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WILLIAM E. KOVACIC
General Counsel

1 secure a permanent injunction, preliminary relief, and other
2 equitable relief against Defendants for deceptive acts or
3 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
4 § 45(a). This Court has subject matter jurisdiction over this matter.
5 This Court has subject matter jurisdiction over this matter.
(17)T17

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1 Tahoe Blvd., Suite #103, Incline Village, Nevada. TEC has
2 conducted business since at least December 22, 1998. TEC supports
3 and promotes the activities of Trek as alleged herein by holding
4 seminars and producing company education materials that are
5 distributed in the Central District of California and throughout
6 the country.

7 7. Defendant VonFlagg Corporation ("VonFlagg") is a Nevada
8 corporation with its principal place of business at 608 Doeskin
9 Court, Incline Village, Nevada. VonFlagg is a holding company
10 for, and therefore controls, both Trek and TEC, and has conducted
11 business since January 2000. Through Trek and TEC, VonFlagg has
12 transacted business in the Central District of California and
13 throughout the country.

14 8. Defendant Jeffrey Kale Flagg, also known as Kale Flagg,
15 is an individual who resides in Reno, Nevada. Kale Flagg is one
16 of Trek's founders and is also the president of Trek and a
17 director of Trek. Kale Flagg is also the president of both TEC
18 and VonFlagg, as well as a co-owner of VonFlagg. At all times
19 material to this Complaint, Kale Flagg has, individually or in
20 concert with others, directed, controlled or participated in the
21 acts and practices of Trek, TEC, and VonFlagg as set forth below.

22 9. Defendant Richard Von Alvensleben, also known as Rich
23 Von, is an individual who resides in Morgan Hill, California.
24 Rich Von is one of Trek's founders and is also the executive vice
25 president and a director of Trek. Rich Von is also the corporate
26 treasurer of TEC, and a shareholder and treasurer of VonFlagg. At
27 all times material to this Complaint, Rich Von has, individually
28 or in concert with others, directed, controlled or participated in

1 the acts and practices of Trek, TEC, and VonFlagg as set forth
2 below.

3 10. Defendant Tiffani Von Alvensleben, also known as Tiffani
4 Von, is an individual who resides in Morgan Hill, California.
5 Tiffani Von is the wife of Defendant Rich Von. She is one of the
6 founders of Trek and is also the corporate secretary and a
7 director of Trek. She is also the corporate secretary of
8 VonFlagg. At all times material to this Complaint, Tiffani Von
9 has, individually or in concert with others, directed, controlled
10 or participated in the acts and practices of Trek, TEC, and
11 VonFlagg as set forth below.

12 11. Defendant Harry M. Flagg is an individual who resides in
13 Incline Village, Nevada. Harry Flagg is the father of Defendant
14 Kale Flagg. Harry Flagg served as president, CEO and chairman of
15 Trek until December 2001, at which time he became "Chairman
16 Emeritus." He is currently a director of Trek, as well as a
17 shareholder and the sole director of VonFlagg. At all times
18 material to this Complaint, Harry Flagg has, individually or in
19 concert with others, directed, controlled or participated in the
20 acts and practices of Trek, TEC, and VonFlagg as set forth below.

21 12. All Defendants transact or have transacted business in
22 the Central District of California.

23 **COMMERCE**

24 13. At all times material to this Complaint, Defendants'
25 course of business, including the acts and practices alleged
26 herein, are and have been in or affecting commerce, as "commerce"
27 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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1 DEFENDANTS' BUSINESS PRACTICES

2 14. Since approximately 1997, Defendants have done business
3 as a "multi-level" marketing company.

4 15. Defendants offer and sell products to a network of sales
5 representatives located throughout the United States, including in
6 the Central District of California, who are authorized to re-sell
7 the products and recruit other people to become sales
8 representatives. These sales representatives, which Trek
9 sometimes refers to as "Independent Business Owners," are
10 independent contractors rather than employees of Trek.

11 16. The principal products that Defendants sell are water
12 filters, cleaning products, nutritional supplements and beauty
13 aids.

14 **Compensation and The Trek Pay Plan**

15 17. The monetary benefits that Defendants' program offers to
16 participants include commissions, or "bonuses," that are based on
17 or derived from the recruitment of other participants, as well as
18 any profits that are realized on the sale of Trek's products.

19 18. Bonuses in Defendants' program are paid pursuant to a
20 twenty-two level "Pay Plan" that Trek publishes on its website. A
21 copy of a recently posted version of Trek's Pay Plan, which is
22 similar to previous versions, is attached hereto as Exhibit 1. As
23 reflected in Exhibit 1, Trek represents that its compensation plan
24 is "one of the most lucrative compensation plans in the industry!"

25 19. Trek's Pay Plan describes various bonuses that are
26 available to Trek's sales representatives. In general, each
27 successively higher position or rank within the pay plan appears
28 to offer the possibility of higher bonuses and greater

1 compensation. Some bonuses are available only to representatives
2 who have reached a minimum rank within the twenty-two level Pay
3 Plan, thus encouraging representatives to meet the conditions for
4 advancement to these higher positions.

5 20. Advancement or "promotion" to any particular rank within
6 Trek's Pay Plan is primarily a function of the dollar volume of
7 product that the representative and other representatives in his
8 "downline" have purchased from Trek. A representative's downline
9 consists of members whom the representative has personally
10 sponsored, as well as all members whom they have recruited, and so
11 on.

12 21. In calculating dollar volume, for purposes of
13 determining whether a representative is eligible to be promoted or
14 to receive a bonus, dollar value is measured in either
15 "Commissionable Points" ("CP") or "Wholesale Volume" ("w/s").
16 Each product is assigned a number of Commissionable Points that is
17 roughly equivalent to the product's suggested retail price; the
18 wholesale volume of a purchase is equal to 60% of the product's
19 Commissionable Points. Dollar volume is always based on the
20 amount of product that representatives order from Trek, rather
21 than the actual amount of product sold to ultimate users.

22 22. For example, according to Trek's Pay Plan, a
23 representative and his downline must purchase product worth a
24 total of at least \$2,000 CP from Trek before the representative is
25 eligible to reach the second level of the plan (Field
26 Representative), and \$4,000 CP worth of product within one month
27 to reach the third level (Supervisor). To reach the fourth level
28 (Bronze Consultant), not only must the representative and his

1 downline purchase \$5,000 w/s (i.e., \$8,333 CP) in one month, but
2 the representative must also have personally sponsored at least
3 two different people who have each met certain group purchase
4 quotas.

5 23. Most bonuses in Trek's Pay Plan are calculated as a
6 percentage of the dollar volume of product that a sales
7 representative and his downline have purchased from Trek.
8 Representatives receive additional bonuses for the initial product
9 purchases made by new recruits in their downlines. Trek's bonus
10 structure provides representatives with strong incentives to
11 purchase more and more product from Trek, to recruit new members
12 into the Trek program, and to encourage those new members to
13 recruit other new members and to purchase substantial amounts of
14 product.

15 24. Sales representatives are not guaranteed to receive a
16 bonus each month, and, indeed, most do not. A Trek sales
17 representative will receive a bonus in any given month only if he
18 qualifies for the bonus.

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1 majority of Trek representatives are unable to make a substantial
2 profit from re-selling Trek products.

3 27. Only a small percentage of representatives who become
4 participants in the Trek program actually make more money in
5 bonuses and profits from retail sales than they spend to
6 participate. The majority of Trek representatives do not earn a
7 substantial monthly income, but instead discontinue their
8 participation in the Trek program with little or no financial
9 success, often after incurring large losses.

10 **Recruitment**

11 28. Trek has at least thirty and perhaps as many as fifty
12 offices, or "co-ops," located throughout the United States. Each
13 of these offices is set up and run by one or more Trek sales
14 representatives. Each office serves as a center for recruiting
15 new sales representatives for Trek.

16 29. Trek sales representatives in each office place
17 classified advertisements in various newspapers for the purpose of
18 recruiting others to become representatives. These advertisements
19 are placed in the "Help Wanted" section of the classified ads and
20 either state or imply that a salaried position is being offered.
21 Many of these ads allude to a substantial salary. The following
22 are examples of some of these ads:

23 Assistant to the Director
24 PR PERSON
25 \$40K+
26 Top exec. from FLA opening branch
27 office in Indy seeks 5 key indiv.
28 w/great people skills. Travel/training
avail. Call [tel. no.]

1 GOLF

2 If you want to play 2 championship courses and have what it takes
3 to
4 earn 6 figures, our national marketing firm seeks professional
5 individuals with DRIVE and personality. Serious inq. only.
6 Interview Ms. Jacobson. [telephone number]

7 *****

8 Looking for Sports/Fitness Minded People
9 PR Position
10 40K+

11 *****

12 Public Relations
13 My last representative made \$15K last month
14 \$20K next month
15 Looking to duplicate.

16 *****

17 Defendants, directly and through other Trek representatives,
18 instruct or encourage Trek representatives to place these and
19 similar ads.

20 30. Trek representatives also regularly contact consumers
21 who, in search of employment, have posted their resumes on
22 Internet job sites, such as Monster.com.

23 31. In speaking to those consumers who respond to the
24 advertisements, and those whom the representatives contact
25 directly, Trek representatives promote the impression that the
26 solicitation pertains to an opening for a salaried job, often
27 telling job seekers that their salary demands are "no problem,"
28 and failing to disclose that consumers are in fact being solicited
to participate in a multi-level marketing program. Trek
representatives frequently use scripts that in fact are designed
to foster the impression that consumers are being solicited for a
salaried job. These telephone conversations culminate in an
appointment for a "job interview."

32. When job seekers come to the Trek office at the
appointed time, however, they are not given a job interview.

1 Instead, they are shepherded with other "applicants" into a
2 presentation, commonly referred to as a "company overview" or
3 "company briefing," the focus of which is persuading the group of
4 prospective recruits to become sales representatives for Trek. In
5 fact, neither Trek nor the Trek representatives that place the ads
6 have any salaried or permanent positions available for the
7 potential recruits who answer their employment advertisements.

8 33. Each Trek office typically holds at least one "company
9 overview" per day, with anywhere from a few to twenty or thirty
10 prospective recruits and several active representatives in
11 attendance at each. At each overview, typically two or three Trek
12 representatives speak, and frequently a videotape of testimonials
13 is shown. While the briefings vary slightly from office to
14 office, they all include the same core elements. Immediately
15 following each company overview, potential recruits meet with Trek
16 representatives for a one-on-one intense sales pitch.

17 34. The theme of success runs throughout the overviews.
18 Trek representatives portray Trek as an extremely profitable
19 company run by extremely successful individuals in an extremely
20 lucrative and fast-growing industry. Prospective recruits are
21 told during these presentations how they can tap into this
22 prosperity. Trek representatives tell prospective recruits that
23 they can make money from retail sales and from building a
24 successful "sales force" by recruiting others to become Trek sales
25 representatives. The emphasis, however, is clearly on making
26 money from recruiting new sales representatives rather than on
27 selling product directly to consumers.

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1 35. After a brief summary of the first three levels of
2 Trek's twenty-two level pay plan, presenters in the company
3 overviews provide illustrations of how representatives can earn at
4 least a few thousand dollars per month under the pay plan. Some
5 presenters, for instance, provide an example of making a
6 substantial monthly income with a "3 x 3" sales organization, in
7 which an individual would recruit three people who would each in
8 turn recruit three people, and so on. Presenters also typically
9 provide stories or testimonials of their own success and the
10 success of others who have purportedly made many thousands of
11 dollars from Trek.

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1 these follow-up sessions that most Trek representatives do not
2 realize substantial financial gain. In fact, Trek's
3 representatives claim, expressly or by implication, that
4 participants are likely to realize substantial financial gain, and
5 that almost everyone can and will make money.

6 38. To sign up for Defendants' program, recruits are
7 typically required to purchase a "Starter Kit" for approximately
8 \$40 to \$50, and also to sign an Application and Agreement form.

9 39. Recruits are encouraged to enter Defendants' program at
10 the level of Supervisor, which requires a purchase of \$4,000 CP
11 from Trek. Recruits are told that Supervisor is the first level
12 at which a person can achieve substantial financial rewards, and
13 that failure to reach the Supervisor level right away can result
14 in a significant loss of income. Recruits are encouraged at a
15 minimum to enter at the level of Field Representative, which
16 requires a purchase of \$2,000 CP in product. Recruits can enter
17 at the level of Field Representative by purchasing a product
18 sampler that Defendants refer to as a "Business in a Box," for
19 approximately \$2,000. In fact, representatives commonly spend
20 between \$2,000 and \$4,000 to purchase product from Trek, either
21 when they sign up or shortly thereafter. Representatives purchase
22 large amounts of product from Trek because they believe they must
23 do so to be able to earn a significant income from bonuses under
24 the Trek Pay Plan.

25 40. After recruits sign up to become Trek sales
26 representatives, they are often encouraged, and sometimes
27 required, to rent desk space in the local office for between \$250
28 and \$500 a month, to incur other office-related expenses, and to

1 subscribe to a telephone line so that they can begin recruiting
2 other people to join the Trek program. Representatives frequently
3 spend thousands of dollars on these expenses.

4 41. Defendants, directly and through other Trek
5 representatives, also instruct Trek representatives to begin
6 recruiting other people into the program by placing classified
7 advertisements in local newspapers and contacting job seekers who
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1 walls. In his second month, his check doubled --
2 it went to over 11 grand. [Brian Horman, 3/10/01,
3 Los Angeles]

4 d. I work with people that have less than ten hours a
5 week to do this business and they got up to making
6 over \$10,000 a month. [Tobi Quello, 3/10/01, Los
7 Angeles]

8 e. So, I got started, and my second month in the
9 business, I received a check for \$4,700. [Mary
10 Stewart McKenzie, 4/6/01, Dulles]

11 f. I've seen checks to [top sales representative] Ray
12 Pearson where he made over \$60,000 in a month.
13 [Joe DeLisle, 4/6/01, Dulles]

14 g. You've got a multimillion business in your hands
15 that you could be making multimillions of dollars
16 without having to work even. [Joe DeLisle, 4/7/01,
17 Dulles]

18 h. Anyone can make a hundred grand a month in this
19 industry. I know people who have. Mr. Von, Mr.
20 Flagg, you can follow them, do what they do and get
21 what they've got. So, you can go out and make a
22 seven-figure income. Yes, anybody can. [Joe
23 DeLisle, 4/7/01, Dulles]

24 i. How many of you in here have ever made \$100,000 a
25 year? ... I can show you that you can make that in
26 a month. I know. I've seen it, I've documented
27 it, and it's happened to me. [Ray Pearson, 9/7/01,
28 Marlborough] what they 0 12 <> /Type /Page 1 >>/Atta /Td [

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j. The only people that fail in a business like what we have here today ... are people who don't apply themselves, people who are not willing to grow or have pressure put on them or do the different things. Can you come in and make \$200 first time and crank it out in our business? Yes. [Ray Pearson, 9/7/01, Marlborough]

k. The bottom line is we will create a lot of millionaires in this company and you can be one of them. None of you are that far behind right now. The company really hasn't hit the gear that will ~~put you <MC behind> right now~~ none of .. are pe

1 is devoted to discussing potential earnings is spent on the
2 earnings that can be made from recruiting new participants.

3 47. During Defendants' training seminars, Defendants and
4 their representatives claim, expressly or by implication, that
5 participants are likely to realize substantial financial gain, and
6 that almost everyone can and will make some money. It is not
7 disclosed to sales representatives during these seminars that most
8 Trek representatives do not realize substantial financial gain.

9 48. Top Trek representatives and leaders use Defendants'
10 training seminars as a means to barrage new Trek representatives
11 with earnings claims and to continually emphasize the need to
12 spend time recruiting new members and to purchase more product.
13 Because representatives attend numerous seminars, they hear the
14 same claims repeatedly. They also become increasingly mired in
15 debt to pay their way to attend these seminars, thereby increasing
16 the need to recruit more people and purchase more product.

17 **Trek is Pyramid Scheme**

18 49. Defendants operate what is commonly known as a "pyramid
19 scheme." In pyramid schemes, each participant pays money to the
20 scheme's promoter in exchange for the right to recruit new
21 participants. Participants then receive benefits for each
22 individual they recruit or who is added to their downline.
23 Earnings in a pyramid scheme are derived primarily from recruiting
24 other participants into the program, not from the retail sale of
25 products or services.

26 50. The structure of a pyramid scheme places severe
27 limitations upon the success of its participants. Participants
28 can make money only if there are a greater number of participants

1 in the levels below them than in the levels above them. Because
2 there are, by necessity, always far more participants at the
3 bottom of the pyramid than at the top, the majority of
4 participants are losing money at any given point in time.

5 51. Most Trek sales representatives pay money to Trek for
6 the right to sell Trek's products and the right to receive rewards
7 for recruiting new participants. Such payments include, for
8 example, money paid to Trek to purchase product for which the
9 representative is not entitled to receive a full refund. In
10 numerous instances representatives buy at least \$2,000 worth of
11 product from Trek in order to increase their potential
12 compensation under the Trek Pay Plan, and because they are led to
13 believe that they are not likely to receive substantial
14 compensation unless they purchase enough product to allow them to
15 qualify for the rank of Field Representative or Supervisor.
16 Representatives also must pay approximately \$45 for a "Starter
17 Kit." In addition, numerous representatives pay hundreds or
18 thousands of dollars to Defendants to attend Education Programs,
19 because they believe it is necessary to do so to obtain
20 significant compensation from the Trek program.

21 52. In return for payment, participants receive not only the
22 right to sell Trek's products, but also the right to receive
23 rewards that are based solely on recruiting new members and are
24 unrelated to the sale of product to ultimate users. As set forth
25 above, bonuses in Trek's compensation plan are based on the amount
26 of product that representatives order from the company, and on the
27 amount of money paid by the sales representatives to Trek, rather
28 than on the amount of actual retail sales to consumers. The

1 amount of compensation that representatives are eligible to
2 receive increases with the number of participants that the
3 representative recruits into the program, both directly and as a
4 function of the amount of product purchased by those new recruits.

5 53. The Trek program and the Trek compensation structure
6 emphasize the rewards from recruitment over those from retailing.
7 The primary focus of Trek's program is on selling the Trek program
8 rather than Trek's products. In company overviews, in training
9 seminars, in videotapes, in conference calls, in meetings, in
10 conversations, on Trek's website, in promotional material and in
11 other settings, Trek and its representatives continually impart
12 the expectation that sales representatives will focus on
13 recruiting new participants, continually exhort sales
14 representatives to recruit new participants, and continually
15 counsel sales representatives that they can earn substantially
16 more money by focusing on recruiting new members than by directing
17 their efforts to selling product directly to ultimate users.
18 Trek's compensation plan holds out the promise of a continuous
19 stream of thousands of dollars per month for successful
20 recruiting, in comparison with the perhaps hundreds of dollars
21 that a participant can hope to earn by selling products at home
22 parties to friends and relatives. Trek sales representatives in
23 fact focus substantially more of their efforts on recruiting
24 rather than on retailing.

25 54. Demand for Trek's products is primarily a function of
26 their value as a prerequisite to earning money pursuant to the
27 Trek Pay Plan. As a result of Trek's focus on recruitment, most
28 Trek representatives purchase products from Trek as an investment

1 in a business opportunity, rather than as a means to use the
2 products or to sell them for a retail profit.

3 55. Trek has internal policies that are ostensibly designed
4 to link compensation to retail sales and to prevent "inventory
5 loading," a situation in which sales representatives purchase
6 product merely for the purpose of qualifying for obtaining bonuses
7 and commissions, rather than for re-sale to end users. These
8 policies include a "70%" rule, a six-receipt rule, and a buy-back
9 policy. Trek's 70% rule provides that its representatives may not
10 order additional product unless they have sold or used for
11 personal or family use at least 70 percent of previously purchased
12 inventory-type product. Trek's six-receipt rule provides that
13 representatives will not be eligible for bonuses or overrides
14 unless they have made at least six sales per month to
15 nonrepresentative retail customers. Trek's buy-back policy sets
16 forth terms and conditions for returning unused product and
17 obtaining a refund. Under Trek's buy-back policy, a request for a
18 buy-back must be made within twelve months of the product's
19 original purchase date, and "reimbursement will be made for the
20 value of the original order(s) less a 10% restocking charge,
21 freight, rebates, bonuses and personal discounts." Trek also does
22 not provide refunds on product that has reached or is within three
23 months of reaching its expiration date.

24 56. These policies, however, are routinely disregarded and
25 are not adequately enforced by Defendants. Even if Defendants did
26 enforce these policies, they would not sufficiently tie
27 compensation to retail sales or prevent inventory loading. For
28 example, participants can satisfy the six-receipt rule by

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1 rescission of contracts, the refund of monies paid, and the
2 disgorgement of ill-gotten monies.

3 4. Award Plaintiff the costs of bringing this action, as
4 well as such other and additional relief as the Court may
5 determine to be just and proper.

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5. Order any further relief that the Court deems appropriate.

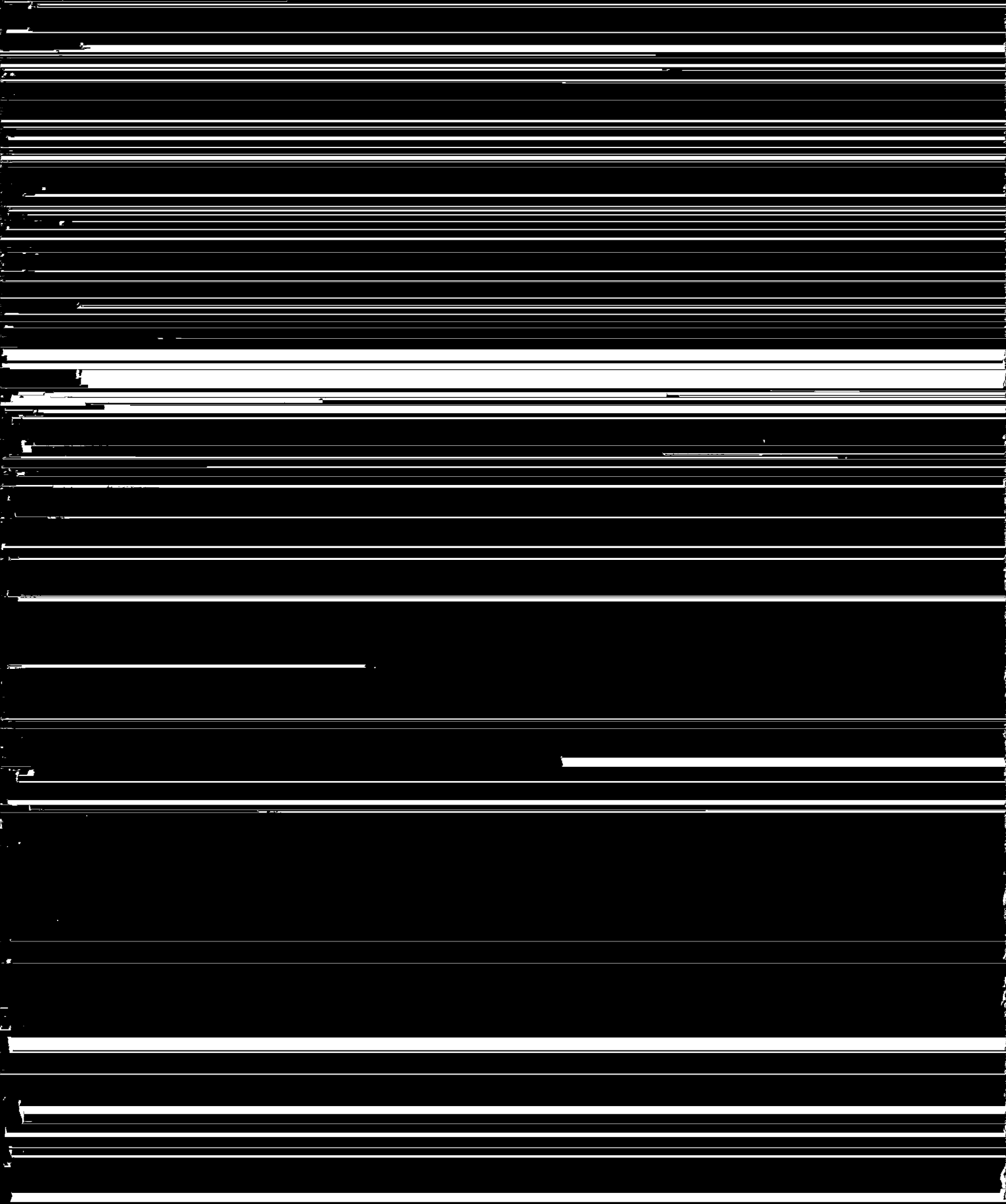
Dated December 2, 2002

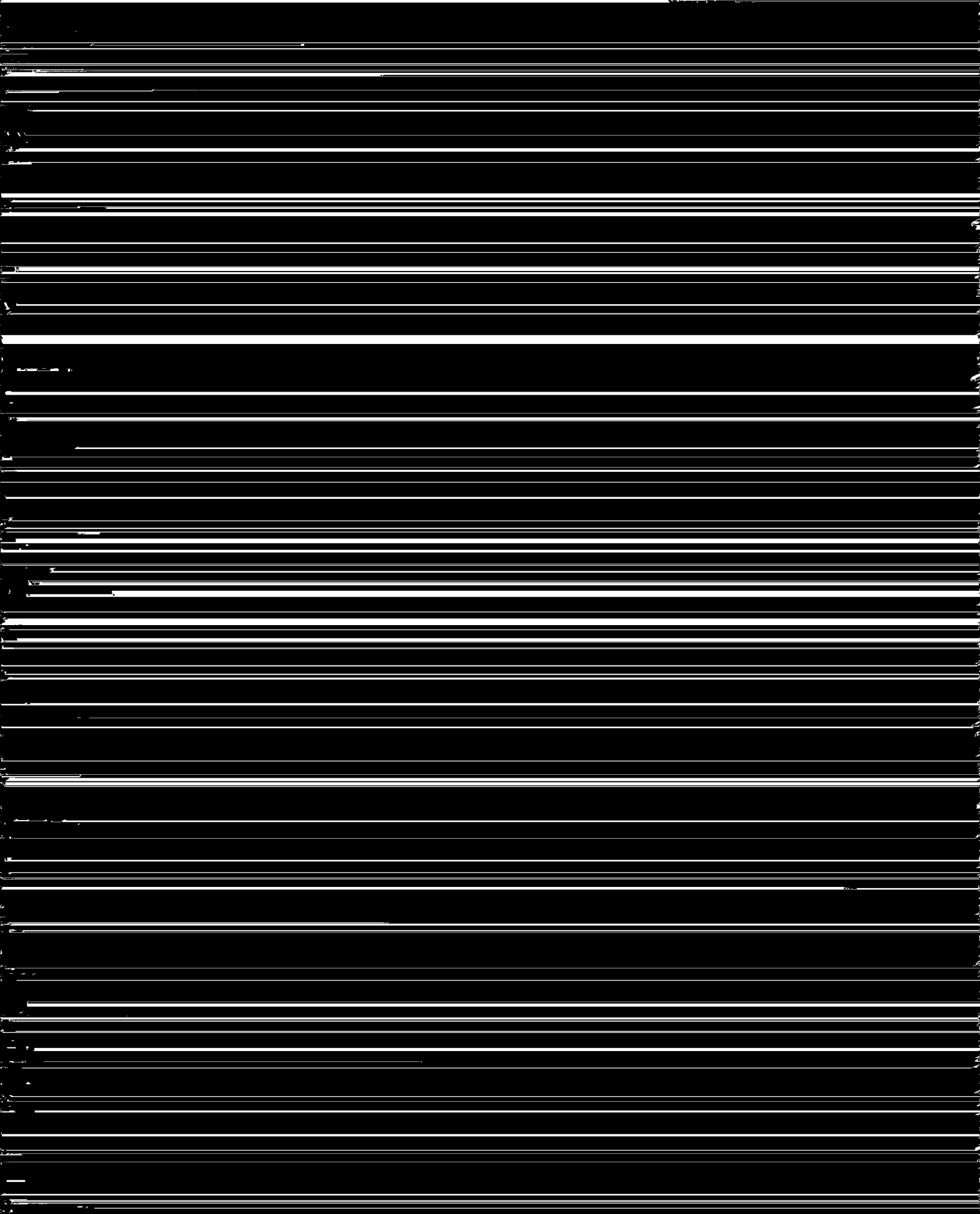
Respectfully submitted,

WILLIAM E. KOVACIC
General Counsel



Pay Plan Outline







Retail Customers 40%

