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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 JOHN HORANZY, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 VEMMA NUTRITION COMPANY and
18 YIBING WANG,

19 Defendants.

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 VEMMA NUTRITION COMPANY, et al.

24 Defendants.

Case No. CV-15-298-PHX-JJT

**PLAINTIFF'S REQUEST FOR AN
ORDER DIRECTING THE PARTIES
AND THE FEDERAL TRADE
COMMISSION TO APPEAR FOR A
SETTLEMENT CONFERENCE**

Honorable John J. Tuchi

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

Honorable John J. Tuchi

1 Plaintiff John Horanzy (“Plaintiff”) respectfully requests that the Court order
2 Defendants Vemma Nutrition Company and Yibing Wang (“Defendants”) and the Federal
3 Trade Commission (“FTC”) to appear at a settlement conference no later than June 3, 2016.

4 Plaintiff brings this case as a class action against Defendants for the false and
5 misleading marketing, advertising, and sale of their Vemma product line. A large basis of
6 Plaintiff’s allegations rests on the contention that Vemma’s marketing practices violate a
7 1999 FTC injunction that bars much of the advertising and labeling at issue in the operative
8 Complaint. First Amended Complaint, ¶¶ 69-77 (ECF No. 46). Specifically, Plaintiff
9 alleges that the FTC injunction bars Defendants from using misleading testimonials or
10 advertising suggesting that their products have the capacity to “treat, cure, alleviate the
11 symptoms of, prevent, or reduce the risk of developing any disease or disorder.” *Id.* ¶ 75.
12 Plaintiff alleges that Vemma’s aggressive marketing campaign did precisely that –
13 advertise the products using unsubstantiated disease claims. *See gen. id.* ¶¶ 78-120.

14 As the Court is aware, Defendant Vemma Nutrition Company is also a defendant in
15 another action before this Court, *Federal Trade Commission v. Vemma Nutrition Company,*
16 *et al.*, No. CV-15-01578-PHX-JJT, where the FTC alleges that Vemma was operating as an
17 illegal pyramid scheme and making misleading income claims. On December 18, 2015,
18 however, the corporate defendants in the FTC action filed a “Quarterly Report” in which
19 they disclosed that “the FTC opened a separate investigation into Vemma to review its
20 compliance with the 1999 Consent Order dated March 3, 1999, in *In re New Vision*
21 *International.*” Corporate Defendants’ Quarterly Report Dated December 18, 2015, No.
22 CV-15-01578-PHX-JJT, at 3-4, 12 (ECF No. 180). The 1999 Consent Order, as quoted
23 verbatim in Plaintiff’s Complaint, is a narrowly tailored order barring Vemma from using
24 misleading testimonials and disease claims. In other words, an FTC investigation
25 concerning potential violations of the 1999 Consent Order almost certainly overlaps with
26 the claims at issue in this case.

27 On December 7, 2015, the parties in the FTC action submitted a Joint Proposed Case
28 Management Plan in which the defendants “request that the parties be directed to appear for

1 ... a settlement conference no later than March 15, 2016.” Joint Proposed Case
2 Management Plan, No. CV-15-01578-PHX-JJT, at 16 (ECF No. 170). The FTC stated that
3 it “does not oppose an early settlement conference date.” *Id.* On December 14, 2015, the
4 Court ordered that the parties to the FTC action engage in good faith settlement discussion
5 no later than June 3, 2016. Rule 16 Scheduling Order, No. CV-15-01578-PHX-JJT, at 4
6 (ECF No. 177). Because a potential settlement of claims concerning the 1999 Consent
7 Order will necessarily impact Plaintiff’s claims (and class member claims) alleged in this
8 case, Plaintiff requests that the Court order that Plaintiff receive notice and an opportunity
9 to attend any settlement conference between the FTC and Vemma concerning the potential
10 settlement of claims related to the 1999 Consent Order.

11
12 Respectfully submitted this 6th day of January, 2016.

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14 **BURSOR & FISHER, P.A.**

15 By: s/ Yermey Krivoshey

16 L. Timothy Fisher (*pro hac vice*)
17 Yermey Krivoshey (*pro hac vice*)

18 *Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2016, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.



Debbie Schroeder

