *Burnlounge*, defendants were liable for income  
5 misrepresentations because “the misleading items *were not vague or merely suggestive*  
6 *pronouncements*, but rather specific references to actual (or purportedly actual) income  
7 amounts earned by individuals or groups.” *FTC v. Burnlounge*, No. CV 07-3654  
8 Statement of Decision at Dkt. No. 431, p. 24 (C.D. Cal. July 1, 2011) (emphasis added).

9        Likewise, in *Patriot Alcohol Testers*, defendants circulated advertisements that  
10 “explicitly” stated that the “reported national average” revenue per device was \$130 per  
11 week, when in reality, the device generated less than half that on average. *Federal Trade*  
12 *Commission v. Patriot Alcohol Testers*, 798 F. Supp. 851 (D. Mass. 1992). In *Transnet*  
13 *Wireless*, the court found defendants liable where they falsely told consumers that each  
14 purchased internet kiosk would each generate, at the very minimum, \$1,000 to \$2,000  
15 income per month. *FTC v. Transnet Wireless Corp.*, 506 F. Supp. 2d 1247 (S.D. Fla. 2007);  
16 *see also FTC v. Freecom Commc’ns, Inc.*, 401 F.3d 1192, 1203-04 (10th Cir. 2005)  
17 (defendants represented that “average monthly income” from vending machine would be  
18 \$80, yet average income was at best in the “low thirties”); *FTC v. Holiday Enters., Inc.*,  
19 2008 WL 953358, at \*3 (N.D. Ga. Feb. 5, 2008) (illegal income misrepresentations where  
20 ads falsely promised that “average display will sell between 3 and 5 cartridges per day” and  
21 that “entry-level investment of \$16,000 dollars offers you the ability to recoup your  
22 investment in approximately six months”). Unlike the offending income claims in these  
23 cases, Mr. Alkazin’s income statements are neither definitive nor untruthful.

## 24        **2. The disclaimers in Mr. Alkazin’s materials are effective and fair**

25        The Court noted that in some instances, the disclaimers for Vemma videos are  
26 limited and arguably difficult to see. But that is not true with respect to the videos and  
27 written materials relating to Mr. Alkazin. For example, although the FTC points to the  
28 presentation of the Two & Go program as evidence of misrepresentations regarding

1 income potential, the New Two & Go Training Video website (a) includes multiple  
 2 disclaimers and disclosures inviting potential customers to view Vemma's "generally  
 3 expected results" (App. 0933, 0937, 0942, 0943, 0944, 0949) and (b) *includes* a copy of  
 4 those generally expected results via Vemma's 2014 Disclosure Statement (App. 0950).  
 5 Likewise, the Two & Go video includes disclaimers and disclosures *when Alkazin is*  
 6 *discussing* the manner in which affiliates can earn bonuses, and points potential  
 7 customers to the Vemma website to view "generally expected results," which again,  
 8 would include the Disclosure Statement. (*See* App. 1822 at 24:45, 29:15, 32:30.)

9 *During* Mr. Alkazin's video statement, "Vemma Business Presentation with Top  
 10 Leader Tom Alkazin," a disclaimer appears on screen which states that "Individual results  
 11 may vary. You may not do as well," precisely during the segment where Tom discusses the  
 12 affiliates earning potential in the first four to eight weeks of the program. *See* App. 1832.  
 13 This is the exact same discussion the FTC points to as evidence of misrepresentation as to  
 14 expected income. (Doc. 9 at 18) (citing App. 1427:24-1427:1, 1428:25-1429:7, 1832); *see*  
 15 *also* Thacker Declaration at ¶ 48(iv) (citing App. 1420-1431, 1832).

16 In sum, the limited income statements by Mr. Alkazin, when coupled with these  
 17 disclosures, are well within the parameters of what is permitted under existing case law.

#### 18 **IV. Conclusion**

19 For the foregoing reasons, Mr. Alkazin respectfully requests that the FTC's Motion for  
 20 Reconsideration be denied.

21  
 22 Respectfully submitted this 15th day of July, 2016.

23 **COPPERSMITH BROCKELMAN PLC**

24 By s/ Keith Beauchamp  
 25 Keith Beauchamp  
 26 Marvin C. Ruth

27 *Attorneys for Defendant Tom Alkazin and*  
 28 *Relief Defendant Bethany Alkazin*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

s/ Sheri McAlister

**Exhibit 1**

**Exhibit 1**

Keith Beauchamp (012434)  
 Marvin C. Ruth (024220)  
**COPPERSMITH BROCKELMAN PLC**  
 2800 North Central Avenue, Suite 1200  
 Phoenix, Arizona 85004  
 T: (602) 381-5490  
 F: (602) 224-6020  
 kbeauchamp@cblawyers.com  
 mruth@cblawyers.com

*Attorneys for Defendant Tom Alkazin and  
 Relief Defendant Bethany Alkazin*

UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA

Federal Trade Commission,	)	No. 2:15-cv-01578-JJT
	)	
Plaintiff,	)	
	)	<b>DECLARATION OF B.K. BOREYKO</b>
v.	)	
	)	
Vemma Nutrition Company, <i>et al.</i> ,	)	
	)	
Defendants.	)	

I, Benson K. Boreyko, state under penalty of perjury, as follows:

1. I am the Chief Executive Officer and a director of Vemma International Holdings, Inc. (“VIH”) and Vemma Nutrition Company (“Vemma Nutrition”) (collectively, “Vemma”). I am familiar with records maintained by Vemma in the ordinary course of its business. I have personal knowledge of the facts set forth in this Declaration, and if called upon, could competently testify to these facts under oath.

2. I submit this declaration in response to express and implied statements by the Federal Trade Commission that Tom Alkazin controlled, or participated in, Vemma’s business operations.

3. Vemma Nutrition is wholly-owned subsidiary of Vemma International, which is also an Arizona corporation. Vemma International (formerly known as New Vision International Holdings, Inc.) shares its headquarters with Vemma Nutrition. Mr.

1 Alkazin had no role or input with respect to the formation of Vemma or the drafting of  
2 Vemma's corporate documents.

3 4. Vemma's business is the marketing and sale of the following four lines of  
4 health, energy, lifestyle, and fitness products (the "Vemma Products"). Vemma Nutrition  
5 sells the Vemma Products through a network of distributors that are independent  
6 contractors, which Vemma calls "Affiliates", and to end users that consume the product.  
7 Tom Alkazin was an Affiliate with Vemma from its inception in 2004. Mr. Alkazin was  
8 previously a distributor with New Vision International Holdings, where I was also the  
9 CEO and a director.

10 5. A person becomes an Affiliate by signing the Vemma Affiliate Agreement  
11 and Terms and Conditions (the "Affiliate Agreement. Among other things, the Affiliate  
12 Agreements include limitations on health and income claims that an Affiliate may make,  
13 require Affiliates to use preapproved advertising and promotional materials created by  
14 Vemma, and require Affiliates to obtain approval from Vemma's Compliance  
15 Department for use of promotional materials. Mr. Alkazin had no role or input with  
16 respect to the content of any version or iteration of the Vemma Affiliate Agreement.

17 6. At the time the FTC initiated the FTC Action on August 21, 2015, Vemma  
18 employed 104 full-time employees and one part-time employee, in various departments,  
19 including a Marketing, Compliance, and Information Technology. These employees were  
20 based in the Tempe, Arizona headquarters. In prior years, Vemma had employed even  
21 more people.

22 7. Mr. Alkazin was never an employee, manager, officer, director, or owner at  
23 Vemma.

24 8. Mr. Alkazin never had authority or control over any employee, manager,  
25 officer, director, or owner at Vemma. Mr. Alkazin never had the ability to direct or  
26 control any of Vemma's more than 100 employees.

27 9. Mr. Alkazin never had a physical or virtual office at Vemma.  
28



1           10. Vemma did not compensate Mr. Alkazin for the marketing materials he  
2 produced or created for Alkazin & Associates, including the Roadmap to Success website  
3 and brochure.

4           11. Each Vemma Affiliate is provided with a unique ID number and a free  
5 company website referred to as the Vemma Back Office. The Vemma Back Office  
6 provided (a) links to manage the Affiliate's own purchases and account, (b) news and  
7 resources, (c) events and training, and (d) various business tools that allow an Affiliate to  
8 track certain aspects of their own downline activity, such as the number of downline  
9 members and the number of current and past cycles attained by the Affiliate. Through  
10 the Vemma Back Office, Mr. Alkazin had access to his own VID-specific sales and  
11 commission information, as did all Affiliates.

12           12. Mr. Alkazin was limited to accessing this personal sales information. Mr.  
13 Alkazin was not have a log-in or other access to Vemma management reports or  
14 company-wide sales or commission data. Likewise, Mr. Alkazin was not provided log-in  
15 or other access to Vemma's finance system or financial reporting.

16           13. Vemma did not include Mr. Alkazin in Vemma's attorney-client  
17 communications. Thus, Mr. Alkazin was not privy to the discussions Vemma  
18 management had with its internal and outside counsel regarding compliance, regulatory  
19 and other matters.

20           14. Mr. Alkazin never had authority or control over any aspect of Vemma's  
21 business operations, including its marketing, promotional, or sales efforts.

22           15. Mr. Alkazin never drafted or originated any of Vemma's compensation  
23 plans. However, I periodically ran compensation ideas by many of Vemma's high-  
24 ranking distributors, including Mr. Alkazin. I also sought input from time to time from  
25 various others who were not Vemma employees, such as consultants and other colleagues  
26 of mine. I was not obligated to accept suggestions from Mr. Alkazin and the many others  
27 from whom I sought input.  
28

1           16. I held regular telephonic meetings with what I called the “Elite Council,” a  
2 group of high-ranking Vemma Affiliates, where I would discuss, among other things,  
3 Vemma’s proposed changes to its compensation plans. I held these meetings with senior  
4 Affiliates because those Affiliates understood how their downlines were operating, how  
5 prior changes had affected the recruitment of customers and affiliates, and how new  
6 changes might be perceived or accepted by their downline. Further, I felt it was  
7 important to educate the upline Affiliates on developments that were likely to result in  
8 questions or comments from their downline. Mr. Alkazin, along with approximately 12  
9 to 15 others, was part of this Elite Council.

10           17. I also generally gave Vemma’s field leadership a 30-day advance notice of  
11 changes to the compensation structure. I invited comments and suggestions, and myself  
12 and other Vemma managers were free to accept or disregard whatever suggestions we  
13 received.

14           18. I do not recall any specific input or ideas Mr. Alkazin may have contributed  
15 to any compensation models or programs. Mr. Alkazin had no authority to demand or  
16 implement any changes of any kind with respect to any Vemma compensation program  
17 or promotional materials. Moreover, there was a significant in-house group at Vemma,  
18 with representatives from marketing, compliance, legal and other departments, that was  
19 involved in developing and revising Vemma’s compensation structure and related  
20 materials.

21           19. For example, beginning in approximately December 2014, Vemma, with  
22 the help of an outside consultant, developed what it referred to as the “Two & Go”  
23 program based on a concept that had already been implemented by a competitor, Isagenix  
24 International, LLC. Several months later, after Vemma created the program and drafted  
25 the marketing brochure, my email dated March 18, 2015 I circulated the program details  
26 and brochure to more than a dozen high ranking Vemma affiliates, including Mr.  
27 Alkazin, for comment.  
28

1           20. I do not recall what specific input or ideas Mr. Alkazin may have  
2 contributed to the Two & Go program or any other promotional materials. Irrespective of  
3 the nature of any suggestions, ideas, or criticism from Mr. Alkazin (or any other  
4 Affiliate), Mr. Alkazin had no authority to implement changes of any kind with respect  
5 to any Vemma's promotional materials.

6           21. Vemma produced marketing materials that included profiles of Mr. Alkazin  
7 and his family (as it did with other successful Affiliates). Vemma did not ask Mr.  
8 Alkazin to review the content of the profiles included in the *This is Vemma Success*  
9 magazine, the AchieveVemma.com website, or the Vemma Training Bible. In general,  
10 Vemma did not seek or request Mr. Alkazin's approval, authorization, or review of  
11 profiles regarding Mr. Alkazin in Vemma's marketing materials.

12           22. Vemma has a Compliance Department dedicated to the development and  
13 monitoring of Vemma's internal and external compliance policies, and the enforcement  
14 thereof. This includes reviewing promotional and marketing materials to ensure that the  
15 health and income representations included therein comply with the law. Up until the  
16 time they were terminated by the court-appointed receiver, Vemma employed no fewer  
17 than five full-time employees in its Compliance Department.

18           23. The Compliance Department reports directly to Vemma's General Counsel.  
19 Until August 14, 2015, Vemma's General Counsel during the time relevant to the FTC  
20 lawsuit was Chris Reid.

21           24. It is my understanding that in the spring of 2014, Mr. Alkazin began  
22 submitting his Roadmap to Success brochure and website to Vemma's Compliance  
23 Department for review. To my knowledge, Mr. Alkazin accepted all of Vemma's  
24 revisions and fully cooperated in submitting his materials for review. Mr. Alkazin never  
25 complained to me regarding the review process or the changes Vemma required to his  
26 marketing materials.

1           25.     Beginning in 2014, Vemma required that Mr. Alkazin include Vemma's  
2     Income Disclosure Statement in his Roadmap to Success materials and website. The  
3     Income Disclosure Statement reflect Affiliates' actual results.

4           26.     Mr. Alkazin was not involved in preparing or formatting the Vemma  
5     Income Disclosure Statement. To my knowledge, he was not consulted at all about the  
6     development of that document, or the revisions made to it over time.


7           27.     Vemma's program and marketing materials were also submitted to the  
8     Compliance Department for review.

9           28.     For example, the Two & Go program and marketing materials were  
10    submitted to Vemma's Compliance Department and general counsel Chris Reid for  
11    review and approval prior to their dissemination by, or to, any Vemma Affiliates,  
12    including Mr. Alkazin.

13          29.     Specifically, the Two & Go Training Video featuring Mr. Alkazin was  
14    reviewed and approved by Vemma's Compliance Department, as was the Two & Go  
15    brochure that Mr. Alkazin presented at the June 2015 Vemma Convention.

16  
17           I declare under the penalty of perjury that the foregoing is true and correct.

18  
19           Respectfully submitted this 11 day of July, 2016.

20  
21             
22           Benson K. Boreyko



**Exhibit 2**

**Exhibit 2**

1 Keith Beauchamp (012434)  
Marvin C. Ruth (024220)  
2 **COPPERSMITH BROCKELMAN PLC**  
2800 North Central Avenue, Suite 1200  
3 Phoenix, Arizona 85004  
T: (602) 381-5490  
4 F: (602) 224-6020  
kbeauchamp@cblawyers.com  
5 mruth@cblawyers.com  
6 *Attorneys for Defendant Tom Alkazin and*  
7 *Relief Defendant Bethany Alkazin*

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF ARIZONA

10 Federal Trade Commission, ) No. 2:15-cv-01578-JJT  
11 )  
Plaintiff, )  
12 )  
v. ) **DECLARATION OF MICHELLE**  
13 ) **LOTTNER**  
Vemma Nutrition Company, *et al.*, )  
14 )  
Defendants. )

15  
16 I, Michelle Lottner, declare under penalty of perjury as follows:

17 1. I am the Compliance Manager at Vemma Nutrition Company ("Vemma"),  
18 and Vemma International Holdings, Inc. ("Vemma International") (collectively,  
19 "Vemma"), and have held that position since March 31, 2014. Prior to being the  
20 Compliance Manager, I was an analyst in the department for eight years. I am familiar  
21 with the records maintained by Vemma in the ordinary course of its business. I have  
22 personal knowledge of the facts set forth in this Declaration, and if called upon, could  
23 competently testify to these facts under oath.

24 2. I submit this declaration in response to express and implied statements by  
25 the Plaintiff Federal Trade Commission that Tom Alkazin controlled, or participated in,  
26 Vemma's business operations.

27 3. My responsibilities with respect to Vemma include, among other things,  
28 ensuring that (a) Vemma's marketing and advertising materials, including written



1 materials, video recordings, audio recordings, and presentations are in compliance with  
2 the rules and regulations of regulatory agencies, including the FTC, and (b) Vemma's  
3 affiliates are abiding by Vemma's policies and procedures, as well as the terms and  
4 conditions of the affiliate's agreements with Vemma.

5 4. Up until the time the receiver appointed by the Court terminated them in  
6 September 2015, Vemma employed no fewer than five full-time employees dedicated to  
7 the development and monitoring of Vemma's internal and external compliance policies,  
8 and the enforcement thereof. In addition to myself, the Compliance Department was  
9 composed of Allison Tengan, who was the head of the Compliance Department until  
10 October 2015 as well as the Vice President of Legal Affairs at Vemma, Debra Nevarez,  
11 Fernando Venegas, and James Wang.

12 5. At various points during the 2014 through 2015 time period, Vemma  
13 employed one or more part-time employees in the Compliance Department, and other  
14 Vemma employees would assist the Compliance Department.

15 6. The Compliance Department reports directly to Vemma's General Counsel.  
16 Until August 2015, Vemma's General Counsel was Chris Reid.

17 7. Starting in approximately the Spring 2014, Mr. Alkazin (or his assistant,  
18 Lisa Schuster) started sending me drafts of his training workbook, "Roadmap to  
19 Success," for the Compliance Department to review for compliance with the law.

20 8. The Compliance Department edited and revised the Roadmap to Success  
21 training workbook in 2014 and 2015 specifically to comply with laws regarding health  
22 and income claims. Mr. Alkazin always accepted the required revisions, which included  
23 the addition of Vemma's Income Disclosure Statement to the Roadmap to Success  
24 training workbook.

25 9. Starting in June 2014, Mr. Alkazin submitted all portions of his  
26 [www.myroadmaptosuccess.com](http://www.myroadmaptosuccess.com) website to the Compliance Department for review,  
27 comment, and approval.

28

1           10. When Tom first submitted the myroadmapstosuccess.com website to the  
2 Compliance Department, it included links to telephonic training workshops conducted by  
3 Mr. Alkazin dating back to 2009, such as, for example, his Quick Start Training Calls. I  
4 instructed Mr. Alkazin to remove all training calls from his website until the Compliance  
5 Department was able to review them to insure that they did not include any misleading  
6 health or income claims. Mr. Alkazin promptly removed all of the training calls from his  
7 website.

8           11. Due to the volume of prior workshops and training calls, the Compliance  
9 Department was unable to review the prior calls, and consequently, told Mr. Alkazin that  
10 he could not re-post those calls to his website. Mr. Alkazin complied with that directive.

11           12. Going forward, Mr. Alkazin would conduct his training calls, then submit  
12 the audio for review by the Compliance Department before posting the audio to his  
13 website. The Compliance Department reviewed dozens of those calls and approved their  
14 posting, until ultimately advising Mr. Alkazin that it was no longer necessary for those  
15 calls to be approved.

16           13. I do not specifically recall that the Compliance Department ever found fault  
17 with the content of Mr. Alkazin's training calls, which often featured Mr. Alkazin as well  
18 as a guest speaker. I do recall that the Compliance Department found no fault in Mr.  
19 Alkazin's portions of the calls; if there were issues, they would have been with  
20 statements made by guest speakers.

21           14. The Compliance Department edited and revised the verbiage in the  
22 remaining portions of Mr. Alkazin's myroadmapstosuccess.com website specifically to  
23 comply with laws regarding health and income claims. These included, but were not  
24 limited to, sections of the website devoted to product information, compensation  
25 information, success stories and profiles. Mr. Alkazin accepted all of the required  
26 revisions.

27           15. The Compliance Department also edited and revised the scripts Mr.  
28 Alkazin used to record his Roadmap to Success Videos, which walked listeners through

1 the eight steps in his Roadmap to Success training workbook, before he posted the videos  
2 to his website. Mr. Alkazin complied with all the revisions the Compliance Department  
3 requested.

4 16. In addition to revising the language in the Roadmap to Success website and  
5 training book, the Compliance Department also required the addition of disclaimers in the  
6 material. Mr. Alkazin complied with that requirement. As a result, the Roadmap to  
7 Success training materials thereafter (a) contained numerous disclosures as well as  
8 disclaimers inviting potential customers to view the Vemma Income Disclosure  
9 Statement and (b) included a copy of the Vemma Income Disclosure Statement.  
10 Likewise, the Roadmap to Success website included numerous pages alerting customers  
11 that success is not guaranteed and that “generally expected results can be obtained” by  
12 visiting the Vemma website.

13 17. Vemma drafted the language for the disclaimers utilized in the Roadmap to  
14 Success materials, and determined their frequency and placement.

15 18. The Compliance Department also reviewed Vemma’s materials for  
16 compliance with laws regarding health and income claims. Thus, for example, the Two  
17 & Go program and marketing materials were submitted to Vemma’s Compliance  
18 Department and general counsel Chris Reid for review and approval prior to their  
19 dissemination by any Vemma employees or affiliates, including Mr. Alkazin.

20 19. The Two & Go brochure that Mr. Alkazin presented at the June 12 & 13,  
21 2015 Vemma Focus Convention (App. 0936-51) was reviewed and approved by  
22 Vemma’s Compliance Department and General Counsel.

23 20. The Two & Go Training Video featuring Mr. Alkazin includes multiple  
24 disclaimers and disclosures inviting potential customers to view Vemma’s “generally  
25 expected results” and includes a copy of those generally expected results via Vemma’s  
26 2014 Disclosure Statement. Vemma, its Compliance Department, and General Counsel  
27 drafted the language for the disclaimers utilized in the Two & Go Training Video, and  
28 determined their frequency and placement.

1           21.    The Compliance Department generally drafted all of the disclaimers used in  
2 Vemma marketing materials, and determined their frequency and placement.

3           22.    The Compliance Department reviewed the profiles of Mr. Alkazin and his  
4 family used in the This is Vemma Success Magazine, the AchieveVemma.com website,  
5 and the Vemma Training Bible (among others), for compliance with laws regarding  
6 health and income claims. In addition to reviewing the profiles, the Compliance  
7 Department included a disclaimer and a disclosure with all of those profiles, asking  
8 potential readers to visit the Vemma website to view "expected results" which would  
9 include the Vemma Income Disclosure.

10          23.    I do not recall a single instance where Mr. Alkazin rejected or disputed any  
11 suggestion or direction made by the Vemma Compliance Department. In my experience  
12 dealing with Mr. Alkazin, he was very interested in being compliant and welcomed  
13 direction from the Compliance Department.

14          24.    I declare under the penalty of perjury that the foregoing is true and correct.  
15  
16  
17

18               Respectfully submitted this 12 day of June, 2016.  
19

20                               *Michelle Lottner*  
21                               Michelle Lottner  
22  
23  
24  
25  
26  
27  
28