

Kazerouni Law Group, APC

1 **KAZEROUNI LAW GROUP, APC**
 2 Abbas Kazerounian, Esq. (SBN: 249203)
 ak@kazlg.com
 3 Jason A. Ibey, Esq. (SBN: 284607)
 4 jason@kazlg.com
 245 Fischer Avenue, Suite D1
 5 Costa Mesa CA 92626
 6 Telephone: (800) 400-6808
 7 Facsimile: (800) 520-5523

8 **HYDE & SWIGART**
 9 Joshua B. Swigart, Esq. (SBN: 225557)
 josh@westcoastlitigation.com
 10 2221 Camino Del Rio South, Suite 101
 San Diego, CA 92108-3551
 11 Telephone: (619) 233-7770
 12 Facsimile: (619) 297-1022

13 *Attorneys for Plaintiff,*
 14 Gregory Montegna

15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **GREGORY MONTEGNA,**
 18 **Individually and On Behalf of All**
 19 **Others Similarly Situated,**

20 Plaintiff,

21 vs.

22 **VEMMA NUTRITION**
 23 **COMPANY,**

24 Defendant.

Case No.: '13CV2731 MMARBB

CLASS ACTION

COMPLAINT FOR:

1. **VIOLATIONS OF CALIFORNIA CIVIL CODE §§ 1747 et seq.;**
2. **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 et seq.; AND,**
3. **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17600 et seq.**

JURY TRIAL DEMANDED

28 **CLASS ACTION COMPLAINT**

INTRODUCTION

- 1
2 1. This is a California statewide class action complaint brought by
3 GREGORY MONTEGNA (“Mr. Montegna” or “Plaintiff”), individually
4 and on behalf of all others similarly situated, to challenge the actions of
5 VEMMA NUTRITION COMPANY (“Vemma” or “Defendant”) with
6 regard to Defendant’s fraudulent, deceitful and unfair business practices
7 regarding the sale of its consumable products to Plaintiff and others
8 similarly situated during the four years leading up to the filing of this
9 action.
- 10 2. Unless otherwise indicated, the use of any Defendant’s name in this
11 Complaint includes all agents, employees, officers, members, directors,
12 heirs, successors, assigns, principals, trustees, sureties, subrogees,
13 representatives and insurers of the named Defendant.

NATURE OF ACTION

- 15 3. Plaintiff is informed and believes, and thereupon alleges, that Vemma is a
16 company that is in this business of selling consumable liquids within the
17 class of beverages known in the beverage industry as “energy drinks,”
18 including Verve Energy Drink.
- 19 4. Vemma advertises and sells energy drinks and similar products called
20 “Verve” directly via its own website, including Verve Energy Drink, Bold
21 Energy, Partea, Zero Sugar and Energy Shot (“Verve Product”).
- 22 5. Vemma reportedly reached \$20 million in sales in the month of July 2013.
23 *See* [http://www.prnewswire.com/news-releases/vemma-doubles-sales-in-12-](http://www.prnewswire.com/news-releases/vemma-doubles-sales-in-12-months-218732251.html)
24 [months-218732251.html](http://www.prnewswire.com/news-releases/vemma-doubles-sales-in-12-months-218732251.html) (“Vemma Nutrition Company announced that sales
25 reached \$20 million per month in July, a first-ever record for the company.
26 After taking seven years to reach the \$10 million monthly sales mark in July
27 2012, Vemma has now doubled that to \$20 million a month just 12 months
28 later. In addition, Vemma monthly customer and Brand Partner enrollments

1 reached the 30,000 mark for the first time in July. This growth continues to
 2 be driven by the \$100 million Verve healthy energy drink brand, including
 3 the release of Verve Bold this past January, which sparked record-breaking
 4 sales and became the most successful product launch in the company's
 5 history, selling over four million cans in the first five months.”), accessed
 6 November 5, 2013.

- 7 6. As part of Vemma’s business practice, once a consumer purchases its Verve
 8 Product via Vemma’s online website, Vemma knowingly or negligently, and
 9 without prior disclosure, charges consumers for additional Verve Product
 10 that they did not purchase or agree to purchase.
- 11 7. The Federal Trade Commission has received numerous complaints about
 12 Vemma, which include complaints of unauthorized credit card charges,
 13 according to www.Truthinadvertising.com, published July 9, 2013. *See*
 14 [https://www.truthinadvertising.org/eight-things-you-should-know-about-](https://www.truthinadvertising.org/eight-things-you-should-know-about-veмма/)
 15 [veмма/](https://www.truthinadvertising.org/eight-things-you-should-know-about-veмма/), accessed November 5, 2013.
- 16 8. Defendant’s conduct as alleged herein violates several California State laws.
- 17 9. This action seeks, among other things, equitable and injunctive relief;
 18 restitution of all amounts illegally retained by Defendant; and disgorgement
 19 of all ill-gotten profits from Defendant’s wrongdoing alleged herein.

20 **JURISDICTION AND VENUE**

- 21 10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a),
 22 as the matter in controversy, exclusive of interest and costs, exceeds the sum
 23 or value of \$75,000 and is a class action in which the named Plaintiff is a
 24 citizen of a State different from Defendant.
- 25 11. This Court has personal jurisdiction over Defendant because Defendant
 26 does business in the State of California, is incorporated in the State of
 27 Arizona, has sufficient minimum contacts with California, and otherwise
 28

1 purposely avails itself of the markets in California through the promotion,
2 sale, and marketing of its products in this state, to render the exercise of
3 jurisdiction by this Court permissible under traditional notions of fair play
4 and substantial justice.

5 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), in that
6 Plaintiff resides within the judicial district and many of the acts and
7 transactions giving rise to this action occurred in this district because
8 Defendant:

- 9 (a) is authorized to conduct business in this district and has
10 intentionally availed itself of the laws and markets within this
11 district;
12 (b) does substantial business in this district;
13 (c) is subject to personal jurisdiction in this district;
14 (d) the harm to Plaintiff occurred within this district; and,
15 (e) the product at issue was shipped to Plaintiff.
16

17 **PARTIES**

18 13. Plaintiff is, and at all relevant times was, a natural person residing in the
19 State of California, County of San Diego.

20 14. Plaintiff is informed and believes, and thereon alleges, that Defendant is
21 incorporated under the laws of the State of Arizona with its principal place
22 of business in Arizona, and does business within the State of California and
23 within this judicial district.

24 **FACTUAL ALLEGATIONS**

25
26 15. On or about January 30, 2013, an individual authorized to conduct a credit
27 card transaction on Mr. Montegna's behalf, purchased, under the name of
28 Salvador Valdez, twelve cans of Verve Energy Drink directly from

1 Vemma's online website for \$50.04 (\$38.00 for the product, and \$12.04 in
2 shipping and taxes).

3 16. On March 1, 2013, Mr. Montegna was once again billed \$50.04 for
4 Vemma product. Neither Plaintiff nor Mr. Valdez placed this order, nor did
5 either individual authorize such charge on Plaintiff's credit card.

6 17. Shortly thereafter, Mr. Montegna emailed Defendant notifying Defendant
7 of the unauthorized additional charges. The email was sent to Defendant via
8 the Defendant's own email notification system built within the Defendant's
9 website. As of the date of the filing of this Complaint, Vemma has yet to
10 respond to Mr. Montegna's email regarding the unauthorized purchases.

11 18. Defendant, while ignoring Mr. Montegna's email, subsequently once again
12 billed Mr. Montegna \$50.04 on March 30, 2013, and April 30, 2013, for
13 Vemma product that Mr. Montegna did not purchase or agree to purchase.

14 19. Mr. Montegna has suffered monetary damages as a direct and proximate
15 result of Defendant's abusive and deceptive conduct.

16 20. Defendant seeks to capitalize on consumers' ignorance in charging
17 consumers for additional Verve Product that they did not agree to purchase,
18 including Verve Energy Drink purchased by Plaintiff via Defendant's
19 website.

20 **I. FIRST CAUSE OF ACTION FOR VIOLATION OF**
21 **CALIFORNIA CIVIL CODE §§ 1747.60 ET SEQ.**

22 21. Plaintiff repeats, re-alleges and incorporates herein by reference the above
23 allegations as if set forth fully herein.

24 22. California Civil Code § 1747.02(e) defines a "Retailer" as follows: "every
25 person other than a card issuer who furnished money, goods, services, or
26 anything else of value upon presentation of a credit card by a cardholder."

27 23. Pursuant to California Civil Code § 1747.02(e), Vemma is a Retailer of a
28 class of beverages called "energy drinks."

1 24. California Civil Code § 1747.60(a) requires Retailers to “correct any
2 billing error made by the retailer within 60 days from the date on which an
3 inquiry concerning a billing error was mailed.”

4 25. As of the date of the drafting of this Complaint, Vemma has willfully or
5 negligently ignored Mr. Montegna’s requests for the billing errors described
6 above to be corrected.

7 26. According to California Civil Code § 1747.60(b), “Any retailer who fails
8 to correct a billing error made by the retailer within the period proscribed
9 by subdivision (a) shall be liable to the cardholder in the amount by which
10 the outstanding balance of the cardholder’s account is greater than the
11 correct balance, and any interest, finance charges, service charges, or other
12 charges on the obligation giving rise to the billing error.

13 27. California Civil Code § 1747.60(c) also allows “Any cardholder who is
14 injured by a willful violation of this section may bring an action for the
15 recovery of damages. Judgment may be entered for three times the amount
16 at which actual damages are assessed. The cardholder shall be entitled to
17 recover reasonable attorney's fees and costs incurred in the action.”

18 28. 28 U.S.C. § 1961 permits a plaintiff to recover postjudgment interest, as
19 “Interest shall be allowed on any money judgment in a civil case recovered
20 in a district court... Such interest shall be calculated from the date of the
21 entry of judgment, at a rate equal to the weekly average 1-year constant
22 maturity Treasury yield, as published by the Board of Governors of the
23 Federal Reserve System...”

24 29. As a proximate result of Defendant’s willful violations of California Civil
25 Code § 1747, Plaintiff is entitled to actual and statutory damages at three
26 times the amount at which such damages are assessed, statutory post-
27 judgment interest, attorney’s fees and costs, and such other relief as the
28 Court determines is reasonable and appropriate.

**II. SECOND CAUSE OF ACTION FOR VIOLATION OF
CAL. BUS. & PROF. CODE §§ 17600 ET SEQ.**

30. Plaintiff repeats, re-alleges and incorporates herein by reference the above allegations as if set forth fully herein.

31. California Business and Professions Code §§ 17600 *et seq.* prohibits automatic renewal of consumer credit or debit cards without the consumer’s explicit consent for ongoing shipments of a product or ongoing deliveries of services.

32. “Automatic renewal” means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

33. California Business and Professions Code §§ 17600 *et seq.* requires companies to clearly and conspicuously disclose the terms of the automatic renewal offer in visual proximity to the request for consent to the offer. Such terms should include information that the subscription will continue until the consumer cancels, a description of the cancelation policy, information about the recurring charges, the length of the renewal term, and the minimum purchase obligation, if any.

34. California Business and Professions Code §§ 17600, *et seq.* also requires a company to obtain a consumer’s affirmative consent to the terms of the automatic renewal service and must provide a cost-effective, timely and easy to use method for canceling the automatic renewal service.

35. Defendant has engaged in deceptive practices that are in direct violation of California Business and Professions Code §§ 17600, *et seq.* by willfully or negligently failing to not only obtain Plaintiff’s consent to the automatic renewal subscription services, but 1) failing to notify Plaintiff that by way of ordering Verve Energy Drink that Plaintiff was thereby subscribing to Vemma’s automatic renewal services; 2) failing to provide an easy way for

1 customers to opt out of the subscription, and 3) willfully or negligently
2 ignoring Plaintiff's request for the subscription to cease.

3 36. Defendant has willfully or negligently ignored Mr. Montegna's request for
4 the automatic renewal of Verve Energy Drink to discontinue being shipped
5 to Mr. Montegna and charged to Mr. Montegna's credit card.

6 37. Defendant has willfully or negligently shipped and charged Mr. Montegna
7 for at least two additional cases of Verve Energy Drink that Mr. Montegna
8 did not consent to purchasing. Pursuant to California Business and
9 Professions Code § 17603, said products are therefore deemed an
10 "unconditional gift."

11 38. Such conduct by Defendant was part of its business policy and/or practice
12 to rapidly increase its profits, and therefore, Defendant was not acting in
13 good faith.

14 39. As a proximate result of Defendant's willful violations of California
15 Business and Professions Code §§ 17600, *et seq.*, including § 17535, which
16 applies to § 17600, Plaintiff is entitled to all relief permitted under
17 California Business and Professions Code, including but not limited to
18 "...such orders or judgments...which may be necessary to restore any
19 person in interest any money or property, real or personal, which may have
20 been acquired by means of any practice in this chapter declared to be
21 unlawful."

22 **III. THIRD CAUSE OF ACTION FOR VIOLATION OF**
23 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**
24 **(California's Unfair Competition Law)**

25 40. Plaintiff repeats, re-alleges and incorporates herein by reference the above
26 allegations as if fully stated herein.

27 41. "Unfair competition" is defined in Business and Professions Code Section
28 § 17200 as encompassing any one of the five types of business "wrongs,"

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1 three of which are at issue here: (1) an “unlawful” business act or practice;
2 (2) an “unfair” business act or practice; and (3) a “fraudulent” business act
3 or practice. The definitions in § 17200 are disjunctive, meaning that each of
4 these five “wrongs,” of which Plaintiff alleges three of them, operates
5 independently from the others.

6 42. Plaintiff and Defendant are both “person[s]” as defined by California
7 Business & Professions Code § 17201. Section 17204 authorizes a private
8 right of action on both an individual and representative basis.

9 **a. “Unlawful” Prong**

10 43. Because Defendant has violated California Civil Code § 1747.60 and
11 California Business & Professions Code § 17600, as described below,
12 Defendant has violated California’s Unfair Competition Law, Business &
13 Professions Code §§ 17200 *et seq.*, which provides a cause of action for an
14 “unlawful” business act or practice perpetrated on members of the
15 California public.

16 44. There were reasonably available alternatives to further Defendant’s
17 legitimate business interest, other than the conduct described herein, such as
18 expressly and clearly indicating in its advertising and on its website that it
19 intended to and would charge consumers for additional product after the
20 consumers one-time purchase of Verve Product from Defendant’s website
21 prior to making such charges, or alternatively, by not charging consumers
22 for additional Verve Product that the consumers did not purchase or agree
23 to purchase.

24 45. Plaintiff and the putative class reserve the right to allege other violations of
25 law, which constitute other unlawful business practices or acts, as such
26 conduct is ongoing and continues to this date.

27 ///

28 ///

b. “Unfair” Prong

1
2 46. Defendant’s actions and representations constitute an “unfair” business act
3 or practice under § 17200, in that Defendant’s conduct is substantially
4 injurious to consumers, offends public policy, and is immoral, unethical,
5 oppressive, and unscrupulous as the gravity of the conduct outweighs any
6 alleged benefits attributable to such conduct. Without limitation, it is an
7 unfair business act or practice for Defendant to knowingly or negligently
8 charge consumers for product that they did not purchase or agree to
9 purchase.

10 47. Such conduct by Defendant is “unfair” because it offends established
11 public policy and/or is immoral, unethical, oppressive, unscrupulous and/or
12 substantially injurious to consumers in that consumers are charged for
13 product they did not purchase or agree to purchase for Defendant’s
14 economic gain, at the expense of Plaintiff and the consuming public at
15 large.

16 48. At a date presently unknown to Plaintiff, but at least four years prior to the
17 filing of this action, and as set forth above, Defendant has committed acts of
18 unfair competition as defined by Business & Professions Code §§ 17200 et
19 seq., by charging consumers without prior disclosure or warning for
20 additional product that the consumers did not purchase or agree to purchase,
21 as described herein.

22 49. Plaintiff and other members of the class could not reasonably have avoided
23 the injury suffered by each of them. Plaintiff reserves the right to allege
24 further conduct that constitutes other unfair business acts or practices. Such
25 conduct is ongoing and continues to this date.

26 50. Defendant could have and should have furthered its legitimate business
27 interests by expressly and clearly indicating in its advertising and on its
28 website that it intended to and would charge consumers for additional

1 Verve Product after the consumers one-time purchase of verve from
2 Defendant’s website prior to making such charges, or alternatively, by not
3 charging consumers for additional Verve Product the consumers did not
4 purchase or agree to purchase.

5 **c. “Fraudulent” Prong**

6 51. Defendant’s representations and omissions were false, misleading and/or
7 likely to deceive the consuming public within the meaning of § 17200.
8 Without limitation, it is a fraudulent act or business act or practice for
9 Defendant to knowingly charge consumers for additional product that the
10 consumers did not purchase or agree to purchase, without prior disclosure
11 or warning of any kind that the consumers would be opted into Defendant’s
12 automatic renewal program by making a one-time purchase via Defendant’s
13 website for Verve Product.

14 52. Defendant’s calculated decision to enroll consumers in its automatic
15 renewal program without their knowledge or consent was for Defendant’s
16 economic gain at the expense of Plaintiff and the consuming public at large,
17 and is the means by which Defendant is able to boast of sales as high as \$20
18 million dollars in the month of July 2013.

19 53. Defendant counted on its individual customers’ failure to review monthly
20 credit card billing statements for repeat orders of Verve Product that the
21 individual consumers did not purchase or agree to purchase.

22 54. Even after Plaintiff had informed Defendant in writing that that certain
23 repeat charges for Verve Energy Drink on Plaintiff’s credit card were not
24 authorized, Defendant chose not to respond to Plaintiff or correct
25 Defendant’s misconduct.

26 55. Plaintiff reserves the right to allege further conduct that constitutes other
27 fraudulent business acts or practices. Such conduct is ongoing and
28 continues to this date.

1 56. The fraudulent, unlawful and unfair business practices of Defendant, as
2 described above, presents a continuing threat to consumers in that they will
3 continue to be charged for additional product that the consumers did not
4 purchase or agree to purchase.

5 57. As a direct and proximate result of the aforementioned acts and
6 representations of Defendant, Defendant received and continues to hold
7 monies rightfully belonging to Plaintiff and other similarly situated
8 consumers who were charged for additional product that the consumers did
9 not purchase or agree to purchase from Defendant.

10 58. Thus, Defendant caused Plaintiff and other members of the Class to be
11 charged for Verve Product the consumers did not purchase or agree to
12 purchase during the Class Period.

13 59. Defendant has engaged in unlawful, unfair and fraudulent business acts or
14 practices, entitling Plaintiff to judgment and equitable relief against
15 Defendant, as set forth in the Prayer for Relief. Pursuant to Business &
16 Professions Code § 17203, as a result of each and every violation of the
17 UCL, which are continuing, Plaintiff is entitled to restitution and injunctive
18 relief against Defendant, as set forth in the Prayer for Relief.

19 60. Similarly, Cal. Bus. & Prof. Code § 17535 “authorizes injunctive relief and
20 restitution for violations of the false advertising provision,”¹ specifically §
21 17200.

22 61. Plaintiff and members of the putative class have suffered injury in fact and
23 have lost money or property as a result of Defendant’s unfair competition,
24 as more fully set forth herein. Plaintiff and members of the putative class
25 have been injured because they were charged, by Defendant, for additional
26 Verve Product the consumers did not purchase or agree to purchase.

27 62. Defendant, through its acts of unfair competition, has unfairly acquired

28 ¹ *Freedman v. Time, Inc.*, 68 F.3d 285, 288-89 (9th Cir. 1995).

1 money from Plaintiff and members of the putative class. It is impossible for
2 the Plaintiff to determine the exact amount of money that Defendant has
3 obtained without a detailed review of the Defendant's books and records.
4 Plaintiff requests that this Court restore this money to compensate Plaintiff
5 and the putative class members and deter Defendant from continuing to
6 violate California Business & Professions Code § 17200 *et seq.*, as
7 discussed above.

8 63. Unless Defendant is enjoined from continuing to engage in the unlawful,
9 unfair, fraudulent, untrue, and deceptive business acts and practices as
10 described herein, consumers residing within California, will continue to be
11 exposed to and damaged by Defendant's unfair competition.

12 64. Plaintiff also seeks an order requiring Defendant to undertake a public
13 information campaign to inform members of the putative class of its prior
14 acts or practices in violation of the law as alleged herein.

15 65. Plaintiff further seeks an order requiring Defendant to make full restitution
16 of all moneys wrongfully obtained and disgorge all ill-gotten revenues
17 and/or profits, together with interest thereupon.

18 66. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*,
19 California Civil Code § 1021.5.

20 **CLASS ACTION ALLEGATIONS**

21 67. Plaintiff repeats, re-alleges and incorporates herein by reference the above
22 allegations as if set forth fully herein.

23 68. Plaintiff and the members of the Class have all suffered injury in fact as a
24 result of the Defendant's unlawful and misleading conduct.

25 69. The "Class Period" means four years prior to filing of the Complaint in this
26 action.

27 70. The term "Builder Pack" refers to large quantity packs containing Verve
28 Energy Drink (48 cans), Bold Energy (48 cans), Partea (24 cans), Zero

1 Sugar (24 cans) and Energy Shot (24 bottles), as well as a single Vemma
2 Success Kit, which packs are intended for retail sales and subject to
3 Defendant’s disclosed “Auto-delivery” program.

4 71. Plaintiff brings this lawsuit on behalf of himself and other California
5 consumers similarly situated under Rule 23(b)(2) and (b)(3) of the Federal
6 Rules of Civil Procedure for violation of California Civil Code § 1747.60 *et*
7 *seq.* and California Business & Professions Code § 17200 *et seq.* Subject to
8 additional information obtained through further investigation and/or
9 discovery, the proposed “Class” consists of:

10 All persons in California who purchased Verve Product
11 from Defendant’s online website, other than a Builder
12 Pack, who were subsequently charged for additional
13 Verve Product without placing a subsequent order and/or
14 consenting to subsequent charge/s, within four years
15 prior to the filing of the Complaint in this action.

16 72. Excluded from the Class are Defendant and any of its officers, directors,
17 and employees, or anyone who purchased Verve Product for the purposes
18 of resale, such as the Builder Pack. Plaintiff reserves the right to modify or
19 amend the Class definition before the Court determines whether
20 certification is appropriate.

21 73. Plaintiff and the members of the Subclass have all suffered injury in fact as
22 a result of the Defendant’s unlawful and misleading conduct.

23 74. Plaintiff also brings this lawsuit on behalf of himself and the other
24 California consumers similarly situated under Rule 23(b)(2) and (b)(3) of
25 the Federal Rules of Civil Procedure for violation of California Business &
26 Professions Code § 17600 *et seq.* and § 17200 *et seq.* Subject to additional
27 information obtained through further investigation and/or discovery, the
28 proposed “Subclass” consists of:

All persons in California who purchased Verve Product

1 from Defendant's online website, other than a Builder
2 Pack, who were subsequently charged for additional
3 Verve Product without placing a subsequent order and/or
4 consenting to subsequent charge/s, and who requested in
5 writing that Defendant refund such charges and/or correct
6 such billing error, which charges were not refunded
7 within sixty days of the mailing and/or electronic
8 submission of the written request, within four years prior
9 to the filing of the Complaint in this action.

10 75. Excluded from the Subclass are Defendant and any of its officers,
11 directors, and employees, or anyone who purchased Verve Product for the
12 purposes of resale, such as the Builder Pack. Plaintiff reserves the right to
13 modify or amend the Subclass definition before the Court determines
14 whether certification is appropriate.

15 76. **Ascertainability.** The members of the Class are readily ascertainable by
16 resort to Defendant's records and/or Defendant's agent's records regarding
17 retail and online sales, as well as through public notice.

18 77. **Numerosity.** The members of the Class and Subclass are so numerous that
19 their individual joinder is impracticable. Plaintiff is informed and believes,
20 and on that basis alleges, that the proposed class contains tens of thousands
21 of members.

22 78. **Existence and Predominance of Common Questions of Law and Fact.**
23 Common questions of law and fact exist as to all members of the Class and
24 Subclass predominate over any questions affecting only individual Class
25 and Subclass members. All members of the Class and Subclass have been
26 subject to the same conduct and their claims are based on the standardized
27 practice of charging consumers for additional product they did not purchase
28 or agree to purchase. The common legal and factual questions include, but
are not limited to, the following:

(a) Whether Defendant disclosed that it intended to or would

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charge consumers for additional Verve Product after the consumers purchased Verve Product via Defendant’s online website;

(b) Whether Defendant charged consumers for Verve Product they did not purchase or agree to purchase after the consumers made a one-time purchase of Verve Product via Defendant’s online website, other than a Builder Pack;

(c) Whether Defendant charged consumers for Verve Product that they did not purchase or agree to purchase after the consumers made a one-time purchase of Verve Product via Defendant’s online website, other than a Builder Pack, and then failed to refund such charges after consumers made a written request to refund such charges or correct such billing error, within sixty days of the mailing or electronic submission of such writing;

(d) Whether Defendant’s conduct is an unlawful act or practice within the meaning of California Business & Professions Code § 17200;

(e) Whether Defendant’s conduct is a deceptive act or practice within the meaning of California Business & Professions Code § 17200;

(f) Whether Defendant’s conduct is an unfair act or practice within the meaning of California Business & Professions Code § 17200;

(g) Whether Defendant’s conduct violated California Civil Code 1747.60;

(h) Whether Defendant’s conduct violated Business & Professions Code § 17600;

(i) Whether Defendant, through its conduct, received money that,

1 in equity and good conscience, belongs to Plaintiff and
 2 members of the Class and Subclass;

3 (j) Whether Plaintiff and proposed members of the Class and
 4 Subclass are entitled to actual and compensatory damages at
 5 three times the amount at which actual damages are assessed.

6 (k) Whether Plaintiff and proposed members of the Class and
 7 Subclass are entitled to equitable relief, including but not
 8 limited to restitution and/or disgorgement; and

9 (l) Whether Plaintiff and proposed members of the Class and
 10 Subclass are entitled to injunctive relief sought herein.

11 (m) Whether Plaintiff and proposed members of the Class and
 12 Subclass are entitled to punitive damages as a result of
 13 Defendant's unlawful acts and/or conduct.

14 (n) Whether Plaintiff and proposed members of the Class and
 15 Subclass are entitled to attorneys' fees and costs incurred in the
 16 action.

17 (o) Whether Plaintiff and proposed members of the Class and
 18 Subclass are entitled to post-judgment interest.

19 **79. *Typicality.*** Plaintiff's claims are typical of the claims of the members of
 20 the Class and Subclass in that Plaintiff is a member of the Class and
 21 Subclass Plaintiff seeks to represent. Plaintiff, like members of the
 22 proposed Class, purchased Verve Product via Defendant's online website
 23 and was subsequently charged for Verve Product that he did not purchase or
 24 agree to purchase. Also, Plaintiff, like members of the proposed Subclass,
 25 purchased Verve Product via Defendant's online website and was
 26 subsequently charged for Verve Product that he did not purchase or agree to
 27 purchase, and was not refunded those charges after requesting in writing a
 28 refund or correction of the billing error within sixty days of the mailing or

1 submission of the writing. Thus, Plaintiff is advancing the same claims and
2 legal theories on behalf of himself and all absent members of the Class and
3 Subclass. Defendant has no defenses unique to the Plaintiff.

4 80. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect
5 the interests of the members of the Class and Subclass. Plaintiff has retained
6 counsel experienced in consumer protection law, including consumer class
7 action lawsuits. Plaintiff has no adverse or antagonistic interest to those in
8 the Class and Subclass, and will fairly and adequately protect the interests
9 of the Class and Subclass. Plaintiff's attorneys are aware of no interests
10 adverse or antagonistic to those of the Plaintiff and proposed Class and
11 Subclass.

12 81. ***Superiority.*** A class-action is superior to all other available means for the
13 fair and efficient adjudication of this controversy. Individualized litigation
14 would create the danger of inconsistent or contradictory judgments arising
15 from the same set of facts. Individualized litigation would also increase the
16 delay and expense to all parties and court system and the issues raised by
17 this action. The damages or other financial detriment suffered by individual
18 Class and Subclass members may be relatively small compared to the
19 burden and expense that would be entailed by individual litigation of the
20 claims against the Defendant. The injury suffered by each individual
21 member of the proposed class is relatively small in comparison to the
22 burden and expense of individual prosecution of the complex and extensive
23 litigation necessitated by Defendant's conduct. It would be virtually
24 impossible for members of the proposed Class to individually redress
25 effectively the wrongs to them. Even if the members of the proposed Class
26 and Subclass could afford such litigation, the court system could not.
27 Individualized litigation increases the delay and expense to all parties, and
28 to the court system, presented by the complex legal and factual issues of the

1 case. By contrast, the class action device presents far fewer management
 2 difficulties, and provides the benefits of single adjudication, economy of
 3 scale, and comprehensive supervision by a single court. Therefore, a class
 4 action is maintainable pursuant to Fed. R. Civ. P. 23(b)(3).

5 82. Unless a Class and Subclass is certified, Defendant will retain monies
 6 received as a result of Defendant's unlawful and deceptive conduct alleged
 7 herein. Unless a class-wide injunction is issued, Defendant will also likely
 8 continue to charge consumers for Verve Product that the consumers did not
 9 purchase or agree to purchase, and members of the Class and Subclass will
 10 continue to be misled, harmed, and denied their rights under California law.

11 83. Further, Defendant has acted or refused to act on grounds that are generally
 12 applicable to the class so that declaratory and injunctive relief is appropriate
 13 to the Class and Subclass as a whole, making class certification appropriate
 14 pursuant to Fed. R. Civ. P. 23(b)(2).

15 PRAYER FOR RELIEF

16 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and
 17 Plaintiff, the Class and Subclass members be awarded damages from Defendant as
 18 follows:

- 19 a. Certifying the Class and Subclass as requested herein;
- 20 b. A temporary, preliminary and/or permanent order for injunctive relief
 21 requiring Defendant to: (i) discontinue its practice of charging
 22 consumers for Verve Product that they did not purchase or agree to
 23 purchase; and (ii) undertake an immediate public information campaign
 24 to inform members of the proposed class as to their prior practices;
- 25 c. An order requiring imposition of a constructive trust and and/or
 26 disgorgement of Defendant's ill-gotten gains and to pay restitution to
 27 Plaintiff and all members of the Class and Subclass and to restore to the
 28 plaintiff and members of the class all funds acquired by means of any act

Kazerouni Law Group, APC

1 or practice declared by this court to be an unlawful, fraudulent or unfair
2 business act or practice, in violation of laws, statutes or regulations, or
3 constituting unfair competition;

4 d. Distribution of any monies recovered on behalf of members of the Class
5 and Subclass via fluid recovery or *cy pres* recovery were necessary and as
6 applicable, to prevent Defendant from retaining the benefits of their
7 wrongful conduct;

8 e. Statutory post-judgment interest pursuant to 28 U.S.C. § 1961;

9 f. Special, general, and compensatory damages to Plaintiff and the Class
10 and Subclass;

11 g. Exemplary and/or punitive damages for fraudulent conduct pursuant to,
12 *inter alia*, Cal. Civ. Code § 3294;

13 h. Treble damages for willful violation of California Civil Code § 1747.60;

14 i. Costs of this suit;

15 j. Reasonable attorneys’ fees pursuant to, *inter alia*, California Code of
16 Civil Procedure § 1021.5, and § 1747.60; and

17 k. Awarding any and all other relief that this Court deems necessary or
18 appropriate.

19 Dated: November 13, 2013

KAZEROUNI LAW GROUP, APC

20 BY: /s/ ABBAS KAZEROUNIAN

21 ABBAS KAZEROUNIAN, ESQ.

22 ATTORNEYS FOR PLAINTIF

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TRIAL BY JURY

84. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: November 13, 2013

KAZEROUNI LAW GROUP, APC

BY: /s/ ABBAS KAZEROUNIAN

ABBAS KAZEROUNIAN, ESQ.

ATTORNEYS FOR PLAINTIFF

Kazerouni Law Group, APC

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gregory Montegna, Individually and On Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kazerouni Law Group, APC; 245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626 (800) 400-6808

DEFENDANTS

Vemma Nutrition Company

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '13CV2731 MMARBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 (a)

Brief description of cause:
Unfair Business Practices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
5,000,001.00+

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/14/2013

SIGNATURE OF ATTORNEY OF RECORD

s/Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFF _____

JUDGE _____

MAG. JUDGE _____