

LINDEMANN LAW FIRM, APC
BLAKE J. LINDEMANN, SBN 255747
433 N. Camden Drive, 4th Floor
Beverly Hills, CA 90210
Telephone: (310)-279-5269
Facsimile: (310)-300-0267
E-mail: blake@lawbl.com

Attorneys For Plaintiff
YAN GUO AND ALL THOSE
SIMILARLY SITUATED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

YAN GUO, an individual; and all those
similarly situated,

Plaintiff,

v.

KYÄNI, INC., an Idaho Corporation;
MICHAEL BRESHEARS, an individual;
and DOES 1-100,

Defendants.

Case No. _____

**ORIGINAL COMPLAINT –
CLASS ACTION**

[DEMAND FOR JURY TRIAL]

1 **I. INTRODUCTION TO THE CASE**

2 1. Kyäni, Inc. (“Kyäni”) and its cohorts represented to Plaintiff Yan Guo
3 (“Guo”) that Kyäni provides a business opportunity “for a lifetime,” and a “lifestyle
4 you have always dreamed of.” Plaintiff and hundreds of thousands, have joined Kyäni
5 and have become distributors. Plaintiff did not make money as promised. As with the
6 case of hundreds of thousands of Kyäni distributors before and after her, the Plaintiff
7 failed. Plaintiff and those similarly situated, failed even though they were committed
8 and put in the time and effort. They failed because they were doomed from the start
9 by a Kyäni marketing plan that systematically rewards recruiting Distributors over the
10 sale of products.

11 2. Over 99% of Kyäni Distributors average net losses. No persons, except
12 the promoters and owners of Kyäni, and secretly placed individuals into the
13 “representative” tiers of the company, makes any money.

14 3. Defendants run an illegal pyramid scheme. Defendants take money in
15 return for the right to sell products, and reward for recruiting other participants into
16 the pyramid. Accordingly, Plaintiff, for themselves, all others similarly situated, and
17 the general public, allege:

18 **II. TYPE OF ACTION**

19 4. Plaintiff sues for herself and for all persons who were Kyäni participants
20 from 2011 until the present under California’s Endless Chain Scheme Law
21 (California’s Penal Code § 327 and California Civil Code § 1689.2), California’s
22 Unfair Competition Law (Business and Professions Code §17200 et seq.), False
23 Advertising Law (Business and Professions Code §17500), Racketeer Influenced and
24 Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, Common Law Fraud, Unjust
25 Enrichment, Conversion, and the Federal Securities Law against all defendants for
26 the operation and promotion of an inherently fraudulent endless chain scheme.

1 **III. PARTIES**

2 5. Plaintiff Yan Guo (“Guo”), is and at all relevant times, has resided in the
3 State of California, County of Los Angeles.

4 6. Defendant Kyäni, Inc. (“Kyäni”) is an Idaho Corporation doing business
5 throughout the State of California, and may be served at its registered office located
6 at 1070 Riverwalk Drive, Suite 350, Idaho Falls, Idaho 83402.

7 7. Defendant Michael Bresehars (“Breshears”) is the Chief Executive
8 Officer of Kyäni who also has a business address at 1070 Riverwalk Drive, Suite 350,
9 Idaho Falls, Idaho 83402. He is at or near the top of the pyramid operated and
10 promoted by the Defendants, and he actively participates in, promotes, and profits
11 from Kyäni’s pyramid scheme. Breshears is referred to hereinafter, as the Individual
12 Defendant.

13 **III. JURISDICTION AND VENUE**

14 8. Jurisdiction is conferred upon this Court because Defendants do business
15 in this judicial district, they hold themselves out and market to this jurisdiction, and
16 they actually conduct significant transactions in this jurisdiction. Under Plaintiff’s
17 California state law claims, more than 75% of those affected in the class (and perhaps
18 more persons) are residents of the State of California. Supplemental jurisdiction exists
19 over the RICO causes of action and the Federal Securities claim, pled in the
20 alternative.

21 9. Venue is proper in this Court because a substantial part of the events or
22 omissions giving rise to Plaintiff’s claims occurred here, a substantial part of the
23 property that is the subject of this action is situated here, and Defendants are subject
24 to personal jurisdiction, in this District.

25 10. Defendant Kyäni is subject to the jurisdiction of this Court. Kyäni has
26 been engaged in continuous and systematic business in California. In fact, many of
27 Kyäni’s representative business activities originate from California.

28 11. Kyäni has committed tortious acts in the State of California.

1 12. Each of the Defendants named herein acted as a co-conspirator, single
2 enterprise, joint venture, co-conspirator, or alter ego of, or for, the other Defendants
3 with respect to the acts, omissions, violations, representations, and common course of
4 conduct alleged herein, and ratified said conduct, aided and abetted, or is other liable.
5 Defendants have agreements with each other, and other unnamed Director co-
6 conspirators and have reached agreements to market and promote the Kyäni pyramid
7 as alleged herein.

8 13. Defendants, along with unnamed Director co-conspirators, were part of
9 the leadership team that participated with Kyäni, and made decisions regarding:
10 products, services, marketing strategy, compensation plans (both public and secret),
11 incentives, contests and other matters. In addition, Defendants and unnamed co-
12 conspirators were directly and actively involved in decisions to develop and amend
13 the compensation plans.

14 14. Plaintiff is presently unaware of the true identities and capacities of
15 fictitiously named Defendants designated as DOES 1 through 100, but will amend
16 this complaint or any subsequent pleading when their identities and capacities have
17 been ascertained according to proof. On information and belief, each and every DOE
18 defendant is in some manner responsible for the acts and conduct of the other
19 Defendants herein, and each DOE was, and is, responsible for the injuries, damages,
20 and harm incurred by Plaintiff. Each reference in this complaint to “defendant,”
21 “defendants,” or a specifically named defendant, refers also to all of the named
22 defendants and those unknown parties sued under fictitious names.

23 15. Plaintiff is informed and believes, and thereon allege that, at all times
24 relevant hereto, all of the defendants together, were members of a single association,
25 with each member exercising control over the operations of the association. Each
26 reference in this complaint to “defendant,” “defendants,” or a specifically named
27 defendant, refers also to the above-referenced unincorporated association as a jural
28 entity and each defendant herein is sued in its additional capacity as an active and

1 participating member thereof. Based upon the allegations set forth in this Complaint,
 2 fairness requires the association of defendants to be recognized as a legal entity, as
 3 the association has violated Plaintiff and Class Members' legal rights.

4 16. Plaintiff is further informed and believes and thereon alleges that each
 5 and all of the acts herein alleged as to each defendant was authorized and directed by
 6 the remaining defendants, who ratified, adopted, condoned and approved said acts
 7 with full knowledge of the consequences thereof, and memorialized the authority of
 8 the agent in a writing subscribed by the principal.

9 17. Plaintiff is informed and believes and thereon alleges that each of the
 10 defendants herein agreed among each other to commit the unlawful acts (or acts by
 11 unlawful means) described in this Complaint.

12 18. The desired effect of the conspiracy was to defraud and otherwise
 13 deprive Plaintiff and Class Members (as hereinafter defined) of their constitutionally
 14 protected rights to property, and of their rights under other laws as set forth herein.
 15 Each of the defendants herein committed an act in furtherance of the agreement.
 16 Injury was caused to the Plaintiff and Class Members by the defendants as a
 17 consequence.

18 **IV. FACTS**

19 **A. Kyäni Operates A Pyramid Scheme**

20 19. Kyäni was founded in 2005 by co-defendant Michael Breshears.

21 20. Kyäni sells products marketed as health supplements.

22 21. To become a distributor, a victim has to pay Kyäni an amount between
 23 \$600 to \$1,299.

24 22. On or about 2016, representatives of Kyäni, managers of Kyäni,
 25 including the executive team that authorized solicitation, marketing, and training
 26 materials (including without limitation Defendant Breshears), promised to the
 27 Plaintiff, the putative class, and the public, the representations contained in ¶¶ 23
 28 through 70 of this Complaint.

1 23. In its training seminars, including those regional training seminars held
2 by Kyäni in Los Angeles and represented by Kyäni and Breshears, Kyäni instructs its
3 victims and Plaintiff, that if you hear “nothing else today besides this” the “secret of
4 Kyäni” is to become a “Jade” (higher level of distribution), and teaching others to
5 become “Jade.” To become a Jade, a distributor has to recruit and sign up several
6 people below them.

7 24. Kyäni and Breshears represented to Plaintiff and the Class Members that
8 the only real way to sell is to “make a list of people you know” and “call in favors.”
9 Further, Kyäni represents that the first thing in Kyäni one must do is “make a list of
10 everybody you know.”

11 25. Kyäni represented to the Plaintiff and the public, that a distributor makes
12 a \$100 sponsor bonus and a \$800 fast start bonus in first 30 days, and a distributor
13 can make back his or her money in 30 days.

14 26. Kyäni further represents to the Plaintiff and the Public that Kyäni will
15 “teach you to be a Jade in 72 hours!”

16 27. Kyäni touts that distributors can make a one time bonus from “\$5,000 to
17 \$1,000,000!” and that you can make \$1.6 million while you help share the product,
18 and help others to do the same thing.

19 28. Kyäni also touts its “more with 4” program, that is, commissions and
20 bonuses for signing up for persons downline.

21 29. Kyäni teaches at its training seminars that distributors can “make money
22 while you are sleeping worldwide. You are getting a share of that. Making money
23 while you sleep.”

24 30. Distributors make a bonus on recruiting people through a pay gate
25 accumulator. According to this training seminar, Kyäni pays nine levels deep, *i.e.* 9
26 levels of the pyramid are paid for a new sign up, and that in Kyäni you get to “leverage
27 the effort of others.”
28

1 31. Kyäni represented to Plaintiff that even a new distributor, can qualify for
2 the a vehicle by recruiting yourself to Sapphire. Pursuant to the vehicle program,
3 Kyäni awards a monthly car to a distributor that signs up 13 recruits. One can go out
4 and personally sponsor 13 new recruits to qualify for the dreamcar program.

5 32. Kyäni brags to the Plaintiff and the public of its “road rally” held in Las
6 Vegas – thousands of vehicles of other high level individuals in Kyäni who are part
7 of the dream car program.

8 33. Kyäni also promises its distributors employment perquisites, *i.e.* the
9 Kyäni Care compensation plan. Kyäni claims this plan is similar to a “401k” in that
10 you don’t have to match. You share products and share with others, and at the age of
11 “retirement, you get a lump sum and go out to have more fun.”

12 34. Kyäni also represents that you get to help people’s health indefinitely
13 because Kyäni products permit them to avoid taking prescription drugs for diabetes.

14 35. Kyäni has a sales script for obtaining customers and distributors, but they
15 materially involve the same process as discussed.

16 36. To encourage people to become customers/distributors, Kyäni
17 encourages distributors to focus on emotions than what is included in the product.

18 37. Kyäni next represents: “I just started a new business Kyäni, can you do
19 me a huge favor” and give Kyäni a try. “I am one customer away from the next
20 promotion.” “This is a consumer product that can gain results.”

21 38. The presenters of Kyäni claim that before they implemented this script
22 they failed, but then they had 20 customers in one hour after making a list and saying
23 the above to their friends and families.

24 39. During the customer presentation, the speaker discusses in training that
25 the essential aspect of being part of the dream car program is “3 persons below you.”

26 40. In further training seminar, Kyäni again reiterates what success requires.

27 41. The “size of your list is the size of your dream” Kyäni proclaims to
28 potential distributors.

1 42. If you “want to do this right, you need a large list.”

2 43. After making a list, a distributor then sorts people in that list into “red
3 apples, green apples, and rotten apples.”

4 44. “Red apples” are “up for anything,” “fun to be around,” and “flexible.”
5 Spend 80% of your time with “red apples” Kyäni represents to distributors.

6 45. “Green apples” ask “too many question,” they “need information,” and
7 want “to know details.” Spend 20% of your time with “green apples” Kyäni teaches,
8 but let them do their own research into the product. Green apples, unlike red apples
9 are not good targets because they are guided by “logic, not emotion.”

10 46. Finally, Kyäni teaches, spend zero time with “Rotten Apples.” “Rotten
11 apples” come up with problems with a business model and why the model can’t be
12 good. According to the Kyäni speakers, “let them be rotten, and love them from a
13 distance.” Make what a “rotten apple” says go in “one ear, out the other.”

14 47. Kyäni also teaches that the only way to recruit is to have a “private
15 business reception.” (PBR). According to Kyäni, if “you are not doing them, you are
16 not growing.”

17 48. In a PBR, the distributor has a “home party” and executives of Kyäni
18 “present” to people in attendance. Kyäni teaches that the distributor need only invite
19 40 people into the home, and “who cares who these 40 people are.”

20 49. Through a PBR, Kyäni boasts, you can shoot up the organizational level
21 and become a Sapphire in one night, and make \$5000 in one night by all the people
22 who sign up. Kyäni further represents that one half of the people who are invited will
23 attend, and one third of the people who attend will sign up. As most distributors learn,
24 they would be lucky to sign up 1 out of 10.

25 50. The goal of a PBR is not say “too much,” but only raise level of curiosity.
26 What will haunt a distributor in recruiting others, Kyäni asserts, is “saying too much.”

27 51. Distributors are taught to inform potential people that are presented to is
28 to advise there is a “ground floor opportunity for a few key people,” that “deals with

1 health and wellness,” where “the executive comes to answer questions,” and is the
2 “next trillion dollar industry.”

3 52. Kyäni targets Plaintiff and potential distributors to “pique, pass, and
4 present.” Pique interest of the potential target, to pass off to upline to talk to them,
5 and to see the presentation.

6 53. Kyäni teaches distributors to have “upbeat music” at the beginning and
7 end of the presentation.

8 54. In addition to PBR’s, Kyäni teaches to have “massive 3-way calls.”

9 55. According to Kyäni, if a distributor puts these 3 way calls with an upline
10 every day, you “will be a diamond.”

11 56. As many distributors have asserted, the product (consisting of Omega 3
12 and melatonin) can be bought at a normal pharmacy for a fraction of the \$80.00 price
13 tag. Distributors have reported there is no improvement by virtue of using the
14 products, and that the products are overrated. Distributors have also reported, these
15 sales tactics create friction with friends.

16 57. Kyäni claims that its name means “strong medicine” in the indigenous
17 Alaskan Tlingit language, but some have suggested this representation is false.

18 58. Kyäni represents that it “combines the world’s most powerful superfoods
19 to create the most compelling nutritional supplements in the industry.”

20
21 **B. The County Of Sweden Reports Kyäni To The Police For The**
22 **Operation Of A “Chain Letter Game”**

23 59. On October 29, 2015, the Swedish Gaming Board, the authority that
24 polices conduct of businesses in Sweden, has reported Kyäni to the police for the
25 “operation of a chain letter game.”

26 60. The Swedish Gaming Board further stated: “[i]t is the overall assessment
27 that the main purpose of Kyäni business is recruiting to generate growing revenues to
28 individuals placed at higher levels within the organization and that the profit potential

1 is related to how many members gradually enter into the concept and not primarily on
2 the sale of products.”

3 61. Kyäni constantly emphasize the importance of recruiting: “the best
4 companies in the world, they recruit.”

5 62. In 2014, the Hungarian Competition Authority (GVH) fined Kyäni
6 Hungary for widespread use of illegal health claims in marketing.

7 63. In 2013, the Country of Estonia banned the distribution of Kyäni Sunset
8 due to the content of illicit substances.

9
10 **C. Kyäni Makes Further False Income Representations And Product**
11 **Representations**

12 64. Kyäni through its owners, agents and representatives, and Brexhears by
13 his authorization, represented to Plaintiff in 2016 through the internet, materials, sign-
14 up documents, mailed materials, and through Kyäni’s agents, made the following
15 representations to Plaintiffs in the ¶¶ 65-78:

16 65. Kyäni represents that your cash flow will grow in “size and stability”
17 and that one can build strong business once and business ownership for a lifetime.

18 66. Kyäni tells its victims: enjoy freedom of owning your own business. A
19 Kyäni business is “family, friends, and good health” and that with an “unmatched
20 dream car program, exotic retreats, and lucrative compensation” Kyäni creates the
21 “lifestyle you have always dreamed of.” Kyäni claims “join today, and experience
22 more.”

23 67. Under Kyäni’s compensation plan, a victim only gains a rank by
24 recruiting people into the business opportunity. The business opportunity is focused
25 on recruiting people, and have them purchase 100 “points” in volumes. Commissions
26 and bonuses are paid to infinite level deep, which means that for each commission
27 and person signed up, the profit travels up the entire pyramid.
28

68. With this many levels, those at the top are enriched. The price of the product is so high, it is impossible to legitimately sell these products retail, except to friends and families.

69. Kyäni makes false and/or misleading income disclosures that are affirmatively false, and false by omission in the picture they present to proposed distributors, in that the representations imply a Kyäni distributorship is profitable, when these are in fact, false statements. (See Figure No. 1).

FIGURE NO. 1

KYÄNI COMPENSATION PLAN															
US ONLY															
KYÄNI RANK	Qualified Distributor	Garnet	Jade	Pearl	Sapphire	Ruby	Emerald	Diamond	Blue Diamond	Green Diamond	Purple Diamond	Red Diamond	Double Red Diamond	Black Diamond	Double Black Diamond
Personal Volume (QV)	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Group Volume (QV)		300	2,000	5,000	10,000	25,000	50,000	100,000	250,000	500,000	1,000,000	2,000,000	4,000,000	10,000,000	25,000,000
Volume Outside Largest Leg		100	800	2,000	4,000	10,000	20,000	40,000	100,000	200,000	400,000	800,000	1,600,000	4,000,000	10,000,000
Volume Outside Largest Two Legs					500	1,250	2,500	5,000	12,500	25,000	50,000	100,000	200,000	500,000	1,250,000

PAYGATE ACCUMULATOR				
Calculates residual income. Accumulates volume flowing upward.				
Pay Gate	Rate	Power Leg Requirement	Total of Small Legs	3rd Leg Minimum
1	5.00%	200	100	
2	7.00%	700	500	
3	8.00%	2,200	1,500	
4	7.00%	4,500	3,000	
5	6.00%	9,000	6,000	400
6	5.00%	18,000	12,000	1,000
7	3.00%	40,000	27,000	2,000
8	1.00%	90,000	55,000	6,000
9	1.00%	200,000	125,000	12,000
10	0.50%	400,000	260,000	18,000
11	0.25%	1,000,000	450,000	40,000
12	0.25%	2,000,000	900,000	100,000

GENERATION CHECK MATCH									
Qualify to earn a percent of every PayGate check in your Sponsor Tree downline.									
	Sapphire	Ruby	Emerald	Diamond	Blue Diamond	Green Diamond	Purple Diamond	Red Diamond	Double Red Diamond
1	15%	15%	15%	15%	15%	15%	15%	15%	15%
2	10%	10%	10%	10%	10%	10%	10%	10%	10%
3	10%	10%	10%	10%	10%	10%	10%	10%	10%
4			5%	5%	5%	5%	5%	5%	5%
5				5%	5%	5%	5%	5%	5%
6					4%	4%	4%	4%	4%
7						3%	3%	3%	3%
8							2%	2%	2%
9								1%	1%

Sponsor/TEAM Bonus			
Paid weekly to the Sponsoring Distributor (minimum of 25 CV) and direct Upline (minimum of 100 CV) of a new recruit. Based on the Starter Pack.			
Starter Pack:	\$299	\$499	\$999
Sponsor Bonus:	\$50	\$100	\$200
Team Bonus:	\$10	\$20	\$40

CUSTOMER PROGRAM	
Earn money on your customer's orders.	
<ul style="list-style-type: none"> Retail Sales Bonus Customer Bonus (20% of Customer CV) Customer One-time Bonus (2 levels) Customer Bonus Pool (share of 2% of Global Customer CV) 	

70. Although there is purportedly a return policy on goods purchased from Kyäni, the return policy is only for 30 days, and does not include shipping and handling fees.

71. Kyäni represents that the three products Sunrise, Sunset, and Nitro “provide you and your family with unmatched nutrition for optimal health.”

72. These products are described by Kyäni as the “Kyäni Triangle of Health™.” The labeling of the products represents the products as being “all natural,” “complete nutritional spectrum” supplement, and “enhances production of nitric oxide,” when none of these representations are true. (See Figure No. 2).

FIGURE NO. 2



73. Further, Kyäni emphasizes recruitment over product sales. The Products are advertised to treat, cure, or alleviate the symptoms of cancer, diabetes, fibromyalgia, arthritis, anxiety, autism, ADHD, migraines, gout, insomnia, shingles, lupus, multiple sclerosis, post-traumatic stress disorder, and a host of other medical ailments. The examples, include: (1) claims made directly by the company, (2) claims made by the company's distributors, and (3) claims made by the three doctors and scientists who comprise Kyäni's "Scientific Advisory Board. Kyäni does not have competent and reliable scientific evidence in the form of clinical trials that are placebo-controlled, randomized, and double-blind. (See Fig No. 3 and 4).

FIGURE NO. 3



FIGURE NO. 4



Wild Alaskan Blueberry
 - Antioxidant Superpower
 - Improves Cognitive Function
 - Flavonoid Superpower
 - Maintains Healthy Cholesterol

Red Raspberry
 - Promotes Healthy Inflammatory Response
 - Pain Management

Aloe Vera
 - Promotes Immune System Health
 - Supports Healthy Gastrointestinal Tract

Noni Plant
 - Promotes Nitric Oxide Production
 - Increases Energy

Wolfberry (Goji Berry)
 - Promotes Healthy Heart
 - Enhances Mineral Absorption

Pomegranate
 - Promotes Heart & Circulatory Health
 - Reduces Oxidation of LDL Cholesterol

Concord Grapes
 - Promotes Cardiovascular Health
 - Stimulates Nitric Oxide Production

Cranberry
 - Promotes Urinary Health
 - Improves Cognitive Function

Bee Pollen
 - Enhances Athletic Stamina
 - Seasonal Allergy Relief

Kyāni SUNRISE
 DOCTOR AND CUSTOMER TESTIMONIALS

Seven Benefits of Kyani Sunrise
 • Enables Effective Stress Management
 • Maintains Heart Health
 • Supports Immune System
 • Regulates Healthy Inflammatory Response
 • Provides Increased Energy
 • Facilitates Improved Brain Function
 • Delivers Ounce-for-Ounce Value

HEALTH IS SWEET...
 PASS IT ON

74. In short, there is no dispute that Kyāni wholly lacks the required evidence to support the various health and treatment claims made about its products.

75. Further, Kyāni is using deceptive, atypical, and unsubstantiated income claims regarding the financial gains consumers will achieve by becoming distributors. For starters, Kyāni advertises to Plaintiff and the public that it “offers the most aggressive, most lucrative compensation plan in the industry,” and that distributors “can reap the commissions, bonuses, check matches, PayGates, and other rewards that will help propel you to financial security and beyond.”

76. Kyāni and its executives make a host of unrealistic financial promises, ranging from getting a company car to making millions of dollars.

77. The problem, however, is that while an overwhelming majority of Kyāni distributors do not make any profit at all, and do not obtain the often-touted company car, the vast majority of the income marketing claims boasting exorbitant financial rewards do not disclose this fact.

78. Rewards paid in the form of cash bonuses, where primarily earned for recruitment, as opposed to merchandise sales to consumers, constitute a fraudulent business model. *See F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878 (9th Cir. 2014).

D. Distributors Are Unable To Sell Kyāni Products For A Profit

1 79. Distributors are unable to consistently sell Kyäni products for a profit for
2 many reasons. First, the products are overpriced. Interchangeable products are
3 available online or in brick-and-mortar stores for amounts far less than Kyäni's
4 suggested retail price, and even lower than its wholesale prices. Specifically, the
5 ingredients in the "triangle" are commonly found at most local pharmacies.

6 80. Second, Kyäni's products themselves are available online for the
7 wholesale price or less. That these products are sold at or below the retail price makes
8 it difficult for Distributors to sell the products for a profit. Kyäni may claim to have
9 made attempts to reduce sales, but the fact remains that Kyäni products are available
10 below the discount prices. Moreover, many of these sales are likely made by current
11 or former Distributors desperately trying to offload excess product at whatever price
12 they can get, which further supports the proposition that Distributors Inventory Load
13 and that the Kyäni products are overpriced.

14 81. Third, Kyäni prohibits Distributors from selling the products in the only
15 forum for a where Distributors could reasonably expect to sell enough product to
16 make a meaningful profit: the internet. Some examples of these prohibited websites
17 include, but are not limited to: eBay, Amazon or Craigslist. In addition, Kyäni forbids
18 its Distributors from selling Kyäni products at almost all brick-and-mortar
19 establishments. Kyäni seeks to limit the Distributors to one-on-one situations in
20 private locations (such as the Distributor's or a friend's home), but achieving
21 significant, profitable retail sales by this method is extremely difficult.

22 82. Plaintiff does not contend that Distributors make no retail sales at all.
23 But Plaintiff does allege that relatively little of the revenues received by
24 Distributors—including both money paid them by Kyäni and proceeds from retail
25 sales—comes from retail sales, and the vast majority comes from Distributors'
26 payments to Kyäni. Thus, the Distributors are primarily feeding off each other.

27 83. Kyäni also makes false and/or inadequate income disclosures in that in
28 many instances, it does not disclose income of those who are distributors, or provides

1 statements of income that are false, and/or misleading, that affirmatively represent a
2 profitable business opportunity, when there is no profit to be made, and nearly all
3 participants in fact, lose money.

4 84. Because Kyäni pays the executives at the top of the pyramid exorbitant
5 incomes and because little non-Distributor money comes into the scheme to pay
6 Distributors, the Distributors at the bottom of the pyramid must lose money. These
7 losses are borne out by Kyäni's own financial disclosures and the experiences of the
8 Plaintiff and multiple other Distributors.

9 **E. Breshears and Kyäni Promote the Pyramid**

10 85. Breshears is a person at the top of Kyäni's pyramid. Breshears is in the
11 top 1% of Distributors who make the most lucrative bonuses. He actively participates
12 in the Kyäni pyramid scheme, and he profits from the compensation plan at the expense
13 of the vast majority of Distributors.

14 86. Kyäni and Breshears promote the pyramid scheme and make misleading
15 claims of financial success.

16 87. In coordination with Kyäni, Breshears has flooded the internet with
17 promotional materials designed to lure in new Distributors. Kyäni and Breshears
18 promote the scheme as a lawful program that, with sufficient hard work, virtually
19 guarantees financial success. Kyäni and Breshears promote Kyäni as a reliable source
20 of significant income.

21 88. To sell the financial-success promise, Kyäni and Breshears flaunt the
22 wealth of the highest-ranked Distributors and those few insiders at the top of the
23 pyramid, as examples of the riches that await new participants, if only they will work
24 hard enough (i.e., tirelessly recruit new Distributors).

25 89. Kyäni, authorized by Breshears, has produced videos and made statements
26 via the internet knowingly promoting Kyäni's pyramid scheme and touting the financial
27 rewards supposedly available to participants. Each of these statements furthered the
28

1 pyramid scheme by encouraging persons to become Distributors and by encouraging
2 Distributors to remain Distributors and pursue the Kyäni business opportunity.

3 90. The similarity of the statements made by Breshears indicates a collusive
4 effort to promote the Kyäni scheme. The following paragraphs set forth just a small
5 subset of publicly broadcast statements made by Kyäni, as authorized by Breshears, to
6 promote the Kyäni opportunity.

7 **F. Plaintiff is a Victim Of The Pyramid Scheme**

8 91. Plaintiff Guo became a distributor on or about June of 2016 by paying
9 approximately \$1,500. Plaintiff Guo was deceived by Kyäni's misleading opportunity
10 believing, the opportunity was a legitimate way to earn money (even though that
11 representation by Kyäni and Breshears was false), and Plaintiff Guo did in fact lose
12 money as a result of Defendants' unfair, unlawful, and fraudulent business practice.

13 92. Plaintiff Guo was unable to make many retail sales, and she lost money in
14 the Kyäni scheme even considering retail sales.

15 **G. Purported Documents**

16 93. At some times during Kyäni's history, it has apparently maintained a
17 document labeled, "Policies and Procedures" (the "Policies"). The Policies permit
18 "litigation" "for resolution of any claims or related litigation to interpret or enforce
19 the terms of the Distributor Agreement."

20 94. The "Kyäni Independent Distributor Agreement Terms and Conditions"
21 (the "Application") has been used from time to time, and in a contradictory fashion,
22 indicates there is a requirement of arbitration. The conflict provision in the Application
23 suggests precedence of the Policies over the Application.

24 95. The arbitration policy of Kyäni is illusory, unenforceable and
25 unconscionable for several reasons based on law and fact.

26 **V. CLASS ACTION ALLEGATIONS**

27 96. Plaintiff seeks to represent a nationwide class, defined as follows:
28

1 97. Plaintiff brings this action as a class action under Federal Rule of Civil
2 Procedure 23.

3 98. Plaintiff seeks to certify a class pursuant to Fed. R. Civ. Proc. 23(a),
4 23(b), 23(c)(4), and 23(c)(5), if necessary.

5 99. Plaintiff seeks relief on behalf of herself and the following class: persons
6 who paid start-up fees, monthly fees, annual fees, seminar ticket fees, any other fees
7 imposed by Kyäni, and/or purchased products from Kyäni between January 1, 2011, to
8 the present date, who lost money from their participation in the Kyäni scheme.

9 100. Subject to confirmation, clarification and/or modification based on
10 discovery to be conducted in this action, Plaintiff also seek to represent a sub-class in
11 California, defined as follows: persons residing in California who paid start-up fees,
12 monthly fees, annual fees, seminar ticket fees, any other fees imposed by Kyäni, and/or
13 purchased products from Kyäni between January 1, 2011, to the present date, who lost
14 money from their participation in the Kyäni scheme.

15 101. Subject to confirmation, clarification and/or modification based on
16 discovery to be conducted in this action, Plaintiff also seeks to represent a sub-class
17 of all worldwide participants of Kyäni, defined as follows: persons residing anywhere
18 in the World who paid start-up fees, monthly fees, annual fees, seminar ticket fees, any
19 other fees imposed by Kyäni, and/or purchased products from Kyäni between January
20 1, 2011, to the present date, who lost money from their participation in the Kyäni
21 scheme.

22 102. Pursuant to the previous paragraph of this complaint, the damage to any
23 person living anywhere else other than the United States involved a domestic injury
24 to business or property because all contracts of independent business owners were
25 negotiated, executed, and stored on a server in the United States owned by Kyäni, and
26 are available on the worldwide web, involved a significant connection to domestic
27 commerce in that the labeling, products, and other parts of the manufacturing and
28

1 sales and marketing process were conducted from the United States, and for other
2 reasons to be provided according to proof, and after the opportunity for discovery.

3 103. Excluded from the class are the Defendants, executives of Kyäni, family
4 members, this Court.

5 104. Plaintiff seeks to pursue a private attorney general action for injunctive
6 relief for themselves and all members of the class, and they satisfy the standing and
7 class action requirements.

8 105. While the exact number of members in the Class and Subclasses are
9 unknown to Plaintiff at this time, and can only be determined by appropriate
10 discovery, membership in the class and subclasses is ascertainable based upon the
11 records maintained by Defendant. It is estimated that the members of the Class are
12 greater than 100,000, nationwide.

13 106. Therefore, the Class and Subclasses are so numerous that individual
14 joinder of all Class and Subclass members is impracticable.

15 107. There are questions of law and/or fact common to the class and
16 subclasses, including but not limited to: (a) Whether the Policies are enforceable to
17 permit litigation, or in the alternative, whether the Application is unenforceable
18 because it is illusory and/or unconscionable; (b) Whether Kyäni is operating an
19 endless chain; (c) Whether Distributors paid money to Kyäni for (1) the right to sell a
20 product and (2) the right to receive, in return for recruiting others, rewards which were
21 unrelated to the sale of the product to retail consumers; (d) Whether Kyäni's rules
22 apply to Section 327 claims; (e) If the Kyäni rules do apply, are Kyäni's rules
23 effective; (f) If the Kyäni rules do apply, and Kyäni's rules are effective, did Kyäni
24 enforce those rules; (g) Whether Kyäni or Breshears omitted to inform the Plaintiff
25 and the plaintiff class that they were entering into an illegal scheme where an
26 overwhelming number of participants lose money; (h) Whether Kyäni's statements of
27 compensation during the Class Period were deceptive and misleading; (i) Whether
28 Kyäni's conduct constitutes an unlawful, unfair and/or deceptive trade practice under

1 California state law; (j) Whether Kyäni's conduct constitutes unfair competition under
 2 California state law; and (k) Whether Kyäni's conduct constitutes false advertising
 3 under California state law.

4 108. These and other questions of law and/or fact are common to the class and
 5 subclasses and predominate over any question affecting only individual class
 6 members.

7 109. Plaintiff's claims are typical of the claims of the class and subclasses in
 8 that Plaintiff were Distributors for Defendant Kyäni and lost money because of the
 9 illegal scheme.

10 110. Plaintiff will fairly and adequately represent the interests of the class and
 11 subclasses. Plaintiff's claims are typical of those of the class and subclasses.
 12 Plaintiff's interests are fully aligned with those of the class and subclasses. And
 13 Plaintiff has retained counsel experienced and skilled in class action litigation.

14 111. Class action treatment is superior to the alternatives for the fair and
 15 efficient adjudication of the controversy alleged, because such treatment will allow
 16 many similarly-situated persons to pursue their common claims in a single forum
 17 simultaneously, efficiently and without unnecessary duplication of evidence, effort,
 18 and expense that numerous individual actions would engender.

19 112. Plaintiff knows of no difficulty likely to be encountered in the
 20 management that would preclude its maintenance as a class action.

21 **VI. CLASS ACTION COUNTS**

22 **COUNT I**

23 **Declaratory Judgment Declaring Distributors May Commence Litigation**

24 (Plaintiff on behalf of Herself and those Similarly Situated, Against All Defendants,
 25 including DOES 1 through 100)

26 113. Plaintiff realleges all allegations as if fully set forth herein, and
 27 incorporate previous allegations by reference.
 28

1 114. The Policies permit Plaintiff and the Class to commence litigation in
2 Court, which governs based on a conflict provision in the alleged documents.

3 115. The Application seems to contradict the Policies and should be construed
4 against the drafter, Kyäni.

5 116. In the alternative, the arbitration policy of Kyäni is illusory, and
6 unconscionable.

7 117. The arbitration provision is alternatively, unenforceable as a matter of
8 fact, and law.

9 118. For these reasons, and those legal reasons to be stated in connection with
10 any motion practice initiated by the Defendants, the Court should declare that any
11 arbitration provision is illusory, lacks consideration, is unenforceable, and that the
12 Plaintiff's claims and the Classes' claims are properly before this Court.

13 **COUNT II**

14 **ENDLESS CHAIN SCHEME; California Penal Code § 327 and Section 1689.2**
15 **of the California Civil Code**

16 (Plaintiff on behalf of herself and the Class, Against All Defendants including
17 DOES 1 through 100)

18 119. Plaintiff realleges all allegations as if fully set forth herein, and
19 incorporate previous allegations by reference.

20 120. Section 1689.2 of the California Civil Code provides: "[a] participant in
21 an endless chain scheme, as defined in Section 327 of the Penal Code, may rescind
22 the contract upon which the scheme is based, and may recover all consideration paid
23 pursuant to the scheme, less any amounts paid or consideration provided to the
24 participant pursuant to the scheme."

25 121. The Defendants are operating an endless chain scheme under Section
26 327 of the Penal Code because they have contrived, prepared, set up, and proposed an
27 endless chain as pled in the factual section of this FAC. Nearly 99% of those who
28 participate in Kyäni's business fail.

1 122. The Kyäni operation constitute a scheme for the disposal or distribution
2 of property whereby class members pay a valuable consideration for the chance to
3 receive compensation (as pled in the fact section) for introducing one or more
4 additional persons into participation in the scheme or for the chance to receive
5 compensation when a person introduced by the participant introduces a new
6 participant.

7 123. Independently, the Kyäni operation constitutes an endless chain because
8 members pay an initial fee and then are required to purchase significant amounts of
9 product, only to have a membership terminated (and points/commissions canceled),
10 if he fails to pay.

11 124. Independently, the Kyäni operation constitutes an endless chain because
12 defendants tell victims they earn commissions by recruiting other people to buy
13 memberships and the members, were in turn, instructed to recruit more members.
14 Revenues are made primarily from recruitments.

15 125. Independently, the Kyäni operations constitute an endless chain because
16 Defendants' commissions, income, lottery gifts like vehicles, and free products were
17 based on a current member's sales of memberships to new members and not the sale
18 of products.

19 126. Plaintiff and the Class have suffered an injury in fact and have lost
20 money or property because of Kyäni and Breshears' operation of an endless chain,
21 business acts, omissions, and practices.

22 127. Plaintiff and the Class are entitled to: (a) rescind all receipts, statements,
23 invoices, and writings upon which the scheme is based and recover all consideration
24 paid under the scheme, less any amounts paid or consideration provided to the
25 participant under the scheme; (b) restitution, compensatory and consequential
26 damages (where not inconsistent with their request for rescission or restitution); and
27 (c) attorney's fees, costs, pre and post-judgment interest.
28

COUNT III

**Unfair and Deceptive Practices Claims Under Cal. Bus. & Prof. Code § 17200,
*et seq.***

(Plaintiff on behalf of herself and the Class Against All Defendants including DOES
1 through 100)

128. Plaintiff realleges all allegations as if fully set forth herein, and incorporate previous allegations by reference.

129. All claims brought under this Third Cause of action that refer or relate to the unlawful, fraudulent or unfair “endless chain” of the Defendants are brought on behalf of Plaintiff and the Class.

130. All claims brought under this Third Cause of Action that refer or relate to the unlawful, fraudulent or unfair the statements, the touted Kyäni “business opportunity” are brought on behalf of Plaintiff and the Class.

131. Kyäni has engaged in constant and continuous unlawful, fraudulent and unfair business acts or practices, and unfair, deceptive, false and misleading advertising within the meaning of the California Business and Professions Code § 17200, *et seq.* The acts or practices alleged constitute a pattern of behavior, pursued as a wrongful business practice that has victimized and continues to victimize thousands of consumers for which Plaintiff’s seek to enjoin from further operation. The Kyäni Sales and Marketing Plan Is Unlawful.

132. Under California Business and Professions Code § 17200, an “unlawful” business practice is one that violates California law.

133. Kyäni’s business practices are unlawful under § 17200 because Kyäni’s promotions constitute an illegal “endless chain” as defined under, and prohibited by, California Penal Code § 327.

134. Kyäni utilizes its illegal “endless chain” with the intent, directly or indirectly, to dispose of property in Kyäni’s products and to convince Distributors to recruit others to do the same.

1 135. Kyäni's business practices are unlawful pursuant to §17200 because
2 they violate §17500 *et seq.*, as alleged in the Fourth Count.

3 136. Under California Business and Professions Code § 17200, a "fraudulent"
4 business practice is one that is likely to deceive the public.

5 137. Kyäni's business practices are fraudulent in two separately actionable
6 ways: (1) Kyäni's business constitutes an illegal and deceptive "endless chain;" (2)
7 the touted, yet non-existent, Kyäni "business opportunity" is for everyone, including
8 but not limited to Kyäni's massive advertising campaign and the misleading
9 statements of compensation.

10 138. First, as detailed herein, Defendants promoted participation in the Kyäni
11 endless chain, which has a compensation program based on payments to participants
12 for the purchase of product by participants, not the retail sale of products or services.

13 139. Kyäni has made numerous misleading representations to Plaintiff about
14 the business opportunity of Kyäni and the income that a recruit or a distributor can
15 realize by becoming a distributor, and participating in the scheme, as outlined above
16 in ¶¶ 19-78.

17 140. Kyäni knew, or should have known, that the representations about the
18 business opportunity of Kyäni were misleading in nature.

19 141. As a direct result of Kyäni's fraudulent representations and omissions
20 regarding the Kyäni endless chain described herein, Kyäni wrongly acquired money
21 from Plaintiff and the members of the classes.

22 142. Second, Kyäni touted, in numerous different ways as part of a massive
23 advertising campaign, a "business opportunity," which Kyäni also repeatedly and in
24 many ways represented, among other things, as being "for everyone" and allowing
25 "full time" or "part time" opportunities.

26 143. The massive advertising campaign included among other things, the
27 website, emails, websites, presentations by Kyäni, training, word of mouth among
28 Distributors, and events.

1 144. As part of this campaign and a further inducement to potential
2 Distributors, Kyäni made and disseminated statements of compensation that further
3 misled the public, among other things: (1) by using cryptic and technical terms known
4 to Kyäni but not to the general public or to those exploring the claimed “business
5 opportunity,” (2) by highlighting the successful persons, i.e., those that received
6 compensation from Kyäni, and the average gross compensation paid by Kyäni to those
7 persons, (3) by failing to disclose the actual number of successful persons as
8 compared to the number of Distributors who received no compensation from Kyäni,
9 and (4) by downplaying and omitting the risks and costs involved in starting an Kyäni
10 Distributorship and succeeding in such a Distributorship.

11 145. In reality, the touted “business opportunity” was only for a select few,
12 and those that were recruited specially. And these numbers did not include expenses
13 incurred by distributors in the operation or promotion of their businesses, meaning
14 there were likely more net losers who made no profit at all.

15 146. Kyäni knew, or should have known, that the selective information
16 presented to distributors in the compensation and its massive adverting campaign
17 during that time frame touting its purported “business opportunity” was likely to
18 mislead the public and did in fact mislead the public into believing that there was a
19 legitimate “business opportunity” in which Distributors/Distributors, or a large
20 portion of them, could make money in either a full or part time capacity. In fact,
21 however, there was no such “business opportunity,” except for a very select few.

22 147. As a direct result of Kyäni’ fraudulent representations and omissions
23 regarding the Statement and the massive adverting campaign during that time frame
24 and thereafter touting Kyäni’s purported “business opportunity” described herein,
25 Kyäni wrongly acquired money from Plaintiff and the members of the classes.

26 148. The named Plaintiff has standing to bring these § 17200 claims under the
27 fraudulent prong, and can demonstrate actual reliance on the alleged fraudulent
28 conduct.

1 149. For instance, the Plaintiff has been in receipt of misleading and false
2 financial statements and marketing materials/seminar papers, which promoted the
3 Kyäni scheme and claimed “business opportunity” and contained material false
4 representations regarding the success Distributors could achieve through Kyäni by
5 purchasing products and recruiting others to do the same, as pled in ¶¶ 19-78.

6 150. There were other representations made to Distributors as part of the
7 massive advertising campaign regarding the claimed “business opportunity,” on
8 which Plaintiff or some of the Class Members, reasonably believed the
9 representations they could succeed in the “business opportunity,” did not return the
10 refund, purchased Kyäni products and did not immediately return them, signed up as
11 Kyäni Distributors, and attempted to and recruited others to do the same. These other
12 representations include, but are not limited to the following: (a) emails from Kyäni
13 that promoted Kyäni and contained material false representations regarding the
14 success that a distributor could achieve through Kyäni by purchasing products and
15 recruiting others to do the same; (b) websites, such as www.Kyäni.com and
16 Kyäniskin.com, which promoted the fraudulent scheme through videos of Kyäni (as
17 authorized by Breshears) containing material false representations regarding the
18 “business opportunity” available to Distributors and the wealth that a distributor could
19 get by agreeing to become an Kyäni distributor; (c) presentations by Kyäni
20 Distributors which contained material false representations regarding the “business
21 opportunity” and the success that a distributor could get through Kyäni by purchasing
22 products and recruiting others to do the same; (d) presentations by Kyäni, including
23 the presentations described in this complaint, which contained material false
24 representations regarding the “business opportunity” and the success that a distributor
25 could get through Kyäni by purchasing products and recruiting others to do the same;
26 (e) training and events where Kyäni Distributors made material false representations
27 regarding the “business opportunity” and the success that a distributor could get
28 through Kyäni by purchasing products and recruiting others to do the same.

1 151. To the extent proof of reliance is required of Plaintiff, Kyäni and
2 Breshears knew that Plaintiff and the Class would reasonably rely on their
3 representations and omissions, which would cause the Plaintiff and the Class joining
4 the fraudulent endless chain scheme and purchasing the products, and Plaintiff did in
5 fact reasonably rely upon such representations and omissions.

6 152. Indeed, had Plaintiff and the Class known that Kyäni and Breshears were
7 promoting an endless chain, they would not have become Kyäni Distributors in the
8 first place and, if learned after becoming a distributor, they would not have purchased
9 Kyäni products thereafter.

10 153. Had Plaintiff and the Class known that Kyäni was promoting a “business
11 opportunity” that did not exist except for a select few, they would not have become
12 Kyäni Distributors in the first place and, if learned after becoming a distributor, they
13 would not have purchased Kyäni products thereafter.

14 154. The fraudulent acts, representations and omissions described herein were
15 material not only to Plaintiff and the Class (as described in this complaint), but also
16 to reasonable persons.

17 155. Under California Business and Professions Code § 17200, a business
18 practice is “unfair” if it violates established public policy or if it is immoral, unethical,
19 oppressive or unscrupulous and causes injury which outweighs its benefits.

20 156. For the reasons set forth herein and above, Kyäni’s promotion and
21 operation of an unlawful and fraudulent endless chain, and its fraudulent
22 representations and omissions regarding its purported “business opportunity,” are also
23 unethical, oppressive, and unscrupulous in that Kyäni is and has been duping Plaintiff
24 and the class out of billions, or at least hundreds of millions, of dollars.

25 157. Kyäni’s actions have few, if any, benefits. Thus, the injury caused to
26 Plaintiff and the class easily and dramatically outweigh the benefits, if any.

27 158. Defendants should be made to disgorge all ill-gotten gains and return to
28 Plaintiff and the class all wrongfully taken amounts.

1 159. Defendants willfully violated Foreign Corrupt Practices Act of 1977
2 (FCPA) 15 U.S.C. § 78dd-1, *et seq.*

3 160. In order to explore various international markets, including China and
4 Sweden, Defendants asked their nationally residing distributors to recruit foreign
5 nationals in China, Sweden, and other countries to become Kyäni distributors without
6 legal authorization from these governments, without licensing as required by these
7 foreign laws, and in violation of the laws of these Countries.

8 161. Promoters of Kyäni made significant profits in cash from the events and
9 utilized multiple individuals and other means to carry their cash back to the United
10 States for them. The conduct violates foreign laws and constitutes money laundering
11 and tax evasion.

12 162. Defendants' conduct violated Foreign Corrupt Practices Act of 1977
13 (FCPA) 15 U.S.C. § 78dd-1, *et seq.*

14 163. Based on the Defendants' violation of the FCPA, Plaintiff, the class, and
15 the general public are entitled to injunctive relief derivatively through Cal. Bus. &
16 Prof. Code 17200, even if the FCPA does not provide a private right of action.

17 164. Kyäni, acting in concert with DOES 1 through 100, inclusive, aided,
18 abetted and conspired with Defendants in making the concealment against named
19 Plaintiffs and class members.

20 165. As a direct and legal result of Defendants' willful and unfair conduct,
21 named Plaintiff, the public, and those similarly situated, have suffered damages.

22 166. Finally, Defendants' unlawful, fraudulent and unfair acts and omissions
23 will not be completely and finally stopped without orders of an injunctive nature.
24 Under California Business and Professions Code section 17203, Plaintiff and the
25 Class seek a judicial order of an equitable nature against all Defendants, including,
26 but not limited to, an order declaring such practices as complained of to be unlawful,
27 fraudulent and unfair, and enjoining them from further undertaking any of the
28 unlawful, fraudulent and unfair acts or omissions described herein.

COUNT IV

False Advertising - California Business and Professions Code § 17500, et seq.

(Plaintiff on behalf of herself and the Class Against All Defendants including DOES
1 through 100)

167. Plaintiff realleges all allegations as if fully set forth herein, and incorporate previous allegations by reference.

168. All claims brought under this Fourth Count that refer or relate to the false, untrue, fraudulent or misleading endless chain of Defendants are brought on behalf of Plaintiff and the Class.

169. All claims brought under this Fourth Count that refer or relate to the false, untrue, fraudulent or misleading statements of income are brought on behalf of Plaintiff.

170. All claims brought under this Fourth Count that refer or relate to the false, untrue, fraudulent or misleading statements of income are brought on behalf of Plaintiff and the Class.

171. Defendants' business acts, false advertisements and materially misleading omissions constitute false advertising, in violation of the California Business and Professions Code § 17500, *et seq.*

172. Defendants engaged in false, unfair and misleading business practices, consisting of false advertising and materially misleading omissions regarding the purported "business opportunity," and the "health benefits" likely to deceive the public and include, but are not limited to, the items set forth in the factual background of this Complaint. Kyäni knew, or should have known, that the representations about the business opportunity of Kyäni were misleading in nature. The statements made to Plaintiffs, and the date of the allegations, are found at ¶¶ 19-78 of this Complaint.

173. Because of Defendants' untrue and/or misleading representations, Defendants wrongfully acquired money from Plaintiff and the class members to which they were not entitled. The Court should order Defendants to disgorge, for the benefit

1 of Plaintiff and all other Kyäni Distributors in the class who signed an agreement with
 2 Kyäni governed by California law their profits and compensation and/or make
 3 restitution to Plaintiff and the Class.

4 174. Under California Business and Professions Code Section 17535,
 5 Plaintiff and the Class seek a judicial order directing Defendants to cease and desist
 6 all false advertising related to the Defendants' illegal endless chain scheme, and such
 7 other injunctive relief as the Court finds just and appropriate.

8 175. Because of Defendants' untrue and/or misleading representations,
 9 Defendants wrongfully acquired money from Plaintiff and the class members to which
 10 they were not entitled. The Court should order Defendants to disgorge, for the benefit
 11 of Plaintiff and all other Kyäni Distributors in the class who signed a Distributor
 12 Agreement with Kyäni their profits and compensation and/or make restitution to
 13 Plaintiff and the class.

14 176. Under California Business and Professions Code Section 17535,
 15 Plaintiff and the class seek a judicial order directing Defendants to cease and desist
 16 from all false advertising related to the Defendants' illegal scheme, and such other
 17 injunctive relief as the Court finds just and appropriate.

18 **COUNT V**

19 **Fraudulent Concealment/Non-Disclosure**

20 (Plaintiff on behalf of herself and the Class Against All Defendants including DOES
 21 1 through 100)

22 177. Plaintiff realleges all allegations as if fully set forth herein, and
 23 incorporate previous allegations by reference.

24 178. As alleged above in ¶¶ 23 through 70 of this Complaint, Defendants
 25 made a number of representations concerning their business, including that this was a
 26 way for normal people to obtain incredible financial success.

27 179. Defendants' representations described above were false. However,
 28 despite knowing of the falsity of their representations, Defendants concealed, and/or

1 failed to disclose material and contrary facts set forth above, including, among other
2 things, that nearly 99% of all participants in Kyäni's pyramid scheme failed.

3 180. Defendants had a duty to disclose this information to their participants
4 because: it is material information that would reflect the fraudulent nature of the
5 business, and Defendants knew the information was not reasonably discoverable by
6 their participants; Defendants made affirmative representations that were contrary and
7 misleading without the disclosure of this information; and/or Defendants actively
8 concealed this information from their participants, the government and the public.

9 181. Defendants concealed and failed to disclose these material facts with the
10 intent to deceive Plaintiff and the Class, including but not limited to concealing the
11 fact that nearly all participants in the pyramid scheme fail.

12 182. Defendants' concealments and non-disclosure of material facts as set
13 forth above were made with the intent to induce Plaintiff and the Class to join the
14 Kyäni opportunity.

15 183. Plaintiff and the Class, at the time these failures to disclose and
16 suppressions of facts occurred, and at the time Plaintiff and the Class became
17 distributors, were ignorant of the existence of the facts that Defendants suppressed
18 and failed to disclose. If Plaintiffs and the Class had known of Defendants'
19 concealments and failures to disclose material facts, they would not have taken the
20 actions they did, including but not limited to becoming distributors of Kyäni.

21 184. Plaintiffs and the Class' reliance was justified and reasonable as they had
22 no basis to doubt the original representations made to them, nor did they have reason
23 to believe they were being misled or material facts were being concealed from them.

24 185. As a direct and proximate result of the above, Plaintiffs and the Class
25 have suffered damages in an amount to be proven at trial.

26 186. Defendants undertook the aforesaid illegal acts intentionally or with
27 conscious disregard of the rights of Plaintiffs and the Class, and did so with fraud,
28 oppression, and/or malice. This despicable conduct subjected Plaintiffs and the Class

1 to cruel and unjust hardship so as to justify an award of punitive damages in an amount
 2 sufficient to deter such wrongful conduct in the future. Therefore, Plaintiffs and the
 3 Class are also entitled to punitive damages against Defendants in an amount to be
 4 determined at trial. Plaintiff realleges all allegations as if fully set forth herein, and
 5 incorporate previous allegations by reference.

6 **COUNT VI**

7 **(RICO 18 U.S.C. § 1961(5), 1962(c))**

8 (Plaintiff on behalf of herself and the Class Against All Defendants including DOES
 9 1 through 100)

10 187. RICO prohibits the following conduct: It shall be unlawful for (1) any
 11 person (2) employed by or associated with (3) any enterprise (4) engaged in, or the
 12 activities of which affect, interstate or foreign commerce, (5) to conduct or participate,
 13 directly or indirectly, in the conduct of such enterprise's affairs (6) through a pattern
 14 of racketeering activity or collection of unlawful debt. 18. U.S.C. § 1961.

15 188. Section 1962(c) makes it "unlawful for any person employed by or
 16 associated with any enterprise engaged in, or the activities of which affect, interstate
 17 . . . commerce, to conduct or participate, directly or indirectly, in the conduct of such
 18 enterprise's affairs through a pattern of racketeering activity."

19 189. RICO requires that a "person" violate its provisions." 18 U.S.C. §
 20 1962(c-d). A RICO "person" includes any individual or entity capable of holding a
 21 legal or beneficial interest in property." 18 U.S.C. § 1961(3). A RICO person can be
 22 either an individual or a corporate entity. All Defendants named in this count are
 23 RICO persons.

24 190. Defendants Kyäni and Breshears have acted as an "association-in-fact"
 25 for a common purpose, have and maintained relationships between and among each
 26 other (and nonparties), and the association-in-fact has a longevity sufficient to permit
 27 those associates to pursue the enterprise's purpose the establishment and perpetuation
 28 of an unlawful pyramid scheme in which hundreds of thousands of people have lost

1 money. The operation and management of the association in fact was generally led,
 2 at various times, by Defendants Kyäni and Breshears. The individual promoter
 3 defendants Shouhed generally operated certain field aspects of the enterprise, taking
 4 direction from Kyäni and Breshears. Kyäni and Breshears provided funds to enable
 5 the association to grow and management and strategic advice to grow and expand the
 6 pyramid scheme. Later, Kyäni and Breshears provided financial incentives to certain
 7 recruiters.

8 191. The “association-in-fact” began in 2005 and has continued to today.
 9 Each of the Defendants charged in Count V has been a part of the association-in fact
 10 as follows: Kyäni: 2005-present; Breshears: 2005-present.

11 **A. Kyäni and Breshears Make False Claims As To The Kyäni**
 12 **Opportunity**

13 192. In 2005 Breshears formed Kyäni.

14 193. Kyäni makes various representations about the business opportunity of
 15 Kyäni as set forth in ¶¶ 23-70.

16 194. Each of the statements made by Kyäni in ¶¶ 23-70, were false and
 17 misleading.

18 **B. Rico Enterprise**

19 195. A defendant can be both a RICO “person” and part of another RICO
 20 “enterprise.” Plaintiff and the Class allege the following:

21 (a) each Defendant is a RICO “person.”

22 (b) each individual defendant, i.e., each person, combination of
 23 persons or combination one or more person and an entity as defined
 24 above, is a RICO “person.”

25 (c) the Defendants named in this Count are an “enterprise,” (e.g., a de
 26 facto corporation acting as a single legal entity, or, alternatively, an
 27 association in fact).
 28

1 196. There was an identifiable hierarchy and framework within the enterprise.
 2 It is directed by Breshears, to whom the remaining Defendants named in this Count
 3 report.

4 **C. All Defendants Are “Employed By Or Associated With” The Rico**
 5 **“Enterprise”**

6 197. Under Section 1962(c), a defendant must be “employed by or associated
 7 with” the RICO enterprise. Section 1962(c) operates equally to both “insiders” and
 8 “outsiders” who participate directly or indirectly in the conduct of the enterprise’s
 9 affairs through a pattern of racketeering activity. All Defendants named in this Count
 10 are employed by or associated with the enterprise, as set forth in detail previously.

11 198. They conduct and participate in the operation or management of the
 12 pyramid scheme through a pattern of racketeering activity, by conducting the affairs
 13 and supporting the acts of the pyramid scheme. Breshears uses the assets of Kyäni to
 14 direct, in whole or part, the affairs of the pyramid scheme, including the operation of
 15 the pyramid scheme and the distribution of unlawful profits to individuals associated
 16 with the scheme. Breshears controls and directs the websites, web presentations,
 17 events, sponsored conventions and speeches of each of them, and the dissemination
 18 of video of same, and the individual promoter Defendants named in this Count.

19 199. Breshears has directed the Company to disburse over time, millions of
 20 dollars to Breshears.

21 200. The other promoters of Kyäni are also “employed by or associated with”
 22 each other and the remaining Defendants for purposes of RICO. They conduct and
 23 participate in the operation or management of the pyramid scheme through a pattern
 24 of racketeering activity, by conducting the affairs and supporting the acts of the
 25 pyramid scheme. They receive payments and benefits for operating at or near the top
 26 of the “downline” pyramid, engage in wholesale recruiting at the direction of Kyäni.
 27 Breshears, communicates regularly with Kyäni, operates the website that induces
 28 innocent people to engage in the illegal pyramid, and cooperate with the other

1 Defendants to lend their names to promotional materials. While appearing as
 2 ostensible “independent” distributors for purposes of convincing innocent recruits to
 3 join the “business opportunity,” each of the promoters takes direction from and is in
 4 contact with each other and Breshears.

5 **D. All RICO Persons Are Distinct From The RICO Enterprise**

6 201. RICO requires the involvement of a RICO “enterprise.” 18 U.S.C. §
 7 1964 (a-d). An “enterprise” includes any individual, partnership, corporation,
 8 association, or other legal entity, and any union or group of individuals associated in
 9 fact although not a legal entity.” 18 U.S.C. § 1961(5).

10 202. The enterprise itself is not the liable entity, rather it is the RICO person
 11 who conducts the affairs of the enterprise through a pattern of racketeering activity.
 12 Kyäni and Breshears described in this complaint are distinct from each other.
 13 Breshears is distinct from the corporate defendant. The corporate Defendant is distinct
 14 from the RICO enterprise because it is functionally separate, performs different roles
 15 within the enterprise and uses its separate legal incorporation to facilitate racketeering
 16 activity.

17 203. Besides paying the salaries of Breshears, Kyäni also created phony
 18 distributorship positions for his cohorts, and certain high placed persons, placing them
 19 at the top of the pyramid of Distributors where they could receive monthly
 20 “commission” checks as leading distributors – without actually distributing anything.
 21 To hide these payments, phantom distributor names were entered into the Kyäni
 22 accounting system.

23 **E. The Defendants Engaged In Activities Which Affect Interstate**
 24 **Commerce**

25 204. Each of the Defendants named in this Count engaged in, and/or each
 26 others’ activities affect, interstate or foreign commerce. The pyramid scheme has
 27 operated in the United States, and originated domestic business contracts with people
 28 living in China, Sweden and other Countries.

1 **F. The Defendants Participated In The Conduct of the Enterprise's**
 2 **Affairs**

3 205. Each of the Defendants named in this Count conducted, or participated
 4 directly or indirectly, in the conduct of such enterprise's affairs as set forth above.

5 **G. The Defendants Engaged In A "Pattern of Racketeering Activity"**
 6 **Over An Extended Period of Time With A Threat of Repetition Into**
 7 **The Future**

8 206. RICO requires a "pattern of racketeering activity." A "pattern of
 9 racketeering activity" is one that is performed by at least two acts of racketeering
 10 activity, or violations of a "predicate" offense (an act "indictable under any of" certain
 11 provisions of" 18 U.S.C. § 1961(1)(D)). *See* 18 U.S.C. § 1961(5). A "pattern of
 12 racketeering activity" can be a past conduct that by its nature projects into the future
 13 with a threat of repetition. It can also be conduct over a closed period through a series
 14 of related predicates extending over a substantial period. Both of these apply here.

15 207. The Defendants' pattern of racketeering activity is well-established and
 16 has continued from 2011 to the present and intends to continue into the future. The
 17 Defendants have taken every imaginable step to sell the pyramid program to
 18 Distributors and potential Distributors. They each also expect to continue to receive
 19 income from the pyramid scheme. With each new person recruited, the Defendants
 20 increase the value of their control of the pyramid scheme. The Defendants have stated
 21 their intentions to continue to grow the pyramid throughout the United States, and
 22 have expanded. It is certain that their conduct is a continuing threat due to their
 23 racketeering activities.

24 **H. Defendants Have Used And Caused To Be Used Fraudulent Mail**
 25 **and Wire Communications In Interstate Commerce, 18 U.S.C. §**
 26 **1341 AND 18 U.S.C. § 1343**

27 208. Mail and wire fraud are enumerated predicate acts that can constitute
 28 RICO "racketeering activity" under Section 1961(1)(D).

1 209. Mail fraud occurs when an individual devises a plot to defraud and
2 subsequently uses the mail in furtherance of it. 18 U.S.C. § 1341.

3 210. The Defendants named in this Count have transmitted, caused to be
4 transmitted or invited others to transmit marketing material and income disclosure
5 materials, by mail or private or commercial carriers, such as UPS, for the purpose of
6 executing their scheme or artifice to defraud in violation of RICO. Likewise, they
7 have distributed promotional literature, statements, checks, and other mailings all
8 between 2011 and the present by mail. Without limitation, each statement sent
9 monthly to an Distributor is a mailing and an act of mail fraud, and each promotional
10 literature sent by U.S. Mail is a mailing and an act of mail fraud.

11 211. Wire fraud occurs when an individual devises a plot to defraud and
12 subsequently uses wire means in furtherance of it. 18 U.S.C. § 1343. The defendants
13 have used the Internet since 2011 to disseminate, publish and spread the pyramid
14 scheme throughout the United States and to China, Sweden, and other Countries for
15 the purpose of executing their scheme or artifice to defraud in violation of RICO.
16 Thus, the Defendants have transmitted, caused to be transmitted and invited others to
17 transmit, by means of wire in interstate commerce, writings, signs, signals, pictures,
18 or sounds for the purpose of executing their scheme or artifice to defraud in violation
19 of 18 U.S.C. §1343.

20 212. Without limitation, for example, each transmission of a video to be
21 posted on YouTube, Vimeo, Facebook, Wechat, Google, Pinterest, Instagram,
22 LinkedIn, or through Twitter, or establishment of a website to disseminate
23 information about the pyramid scheme or transmission of signals, pictures or
24 information to such website is a separate act of wire fraud.

25 213. Defendants committed at least two predicate acts of mail and/or wire
26 fraud relevant to this Count. These, along with factual allegations against other
27 Defendants, are described throughout this Complaint.

28

1 214. Each of the Defendants named in this Count acted with requisite intent
 2 to establish, perpetuate and/or carry out the pyramid scheme to defraud. Each
 3 Defendant named in this Count acted with either specific intent to defraud or with
 4 such recklessness with respect to the false or misleading information mailed or wired
 5 in furtherance of the pyramid scheme as to constitute requisite scienter to commit mail
 6 and wire fraud.

7 215. That scienter can be inferred from, among other things at least the
 8 following: (a) Various third parties, Countries, and Distributors of Kyäni have
 9 asserted publicly and in litigation, that Kyäni is a pyramid scheme during its short
 10 history, (b) many consumers have complained to the FTC that Kyäni constitutes an
 11 illegal pyramid scheme (c) the Country of Norway called the police on this “Chain
 12 letter game” (d) Defendant Breshears was directly involved in the financing and active
 13 management of the Kyäni company and individually knew and/or recklessly
 14 disregarded that that the operation of that entity was an illegal pyramid scheme; (e)
 15 Breshears is a veteran of the network marketing industry; (f) There is a network
 16 industry awareness that the FTC has closed down similar operations for being an
 17 illegal pyramid (for example BurnLounge, Vemma, Equinox and others) and (g) an
 18 awareness on the part of each of these Defendants that recruiting others into a
 19 particular sales scheme has been deemed by the FTC and courts to be an illegal
 20 pyramid scheme.

21 216. A number of the Individual Promoter Defendants are also in the separate
 22 business of assisting new recruits on how to themselves recruit others. Some of the
 23 individual Promotor Defendants use fake testimonials to market the products of
 24 Kyäni. These Defendants therefore have for years had an opportunity to understand
 25 that their participation in the Kyäni scheme is an illegal pyramid and/or recklessly
 26 disregarded the notion and consciously participated in an illegal pyramid scheme.

27 **I. The Defendants’ Promotion of the Pyramid Is A Per Se Scheme To**
 28 **Defraud Under The Mail And Wire Fraud Statutes**

1 217. The Defendants named in this Count have used a false and fraudulent
2 scheme, or a scheme to defraud within the meaning of federal law, to harm Plaintiff
3 and the Class. In all respects, these Defendants have conducted their affairs
4 unlawfully, intentionally, willfully and with intent to defraud, that is, knowingly and
5 with such specific intent to deceive as is in violation of the mail and wire fraud
6 statutes. They have done so in order to cause financial gain for themselves and for
7 others, all to the detriment of Plaintiff and the Class.

8 218. First, each Defendant named in this Count has promoted the pyramid
9 scheme that, by its very nature, is a per se scheme and artifice to defraud to obtain
10 money by false pretenses. As detailed in this complaint, all Defendants named in this
11 Count have promoted and successfully expanded the pyramid scheme to victimize the
12 named Plaintiff and the Class. Each of the enumerated acts of wire and mail fraud in
13 furtherance of the pyramid scheme is an act of racketeering.
14 Second, as part of the pyramid scheme, the Defendants named in this Count made
15 numerous false statements in furtherance of the scheme.

16 219. Examples of the falsity of these statements include: (a) creating and
17 disseminating the false impression that through the pyramid scheme, Distributors like
18 Plaintiff can receive a free car or obtain a sizable income; (b) creating and
19 disseminating the false impression that the Distributors program has enormous or
20 unlimited income potential and that the Distributors can make enormous money as a
21 result of participating as a promoter for the program; (c) creating and disseminating
22 the false impression that the Distributors' is an opportunity that one can make money
23 while partying.

24 220. Further, the Defendants created and disseminated the false impression
25 that the success stories featured by Kyäni are typical or, in some cases, even possible
26 when defendants knew that the persons portrayed were falsely portrayed, persons
27 portrayed were being paid (unreal) amounts of money for committing an illegal
28

1 activity and/or were assisted by the defendants in setting up a sufficiently large
2 “downline” that the income generated was in fact large.

3 221. Third, as part of the pyramid scheme the Defendants named in this Count
4 omitted material facts for the purpose of and with the intention of the fraudulent
5 pyramid scheme by obtaining money from the victims. Examples of these omissions
6 include: (a) failure to reveal that the multilevel marketing program and its Distributor
7 program are illegal pyramid schemes but instead propagate the statements and
8 impression that it is a legal enterprise; (b) failure to reveal that under compensation
9 plan that the majority of the Distributors have and likely will lose their money; (c)
10 failure to disclose that many of the top Distributors earners paraded by the company
11 (at company-sponsored spectacles and through other publicly disseminated events,
12 videos, documents, and other media) as examples of what Distributors can hope to
13 attain through following the Kyäni compensation plan were in fact already well
14 established salespeople for other network companies who were recruited to bring
15 large, preexisting “downlines” by the company and were placed in their positions,
16 aided in their attainment of their Kyäni ranks, and/or otherwise compensated beyond
17 what is paid to ordinary Distributors under the Compensation Plan; (d) failure to
18 reveal that the company knowingly spread unreal and misleading accounts and claims
19 of the success of its upper level executives, all in an effort to attract new Distributors,
20 but avoid disclosing a direct connection between the statements and Kyäni.

21 **J. Plaintiff and the Classes Have Proximately Suffered RICO Injury**
22 **To Business**

23 222. A “violation” of RICO is committed if “individuals and entities,” use the
24 mails or interstate wire facilities in the execution of “any scheme to defraud.” 18
25 U.S.C. §§ 1341, 1343, Sections 1961(1) (B), 1962. Sections 1964 (a), (c) and (d)
26 authorize persons “injured” in their “business or property,” “by reason of” RICO’s
27 “violation” to sue for appropriate redress, including equity relief, treble damages and
28 attorneys’ fees.

1 223. The Plaintiff (and the class sought to be certified) suffered a loss of
2 money composed of the cost they paid to become a distributor, together with the
3 website fees, administrative fees, and the cost of merchandise purchased as samples
4 and for purposes of operating the alleged “business opportunity,” and the amount they
5 recovered as commissions or other payments. Guo has lost over \$1,500. The losses
6 were proximately caused by the actions described in this Count, and may be presumed
7 from, among other things, the presumption that no one would knowingly join an
8 illegal pyramid scheme.

9 224. The precise amount lost by the class sought to be certified has not yet
10 been determined, but is believed to be significant. It is believed that each of the
11 unwitting participants in the pyramid scheme sought to be certified as a class has lost
12 from \$50 to well over \$20,000 as a result of purchasing their Distributor distribution
13 rights. Upon information and belief, the precise amounts that each and every
14 participant in the pyramid scheme has spent on (1) costs associated with the
15 Distributor “business opportunity” and (2) has received in commissions or bonuses or
16 other payments from Kyäni as a result has been tracked, maintained and accounted
17 for by Kyäni through a proprietary software database. Thus, the precise loss of every
18 class member is easily capable of being ascertained in this litigation, and the total
19 business injury capable of being computed for the class.

20 225. The predicate acts set forth in this Count each were mailings and/or wire
21 transmission of material in furtherance of the promotion of the pyramid scheme. Each
22 of these predicate acts was intended to falsely convey the impression to people like
23 Plaintiff that participation as a Kyäni Distributors was legal; that they had a reasonable
24 opportunity to make money; that people just like them were able to make generous
25 income; and that the commissions or bonuses they would receive would come from
26 the sale of desirable product. The loss suffered by the Plaintiff and the Class was
27 foreseeable and a direct result of the establishment, promotion, and expansion of the
28 pyramid scheme by the Defendants named in this Count. A pyramid scheme depends

1 on continued expansion by continual recruiting of innocent people who do not realize
2 that the only way in which they can achieve the benefits represented by the pyramid
3 scheme's promoters is to recruit and victimize other innocent people into joining. In
4 reality, like all pyramid schemes, the Compensation Plan and all aspects of the
5 promotion of the pyramid scheme were based on recruiting over product sales, and
6 depended on the known existence of money-losers (like the Plaintiff and the Class) to
7 pay the small group of "winners" inherent in any pyramid scheme. There is a clear
8 causal connection between the promotion and recruiting predicate acts alleged above
9 and the injury suffered by the Plaintiff and the Class.

10 226. The predicate acts attributed to Kyäni, Breshears, also include the
11 creation and dissemination of the Compensation Plan. Under the Kyäni Compensation
12 Plan, as set forth above, innocent participants could only make money by recruiting
13 others who in turn would recruit others. This was a necessary feature of the Plan,
14 understood as such by all of the Defendants named in this Count. It was the goal of
15 each of these Defendants that Plaintiff subscribe, by the payment of money to Kyäni,
16 to the Compensation Plan. The payment of bonuses and commissions to promoters
17 who were recruiters of participants in the pyramid scheme, like the Plaintiff and the
18 Class, was an intended part of the Kyäni Compensation Plan. Each of the named
19 Plaintiff were placed by Kyäni in a pyramid "downline" whose top slot was occupied
20 by Breshears. Each of the payments made by the Plaintiff to purchase Distributor
21 distribution rights and product, as well as payments they made for website usage,
22 resulted in payment of a bonus or commission payment that was made, directly or
23 indirectly, to Kyäni, Breshears, directly authorized and/or approved of the
24 dissemination of the Kyäni compensation plan that was made a part of the Distributor
25 distribution rights purchased by the Plaintiff. The dissemination of the Kyäni
26 compensation plan, together with predicate acts that purported to falsely emphasize
27 the features of the compensation plan (for example, without revealing that under the
28 plan there would be many more "losers" than "winners") was in furtherance of the

1 scheme. Plaintiff lost money by participating in the compensation plan. But for the
2 illegal nature of the bonus and commission payments set forth by the compensation
3 plan, Plaintiff and others would not have lost money. Plaintiff's losses thus, were a
4 direct and proximate cause of their intended participation in the compensation plan
5 authored and/or approved by each of these Defendants.

6 227. A pyramid scheme depends on recruitment of innocent people. The
7 predicate acts attributed to the promoter Defendants are primarily those that concern
8 the promotion of the scheme and luring innocent people to join the business
9 opportunity. The promoters had an incentive to spread the word. The payment of
10 bonuses and commissions to promoters who were recruiters of more participants was
11 part of the scheme. The dissemination of the Kyäni "business opportunity," by these
12 Defendants together with predicate acts that purported to spread the impression that
13 joining the Kyäni "business opportunity" or that resulted in the recruitment of
14 Plaintiff, directly or indirectly, proximately caused Plaintiff's and the class losses.

15 228. Breshears: (1) serving as the founder and principal creator of the pyramid
16 scheme, (2) creating and/or approving the creation of the Compensation Plan which
17 pays primarily for recruiting, (3) creating and disseminating countless promotional
18 materials, videos, and public appearances designed to further and expand the pyramid
19 scheme in the United States and abroad, (4) making contractual arrangements with
20 third persons to provide capital to expand the pyramid scheme and to lend the scheme
21 an air of legitimacy, (5) making deals with professional network marketers to pay
22 them hidden inducements and/or assign them "downlines" as an inducement to further
23 the expansion of the pyramid scheme, (6) acting as the "top" distributor and accepting
24 tens of millions of dollars as gains from the pyramid scheme.

25 229. The Defendants named in this Count used false and fraudulent means
26 and conducted their affairs unlawfully, intentionally, willfully and with the intent to
27 defraud, for their own financial gain and benefit and for the financial gain and benefit
28

1 of others, all to the detriment of Guo and others that purchased the Distributor
2 program.

3 230. Each of the Defendants named in this Count has violated Section 1962(c)
4 and is liable, jointly and severally, for the business injury caused to the Plaintiff and
5 the Class by his or her actions.

6 **COUNT VII**

7 **(RICO 18 U.S.C. § 1962(c) AND ARE IN VIOLATION OF 18 U.S.C. §§** 8 **1961(5), 1962(d))**

9 (Plaintiff on behalf of herself and the Class Against All Defendants including DOES
10 1 through 100)

11 231. Section 1962(d) makes it “unlawful for any person to conspire to violate
12 any of the provisions of subsection (a), (b), or (c) of this section.”

13 232. Plaintiff re-states the previous paragraphs as if fully set forth here.

14 233. Each of the Defendants named in this Count have participated in a
15 conspiracy to violate Count VI of the Complaint.

16 234. Each of the Defendants named in this Count has participated in the
17 pyramid scheme and their participation is necessarily a combination of more than two
18 individuals.

19 235. The roles of all of the Defendants named in this Count are set forth in
20 Count VI.

21 236. Defendants’ and nonparty entities’ creation, support or maintenance of
22 the pyramid scheme is illegal.

23 237. The Defendants named in this Count had a meeting of the minds on the
24 object or course of action, specifically to create, support and maintain the pyramid
25 scheme for their financial benefit as evidenced by each Defendant’s voluntary and
26 knowing participation in the pyramid scheme. These agreements and understandings
27 are described in Count VI.
28

238. Each of the Defendants named in this Count and others have committed one or more overt acts to achieve or further the unlawful objects and purposes of the pyramid scheme detailed herein. They include the following:

239. Breshears: (1) serving as the founder and principal creator of the pyramid scheme, (2) creating and/or approving the creation of the Compensation Plan which pays primarily for recruiting, (3) creating and disseminating countless promotional materials, videos, and public appearances designed to further and expand the pyramid scheme in the United States and abroad, (4) making contractual arrangements with third persons to provide capital to expand the pyramid scheme and to lend the scheme an air of legitimacy, (5) making deals with professional network marketers to pay them hidden inducements and/or assign them “downlines” as an inducement to further the expansion of the pyramid scheme, (6) acting as the “top” distributor and accepting tens of millions of dollars as gains from the pyramid scheme.

240. The Defendants named in this Count used false and fraudulent means and conducted their affairs unlawfully, intentionally, willfully and with the intent to defraud, for their own financial gain and benefit and for the financial gain and benefit of others, all to the detriment of Plaintiff Guo, and others that purchased the Distributors. These acts, intent and losses are set forth in Count VI.

241. Each of the Defendants named in this Count has violated Section 1962(c) and is liable, jointly and severally, for the business injury caused to the Plaintiff and the Class by his or her actions.

COUNT VIII

(Federal Securities Fraud)

(Plaintiffs on behalf of themselves and the Class Against All Defendants including DOES 1 through 100)

242. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous allegations by reference.

243. In the alternative to Counts Six and Seven, and without prejudice to their

1 position that Counts Six and Seven are not preempted by the PSLRA, Plaintiff in
2 Count Eight alleges violations of the securities laws.

3 244. Only to the extent Defendants contend that Plaintiff's purchases of
4 starter kits, payment of monthly and annual fees, and purchases of Kyäni products
5 constitute investments in unregistered securities (the sale of which would be a past
6 and continuing violation of federal securities laws), and only if Defendants are
7 successful in obtaining a dismissal for judgment against Plaintiff's RICO claims on
8 the grounds that the PSLRA preempts their RICO claims, Plaintiff contends that her
9 purchases of starter kits, payment of monthly fee, and purchases of Kyäni products
10 constitute investments in securities.

11 245. Kyäni made numerous material omissions in its Policies regarding retail
12 sales. Kyäni represented that retail sales were a significant part of Defendants'
13 revenues. Each renewal of the distributorship constitutes a separate investment
14 contract, in the alternative.

15 246. These statements are misleading because they fail to inform Distributors
16 that "retail sales," particularly as defined in the Policies, are not a true viable way of
17 earning income because Distributors are extremely unlikely to make significant "retail
18 sales" and because the only realistic way to make money in the Kyäni scheme is
19 through recruiting.

20 247. Kyäni made material omissions in its Policies regarding Distributors'
21 ability to earn money. In the Policies, Kyäni informed its Distributors that they do
22 not even need to be good at sales, and they can still earn money.

23 248. This statement is misleading because it fails to inform Distributors that
24 very few Distributors are likely to earn any profit from participating in Kyäni,
25 regardless of how much work they put in and regardless of what part of the country
26 they live in.

27 249. By making affirmative statements regarding retail sales and the ability
28 of Distributors to earn income, Kyäni undertook an affirmative obligation to make the

disclosures necessary to make such statements not misleading.

250. Kyäni made the then-current version of the Policies available to Plaintiffs and the Class Members through Kyäni's website at all times.

251. Kyäni made these omissions knowing that doing so was false and misleading. Kyäni benefitted in a concrete and substantial way from the operation of the pyramid scheme, the recruitment of new Distributors, and new Distributors' reliance on Kyäni's omissions.

252. Kyäni made these omissions with the specific intent that Distributors rely on them.

253. Plaintiffs' and the Class Members' reliance on the omissions may be presumed.

COUNT IX

Unjust Enrichment

(Plaintiff on behalf of herself and the Classes Against Defendant Breshears,
including DOES 1 through 100)

254. Plaintiff and the Classes repeat and re-allege every allegation above as if set forth herein in full.

255. Unjust enrichment occurs when a plaintiff confers a benefit to the defendant, the defendant accepts and retains the benefit, and defendant does not pay the Plaintiff the value of the benefit.

256. Breshears, who was named in this Count, has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the members of the class in that the financial benefits obtained by them came as a result of their promotion of the unlawful pyramid scheme. The financial benefit that Defendant Breshears came was obtained came from the Plaintiff and the members of the class, who unwittingly participated in the pyramid scheme and naturally and inevitably lost money in the process. The unjustly-obtained benefits are comprised of the following three categories of gains.

1 257. First, the individuals defendants named in this Count made contractual
2 agreements with each other and with other third-parties that depended on the success
3 of the pyramid scheme. Breshears took active steps to expand the scope of the
4 pyramid scheme, and increased the number of participants—and therefore the number
5 of inevitable losers in order to maximize the amounts each would get. These
6 Defendants were able to obtain payouts under the contracts on the backs of the
7 Plaintiff.

8 258. Second, Breshears, together with his controlled entities, and other parties
9 have each been enriched in significant amounts as a result of the performance of their
10 various illegal duties. Regardless of in what year, Breshears was the ultimate upline
11 from the Plaintiff and the class, and thus, as a matter of the compensation plan
12 implemented by Kyäni, obtained bonuses and commissions, which were necessarily
13 funded by a portion of the Plaintiff's (and the classes) purchase of distributorships,
14 and purchase of product. These payments were thus, directly funded by the Plaintiff
15 by virtue of the compensation system paying commissions and bonuses "upline" to
16 promoters at the top of the pyramid. The value of these benefits can be computed but
17 is presently unknown. But for the illegal Compensation Plan and the commission of
18 the illegal pyramid scheme, Breshears could not have obtained the funds that came to
19 them via the Compensation Plan.

20 259. Third, in addition to the unjust benefits, Breshears has obtained as a
21 result of being upline at the top of the Kyäni Pyramid, Breshears has also received a
22 compensation in an amount equaling in the millions based on their executive position
23 in the pyramid scheme. The monies that they received, in part to pay these salaries,
24 came from Plaintiff's (or the class) payments for the same reasons as set forth above.

25 260. The revenue that resulted in these payments came directly from the
26 payments made by Plaintiff and the class. It would be unjust to permit these
27 Defendants to retain these ill-gotten gains.
28

PRAYER FOR RELIEF

The named Plaintiff and the Plaintiff's class and subclasses request the following relief:

- a. Certification of the class and subclasses;
- b. A jury trial and judgment against Defendants;
- c. Rescission of the agreements, invoices, open accounts, receipts, and open book accounts, upon which the scheme is based, and recovery of all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme;
- d. Damages for the financial losses incurred by Plaintiff and by the class and subclasses because of the Kyäni and Breshears' conduct and for injury to their business and property;
- e. Restitution and disgorgement of monies;
- f. Temporary and permanent injunctive relief enjoining Kyäni from paying its Distributors recruiting rewards that are unrelated to retail sales to ultimate users and from further unfair, unlawful, fraudulent and/or deceptive acts;
- g. The cost of suit including reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, Civil Code §1689.2, pursuant to the statute's sued hereunder, and otherwise by law;
- h. Punitive damages;
- i. Treble damages pursuant to RICO;
- j. For damages in an amount yet to be ascertained as allowed by law; and
- k. For such other damages, relief and pre- and post-judgment interest as the Court may deem just and proper.

1 Respectfully submitted,

2 Dated: November 13, 2017

By: /s/ Blake J. Lindemann

3 **LINDEMANN LAW FIRM, APC**
4 **BLAKE J. LINDEMANN, SBN 255747**
5 433 N. Camden Drive, 4th Floor
6 Beverly Hills, CA 90210
7 Telephone: (310)-279-5269
8 Facsimile: (310)-300-0267
9 E-mail: blake@lawbl.com

10 Attorneys For Plaintiff
11 YAN GUO AND ALL THOSE SIMILARLY
12 SITUATED
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

