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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Federal Trade Commission,

14 Plaintiff,

15 v.

16 James D. Noland, Jr., a/k/a Jay Noland and J.D.
17 Noland, individually and as an officer of Success By
18 Media Holdings Inc., Success By Media LLC,
19 Enhanced Capital Funding, and Rinpark SA;

20 Lina Noland, individually and as an officer of Success
21 by Media Holdings Inc. and Success By Media LLC;

22 Scott A. Harris, individually and as an officer of
23 Success By Media LLC;

24 Thomas G. Sacca, individually and as an officer of
25 Success By Media LLC;

26 Success By Media Holdings Inc., a corporation, also
27 d/b/a Success By Health and Success By Media;

28 Success By Media LLC, a limited liability company,
also d/b/a Success By Health and Success By Media;

Enhanced Capital Funding, a corporation; and

No. CV-20-0047-PHX-DWL

**SECOND AMENDED
COMPLAINT FOR
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF**

1 Rinpark SA, a foreign corporation, also d/b/a Success
2 By Media International,
3 Defendants.

4 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Second
5 Amended Complaint alleges:
6

7 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
8 Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b; the Mail, Internet, or
9 Telephone Order Merchandise Rule (“Merchandise Rule”), 16 C.F.R. Part 435; and the
10 Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other
11 Locations (“Cooling-Off Rule”), 16 C.F.R. Part 429, to obtain temporary, preliminary,
12 and permanent injunctive relief, rescission or reformation of contracts, restitution, the
13 refund of monies paid or return of property, the payment of damages, disgorgement of ill-
14 gotten monies, and other equitable relief for Defendants’ acts or practices in violation of
15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the Merchandise Rule
16 and the Cooling-Off Rule.
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18
19

20 **JURISDICTION AND VENUE**

21 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
22 1337(a), and 1345, and 15 U.S.C. §§ 57b.
23

24 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2-3) and 15
25 U.S.C. § 53(b).
26
27
28

PLAINTIFF

1
2 4. The FTC is an independent agency of the United States Government
3 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act,
4 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
5 commerce. The FTC also enforces the Merchandise Rule, 16 C.F.R. Part 435, which
6 requires mail-, Internet-, or phone-based sellers to have a reasonable basis for advertised
7 shipping times, and, when sellers cannot meet promised shipping times or ship within 30
8 days, to obtain the buyer’s consent for a delay or provide a refund. The FTC also
9 enforces the Cooling-Off Rule, 16 C.F.R. Part 429, which requires sellers of certain
10 goods or services at places other than the seller’s place of business to notify purchasers of
11 their right to cancel the transaction within three business days.
12
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14

15 5. The FTC is authorized to initiate federal district court proceedings, by its
16 own attorneys, to enjoin violations of the FTC Act, the Merchandise Rule, and the
17 Cooling-Off Rule, and to secure such equitable relief as may be appropriate in each case,
18 including rescission or reformation of contracts, restitution, the refund of monies paid,
19 and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b; 16 C.F.R. Part 435;
20 16 C.F.R. Part 429.
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22

DEFENDANTS

23
24 6. Defendant Success By Media Holdings Inc. (“SBM Holdings”), also doing
25 business as Success By Health (“SBH”) and Success By Media, is a Nevada corporation
26 with its principal place of business at 2875 Saint Rose Parkway, Suite 100, Henderson,
27 NV 89052. SBM Holdings transacts or has transacted business in this District and
28

1 throughout the United States. SBH is or was an unincorporated division of SBM
2 Holdings.

3 7. Defendant Success By Media LLC (“Success By Media”), also doing
4 business as SBH and Success By Media, is a Nevada limited liability company with its
5 principal place of business at 2875 Saint Rose Parkway, Suite 100, Henderson, NV
6 89052. Success By Media transacts or has transacted business in this District and
7 throughout the United States. Success By Media is a subsidiary of SBM Holdings. SBH
8 is or was an unincorporated division of Success By Media.
9

10 8. Defendant Enhanced Capital Funding is a Nevada corporation with its
11 principal place of business in Las Vegas, Nevada. Enhanced Capital Funding transacts or
12 has transacted business in this District and throughout the United States.
13

14 9. Defendant Rinpark SA (“SBM International”), also doing business as SBM
15 International, is a Uruguay corporation with its principal place of business in Punta Del
16 Este, Uruguay. SBM International transacts or has transacted business in this District and
17 throughout the United States through its common enterprise and its alter egos, Jay
18 Noland, Success By Media, SBM Holdings, and Enhanced Capital Funding.
19

20 10. Defendant James D. Noland, Jr. (“Jay Noland”), also known as Jay Noland
21 and J.D. Noland, is an owner, director, chief executive officer, president, and treasurer of
22 SBM Holdings. He is a manager and chief executive officer, and previously was an
23 owner, of Success By Media. Noland is also: the president, secretary, treasurer, and a
24 director of Enhanced Capital Funding; the president, sole officer, sole shareholder, and
25 sole director of SBM International; and the founder and chief executive officer of SBH.
26
27
28

1 At all times material to this Second Amended Complaint, acting alone or in concert with
2 others, he has formulated, directed, controlled, had the authority to control, or
3 participated in the acts and practices of Success By Media, SBM Holdings, SBM
4 International, Enhanced Capital Funding, and SBH, including the acts and practices set
5 forth in this Second Amended Complaint. Defendant Jay Noland, in connection with the
6 matters alleged herein, transacts or has transacted business in this District and throughout
7 the United States.
8

9
10 11. Defendant Lina Noland (together with Jay Noland, the “Nolands”) is an
11 owner, officer, director, and corporate secretary of SBM Holdings. She also is a
12 manager, and previously was an owner, of Success By Media. At all times material to
13 this Second Amended Complaint, acting alone or in concert with others, she has
14 formulated, directed, controlled, had the authority to control, or participated in the acts
15 and practices of Success By Media, SBM Holdings, SBM International, Enhanced
16 Capital Funding, and SBH, including the acts and practices set forth in this Second
17 Amended Complaint. Defendant Lina Noland, in connection with the matters alleged
18 herein, transacts or has transacted business in this District and throughout the United
19 States.
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23 12. Defendant Scott A. Harris (“Harris”) is the president and an officer, and
24 previously was a senior field advisor, of Success By Media and SBH. At all times
25 material to this Second Amended Complaint, acting alone or in concert with others, he
26 has formulated, directed, controlled, had the authority to control, or participated in the
27 acts and practices of Success By Media and SBH, including the acts and practices set
28

1 forth in this Second Amended Complaint. Defendant Harris, in connection with the
2 matters alleged herein, transacts or has transacted business in this District and throughout
3 the United States.
4

5 13. Defendant Thomas G. Sacca (“Sacca”) is the chief visionary officer, and
6 was previously the chief sales officer and a senior field advisor, of Success By Media and
7 SBH. At all times material to this Second Amended Complaint, acting alone or in
8 concert with others, he has formulated, directed, controlled, had the authority to control,
9 or participated in the acts and practices of Success By Media and SBH, including the acts
10 and practices set forth in this Second Amended Complaint. Defendant Sacca, in
11 connection with the matters alleged herein, transacts or has transacted business in this
12 District and throughout the United States.
13
14

15 **COMMON ENTERPRISE**

16 14. Defendants SBM Holdings, Success By Media, Enhanced Capital Funding,
17 and SBM International (collectively, “SBM Defendants”) have operated as a common
18 enterprise while engaging in the unlawful acts and practices described below. SBM
19 Defendants have conducted the business described below through SBM Holdings,
20 Success By Media, Enhanced Capital Funding, and SBM International, which have
21 commingled funds and have or had common ownership, officers, managers, business
22 functions, and office locations. Because the SBM Defendants have operated as a
23 common enterprise, each of them is jointly and severally liable for the acts and practices
24 alleged below.
25
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1 recruiting new Affiliates over selling products to ultimate users or consumers outside of
2 the organization. SBH’s business practices also make it unlikely that Affiliates can
3 meaningfully earn money by selling products to outside customers.
4

5 20. In many instances, Defendants fail to timely ship products to Affiliates and
6 other consumers who place product orders. When those consumers complain to the
7 company, seek a refund from the company, or seek a chargeback through their credit card
8 company, Defendants respond with threats and lawsuits.
9

10 21. Defendants also host SBH and Success by Media events at hotels and
11 additional locations other than their place of business. At those sometimes-mandatory
12 events, Defendants use high-pressure sales tactics to force Affiliates to buy expensive
13 consumer goods and services, including SBH products and tickets to future training
14 events, without informing Affiliates of their legal right to cancel those transactions.
15

16 22. In October 2019, Defendants announced their “VOZ Travel” program.
17 Defendants charged consumers \$1,000-\$2,795 to become VOZ Travel members. In
18 exchange, consumers received the right to sell discounted travel through a never-
19 launched booking platform and to earn rewards based on their ability to recruit others
20 willing to pay the steep membership fee.
21
22

23 **The SBH Marketing Scheme**

24 23. Consumers pay an annual membership fee of \$49 to become SBH
25 Affiliates, making them eligible to sell SBH products and receive rewards for doing so.
26

27 24. Each SBH Affiliate receives a distinct URL that directs consumers to the
28 Affiliate’s SBH website, a duplicate of the main SBH website. Product purchases made

1 on either the Affiliate’s copy of the SBH website (the “Affiliate Website”) or on the main
2 SBH website are handled identically—SBH receives the proceeds of the transaction and
3 is responsible for fulfilling and shipping the order. Purchases made by Affiliates or non-
4 Affiliates on an Affiliate Website, including purchases made by the Affiliate himself or
5 herself, result in the Affiliate receiving credit for the sale toward commissions.
6

7 25. Any member of the public can buy SBH products from the company’s
8 website, or an Affiliate Website, at the same “wholesale” price that SBH offers to
9 Affiliates. SBH sets the pricing both on its website and on the Affiliate Websites.
10 Affiliates do not have the ability to offer different prices on the internet.
11

12 26. Only SBH Affiliates are eligible to recruit a “downline” of additional SBH
13 Affiliates and to earn commissions and other rewards based on purchases made through
14 their own or their downline’s Affiliate Websites.
15

16 27. In practice, because SBH requires Affiliates to accrue \$20 in commission
17 before they can receive a payout and because SBH commissions generally do not exceed
18 10% of the purchase amount, an Affiliate or his or her downline must purchase, or
19 generate purchases of, at least \$200 from SBH before the Affiliate can receive any
20 commission.
21

22 28. Affiliates only become eligible for certain rewards by increasing their SBH
23 “rank.” The current 11 ranks range from “Business Affiliate” (“BA”), which requires
24 \$5,000 in monthly purchase volume from the Affiliate and the Affiliate’s downline, to “5
25 Star Diamond,” which requires \$1.25 million in monthly purchase volume from the
26 Affiliate and the Affiliate’s downline. To qualify for each rank, no more than 50% of the
27
28

1 Affiliate’s qualifying purchase volume can come from a single downline Affiliate or that
 2 Affiliate’s own downline.

3 29. If Affiliates lack the downline volume to meet the monthly purchase
 4 volume requirements, they can personally purchase products to make up the difference
 5 and qualify for new rewards.
 6

7 30. Each Affiliate’s rank resets every month. Therefore, to maintain his or her
 8 rank, an Affiliate must consistently meet the relevant purchase thresholds.
 9

10 31. In addition to other forms of compensation, Affiliates earn percentage-
 11 based commissions on total sales volume at various “tiers” within their downlines. “Tier
 12 0” is the Affiliate himself or herself. “Tier 1” is recruits of the Tier 0 Affiliate. “Tier 2”
 13 is the Tier 1 Affiliates’ recruits, “Tier 3” is the Tier 2 Affiliates’ recruits, and so on.
 14

15 32. The percentage-based commissions that an Affiliate earns depend on two
 16 variables: the Affiliate’s rank and the tier at which purchases occurred. As an Affiliate’s
 17 rank increases, the Affiliate can access commissions at additional tiers and increase the
 18 applicable commission percentage at each tier. The table below, from SBH’s marketing
 19 materials, provides the percentage commissions by rank and tier:
 20
 21

Titles	RETAIL CUSTOMER	AFFILIATE	BUSINESS AFFILIATE	SUPER BUSINESS AFFILIATE 1	SUPER BUSINESS AFFILIATE 2	SUPER BUSINESS AFFILIATE 3	SUPER BUSINESS AFFILIATE 4	1 STAR DIAMOND	2 STAR DIAMOND	3 STAR DIAMOND	4 STAR DIAMOND	5 STAR DIAMOND
Abbreviation	C	A	BA	SBA1	SBA2	SBA3	SBA4	1SD	2SD	3SD	4SD	5SD
6-TIER RESIDUAL TEAM COMMISSION												
TIER 0 ⁽¹⁾		10%										
TIER 1		8%	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%
TIER 2		2%	5%	6%	6%	6%	6%	6%	6%	6%	6%	6%
TIER 3		1%	2%	4%	4%	4%	4%	4%	4%	4%	4%	4%
TIER 4		⁽²⁾	1%	3%	3%	3%	3%	3%	3%	3%	3%	3%
TIER 5		⁽²⁾	⁽²⁾	2%	2%	2%	2%	2%	2%	2%	2%	2%

22
 23
 24
 25
 26
 27 33. Under this plan, a hypothetical Affiliate, “Joe,” with a rank of Super
 28 Business Affiliate 1 (“SBA1”) earns 10% commission on purchases made by Joe and by

1 Joe's "Tier 1" members—those Affiliates that Joe recruited personally. Joe also earns
2 10% commission on orders placed through his or his Tier 1 members' Affiliate Websites.
3 Joe earns 6% on Tier 2 purchases, 4% on Tier 3 purchases, 3% on Tier 4 purchases, and
4 2% on Tier 5 purchases. An Affiliate without any elevated rank, by contrast, earns 8%
5 commission on Tier 1 sales, 2% on Tier 2, 1% on Tier 3, and no commission on Tiers 4
6 and 5.
7

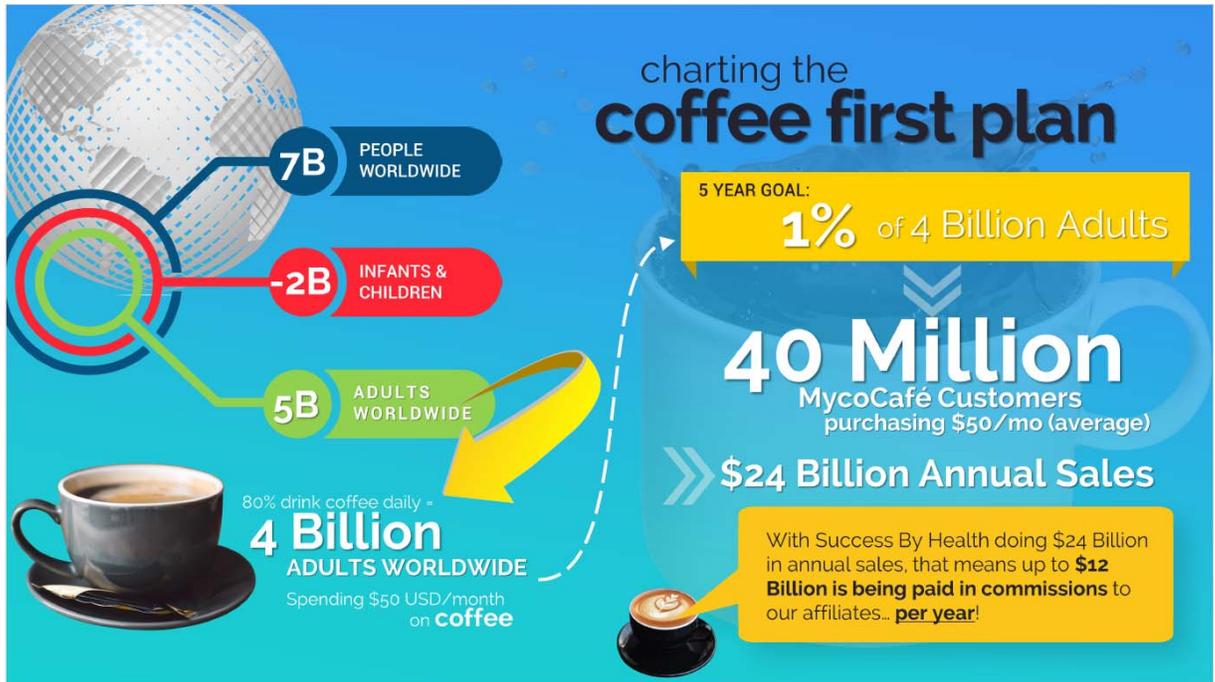
8
9 34. Defendants also pay various bonuses based on recruiting new Affiliates
10 who purchase \$500 or \$1,995 "product packs" upon enrollment. For example,
11 Defendants' "5x5 bonus" paid cash bonuses of up to \$10,000 for recruiting five new
12 Affiliates, each of whom purchased a product pack and recruited five new Affiliates who
13 also purchased product packs.
14

15 35. Achieving SBA1 status—and gaining access to all five tiers of commission,
16 in addition to other bonuses and rewards—requires an Affiliate and that Affiliate's
17 downline to purchase, or have others purchase through one of their Affiliate Websites,
18 \$15,000 in products in one month.
19

20 36. Jay Noland, Lina Noland, Harris, and Sacca all participated in developing
21 or revising SBH's commission plan for Affiliate compensation.
22

23 37. SBH's flagship product is its "MycoCafé" brand of instant coffee, which
24 Defendants attempt to differentiate from other coffees by touting the inclusion of
25 "ganoderma," a mushroom that Defendants call the "king of herbs" for its myriad
26 purported health benefits.
27
28

1 38. SBH is in a self-proclaimed “build-out” stage. The company’s recruiting
 2 and marketing materials explain, using the visual below or other materials, that SBH
 3 plans to capture 1% of the world coffee market in 5-7 years, which will result in \$24
 4 billion in annual revenues.
 5



18 39. Over two years into SBH’s 5-7 year plan, its annual revenues have yet to
 19 exceed \$5 million.

20 40. From July 2017 through June 2019, more than 500 consumers in this
 21 District made more than 1,900 purchases from Defendants, totaling more than \$460,000.
 22

23 **Defendants’ False Income and Lifestyle Claims**

24 41. Defendants promote their scheme through videos and presentations on the
 25 SBH website; in materials provided to Affiliates for recruiting purposes; on videos and
 26 statements posted to an Affiliates-only Facebook group that is administered exclusively
 27
 28

1 by the Nolands; on daily “SBH Heat” conference calls for SBH Affiliates; and during in-
2 person training and recruiting sessions.

3 42. In these settings, Defendants lure consumers into SBH, and encourage
4 aggressive purchasing by already-enrolled consumers, with claims that SBH provides a
5 life-changing financial solution.
6

7 43. Defendants Jay Noland, Lina Noland, Harris, and Sacca have all promoted
8 recruitment and continued participation in SBH.
9

10 44. Defendants frequently tell consumers that they likely will replace their job
11 income within six months and obtain “financial freedom” within 18 months if they work
12 hard and follow Defendants’ instructions.
13

14 a. Jay Noland told SBH Affiliates that, by following his instructions for
15 six months, you “can have a reasonable expectation that you would have replaced
16 your income if you were results-oriented and focused.”
17

18 b. On one SBH Affiliate conference call, Jay Noland explained that
19 “replacing your income at your job in six months or less . . . really starts with just
20 thinking right,” as depicted in the following SBH advertisement:
21



1 c. Jay Noland also told SBH Affiliates that if they “just applied [his
2 system], without fail, you should be able to be financially free in 18 months.”

3 d. In a video posted to Facebook in March 2018, Jay Noland told SBH
4 Affiliates that some of them “by the end of this year [would] never, ever have to
5 work again.”

6 e. Sacca told SBH Affiliates that if “we’re out there busting this thing
7 for 12 to 18 months, it’s going to give us a lifetime of freedom.”

8
9
10 45. In multiple scripts provided to Affiliates for recruiting purposes,
11 Defendants claim that “several people” are “achieving Financial Freedom already with
12 our company.”

13
14 46. Defendants also frequently tell SBH Affiliates and recruits that Jay Noland
15 is the “Millionaire Maker” and has trained many millionaires in past multilevel marketing
16 programs. Defendants explain that Noland is applying the same lessons in SBH, thereby
17 offering Affiliates an opportunity to become “coffee millionaires.”

18
19 a. Success By Media’s website refers to Jay Noland as the “millionaire
20 maker.”

21 b. Jay Noland calls many of his Facebook videos for SBH Affiliates
22 “Millionaire Mentorship” trainings.

23 c. On one Millionaire Mentorship training, Jay Noland declared that he
24 would create “1,000 millionaires” through SBH.

25 d. In another Millionaire Mentorship training, Jay Noland said that he
26 was training people to make “\$1 million per year” “forever.” He then asked,
27
28

1 “Who in the hell would have the audacity to talk about that type of money?,”
2 before proceeding to claim that he could train Affiliates to make \$1 million “year
3 after year whether you work or not.”
4

5 e. Harris told SBH Affiliates that he had “watched [Jay Noland],
6 through the years, build way too many millionaires and multi-millionaires, go out
7 and do billions in volume.”
8

9 f. Harris also told Affiliates, “All that matters is are you out there
10 building it the way that Mr. Noland teaches us to build it? And if you are, the
11 rewards are gonna come no matter what, that’s the way I feel about it.”
12

13 g. SBH’s director of sales told Affiliates on a company conference call
14 that they could be “financially free and be making a five-figure income possibly
15 on a monthly basis residually.” He continued, “This is not a theoretical example.
16 It’s fact. I’m just talking about what’s happened in the past and the people that
17 Mr. Noland has worked with, trained, and taught and the companies that he’s
18 developed. And what’s happening with Success By Health is like no other.”
19

20 47. Defendants encourage Affiliates to sign a “Million Dollar Contract.” In
21 that “contract,” Affiliates agree that they are “100% committed to my goals and dreams”
22 and that “[f]or the next 18 months I’m willing to do whatever it takes to make my dreams
23 a reality.” Affiliates then commit to maintain a \$500 monthly auto-order from the
24 company for at least 18 months, to attend “all SBH Corporate trainings and events no
25 matter what,” and to “ask at least 4 people a day to join my business at least 5 days a
26 week for at least 18 months,” among other things.
27
28

1 48. Referencing SBH’s goal of \$24 billion in annual revenues in 5-7 years,
2 described in paragraph 38 above, Defendants claim that Affiliates’ fortune will come
3 from a pool of \$12 billion in anticipated annual payouts to Affiliates. Defendants base
4 that \$12 billion projection on, among other things, their claim that SBH shares
5 approximately 50% of its revenues with Affiliates. Defendants highlight the \$12 billion
6 figure in recruiting materials and promotional videos featuring Jay Noland with the
7 following images:
8
9



17 49. Defendants also tout Affiliates’ potential to earn unlimited income.

18 a. One SBH training document tells Affiliates that the company’s
19 commission plan “provides for UNLIMITED Income. You can earn as much
20 money as you want. There is NO LIMIT on the width of the affiliates you can
21 refer to the program.”
22

23 b. An “SBH Prospecting System” document tells Affiliates how to
24 pitch the program to recruits. The document provides a closing script that allows
25 Affiliates to fill in the blanks for consumers’ potential earnings if they join the
26 company:
27
28

STEP 4: 4 CLOSING QUESTIONS

1
2 1. "Now, how much money would you need to make on a monthly basis, for
3 this business to be worth your time?"

4 2. "How many hours per week could you put towards working your SBH
5 business in order to get to \$_____ / month?"

6 3. "How long (months or years) would you be willing to work _____ hours
7 per week to reach \$_____ / month?"

8 4. "If I could show you how to get to \$_____ / month working _____
9 hours per week within _____ months/years, you'd be ready to get
10 started, wouldn't you?"

11 c. In one video posted to Facebook, Jay Noland called SBH a "literal
12 golden goose . . . a perpetual money and health machine."

13 50. Notwithstanding the claims described above, Defendants also tell SBH
14 Affiliates to avoid making "income claims" by instead referring to "lifestyle
15 enhancements."

16 a. SBH's "Getting Started Training" presentation deck tells Affiliates,
17 "No Income Claims (Share Lifestyle Enhancements Instead)."

18 b. Similarly, SBH's "1-10 Overview," which Affiliates use to recruit
19 consumers, includes a "Lifestyle" section picturing a luxury car and highlighting
20 "exotic reward trips and vacations" and "luxury and living incentives."

21 c. On one company conference call, Harris told Affiliates: "Don't
22 make income claims. Say things like, 'I've been able to make my car payment or
23 my house payment with the income we're making on the side.' . . . Say things like,
24 'My wife was able to walk away from her job . . . or both of us were able to walk
25 away from our jobs based on the residual income from the company.'"

1 d. In a video posted to Facebook, Jay Noland claimed that his past
2 trainees, by listening to his advice, had acquired “Lamborghinis; Rolls Royces;
3 Bentleys; multimillion-dollar homes in single-, double-, and triple-gated
4 communities; [and] Bahamas trips.”

5
6 e. On another Facebook video, Jay Noland described the success
7 obtained by adherents to his system: “You see their million-dollar homes they’re
8 buying. You see the Lamborghinis, you see the Ferraris. You see all these great
9 things that people are able to obtain, the travel, how they’re able to help their
10 family out, help their favorite nonprofit cause. All of a sudden, you see them
11 going in, donating \$100,000, \$200,000, man.”

12
13
14 51. Jay Noland has described this “lifestyle enhancement” marketing strategy
15 as an effort to avoid government scrutiny. He explained that “instead of telling people
16 how much [money] we make, we just go, okay, last week, I made enough to buy that
17 Maserati cash.”

18
19 52. Defendants’ publicly available marketing materials feature images of
20 luxury yachts and cars, piles of cash, and exotic vacations. For example, one SBH
21 promotional video states that SBH is a “recession-proof” business that could “change
22 everything – the car you drive, the home you live in, the vacations you take, the control
23 of your life.”

24
25 53. Defendants sometimes tell consumers that income is not “guaranteed,” that
26 “results may vary,” and that any explanations of the SBH commission plan that show
27 lucrative results are “simple theoretical examples.”
28

1 54. These income-related disclaimers frequently are inconspicuously disclosed
2 in fine print on SBH’s promotional materials.

3 55. Defendants also regularly undermine these disclaimers, including by
4 making the claims described in paragraphs 41-52 above.
5

6 a. On one SBH conference call, Jay Noland explained that Defendants’
7 “theoretical examples” of lucrative income are only “theoretical” because “you
8 haven’t done it yet.”
9

10 b. Similarly, in a publicly available presentation, Jay Noland
11 referenced potential income of \$23,500 per month as a “simple theoretical
12 example.” He then asked, “Why is it theoretical?” and answered himself,
13 “Because you just ain’t done it yet. But are there people that do it? . . . Yes. I got
14 people in my network globally that make that look silly.”
15

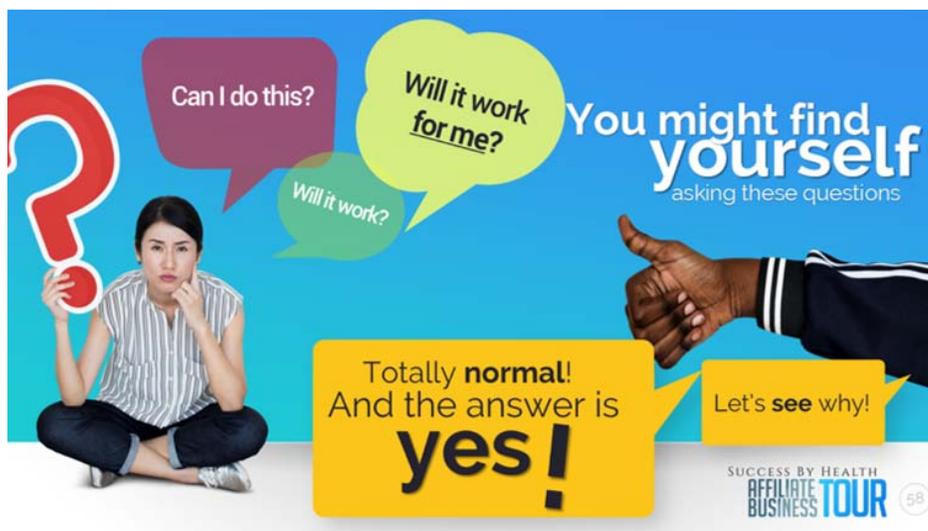
16 56. On many occasions, Defendants explain that the only things separating
17 SBH Affiliates from substantial income and millionaire status is work ethic, attitude, and
18 a willingness to follow Defendants’ instructions.
19

20 a. In an SBH conference call announcing changes to the company’s
21 commission plan, Jay Noland told Affiliates, “The money opportunities to make
22 and change your life [are] ridiculous. All you’ve got to do is go to work.”
23

24 b. Jay Noland told Affiliates this his plan was “literally dummy-
25 proof. . . . [They] came out with ‘This for Dummies’ and ‘That for Dummies,’ this
26 is literally ‘Direct Sales for Dummies.’ A dummy can just go follow these
27 instructions and create wealth.”
28

1 c. Sacca promised Affiliates that “there’s no way you can fail if you
2 utilize the training that Mr. Noland is going to give us at [an upcoming training
3 event].”

4
5 d. In one SBH recruiting presentation, just after describing a \$5 million
6 recruitment incentive, Defendants suggest that anyone can succeed:



18 57. Defendants direct SBH Affiliates to tell recruits that the company’s rewards
19 are “achievable for the masses.”

20 58. Defendants’ claims described in paragraphs 42-57 are false.

21 59. SBH does not offer consumers a viable path to “financial freedom” or to
22 replacing their job income in six months.

23 60. Typically, SBH Affiliates pay more money to the company than they
24 receive from it.

25 61. SBH does not even abide by its own commission plan when compensating
26 Affiliates. An FTC investigator used an undercover identity to enroll in SBH and then
27
28

1 made sales and purchases that should have entitled him to commissions. He never
2 received those commissions, and the company did not respond to his email inquiry
3 regarding the missing commissions.
4

5 62. Even if Defendants honored SBH's commission plan, the structure of that
6 plan, and Defendants' instructions for how to take advantage of it, ensure that the vast
7 majority of participants lose money in the program.
8

9 **SBH Operates as an Unlawful Pyramid Scheme**

10 63. Each version of the SBH commission plan, and the manner in which
11 Defendants have promoted the plan, has prioritized and incentivized recruiting new
12 Affiliates over selling SBH products to ultimate users of those products.
13

14 64. For example, SBH promises commissions to Affiliates based only on
15 Affiliate or non-Affiliate product *purchases* from SBH, rather than *sales to users of SBH*
16 *products*. Specifically, Affiliates receive commissions and other rewards based on the
17 Affiliate's "personal order and any orders generated from [their SBH] website" as well as
18 personal orders and orders generated from downline Affiliate Websites. SBH does not
19 separately track sales made by Affiliates to ultimate users of SBH products.
20

21 65. The vast majority of purchases from the SBH website or from Affiliate
22 Websites are made by Affiliates.
23

24 66. Affiliates' purchases from the SBH website or Affiliate Websites are not
25 motivated by actual consumer demand for the SBH products, but rather by the
26 opportunity to pursue higher ranks within SBH.
27
28

1 67. Defendants promote “Four Steps to Success” for new SBH Affiliates, as
 2 depicted in the visual below. The Four Steps to Success—which have remained
 3 consistent throughout all versions of the commission plan—do not mention retail sales,
 4 instead encouraging Affiliates to buy products, “build a team,” and then “duplicate” their
 5 own efforts by “[t]each[ing] your team to do the same.”
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 19 68. In other training materials, Defendants elaborate on the Four Steps to
 20 Success.

21 a. In Step 1 (“Get Started”), Defendants urge consumers to make large
 22 up-front investments in “business packs,” which cost \$125, \$500, or \$1,995 and
 23 contain miscellaneous SBH products. Defendants tell Affiliates that starting with
 24 a more expensive pack will create “more initial commission benefits.”
 25

26 b. In Step 2 (“Be a Product of the Product”), Defendants tell consumers
 27 to set up a monthly product “auto-order.” To be eligible for many bonuses and
 28

1 rewards, Affiliates must set up a minimum \$60 monthly auto-order. Defendants
2 also tell Affiliates and recruits that setting up an auto-order will give them an
3 “85% chance of earning regular commission checks within 2 years.”
4

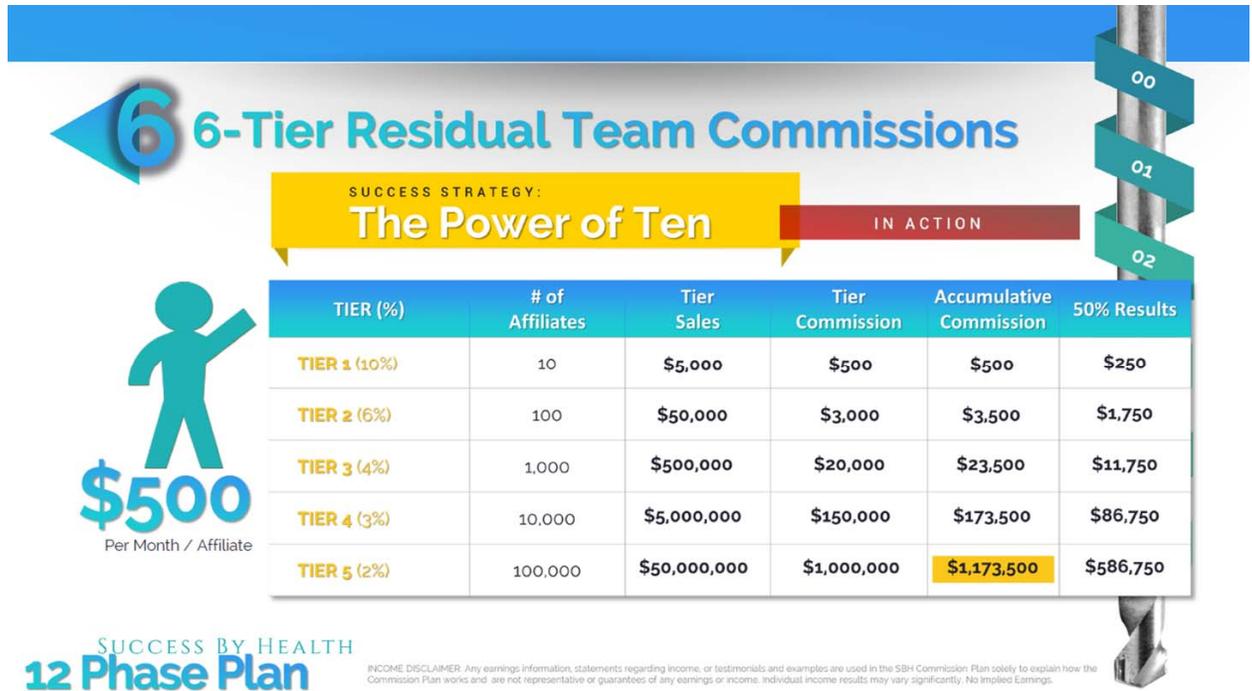
5 c. In Step 3 (“Build A Team”), Defendants focus Affiliates on
6 recruiting. They instruct Affiliates to “be sure to personally refer at least two new
7 Affiliates within your first 7 Days if you are aiming to Replace Your Income (No
8 More Job).” After the first seven days, Affiliates are encouraged to “keep building
9 every month,” “duplicate the system,” and “focus on rank advancing.”
10

11 d. In Step 4 (“Pay Attention to the Training and Duplicate”),
12 Defendants tell Affiliates to use SBH-provided materials to “[t]each your team to
13 do the same” steps identified above. A separate SBH training document describes
14 “duplication” as the “key to long term success” as an SBH Affiliate.
15

16 69. All versions of the SBH commission plan have encouraged Affiliates to
17 harness the “Power of 10.” An Affiliate can achieve the “Power of 10” by recruiting ten
18 new Affiliates as the Affiliate’s “Tier 1,” each of whom themselves recruit ten new
19 Affiliates as the original Affiliate’s “Tier 2,” and so on through Tiers 3-5. Therefore, in
20 the Power of 10, Tier 1 contains 10 Affiliates, Tier 2 contains 100 Affiliates, Tier 3
21 contains 1,000 Affiliates, Tier 4 contains 10,000 Affiliates, and Tier 5 contains 100,000
22 Affiliates, for a cumulative total of 111,110 Affiliates.
23

24
25 70. Defendants promote an example of the Power of 10 wherein each of the top
26 Affiliate’s 111,110 downline Affiliates generate purchases from SBH of \$500 per month,
27 for a cumulative monthly purchase volume of over \$55 million. Defendants use the
28

1 following visual to highlight that the top Affiliate receives a \$1,173,500 monthly
 2 commission in this example:



71. Defendants also promote an otherwise-identical example wherein each of the 111,110 downline Affiliates generate \$100 rather than \$500 in product purchases per month, which results in a \$234,700 monthly commission for the top Affiliate.

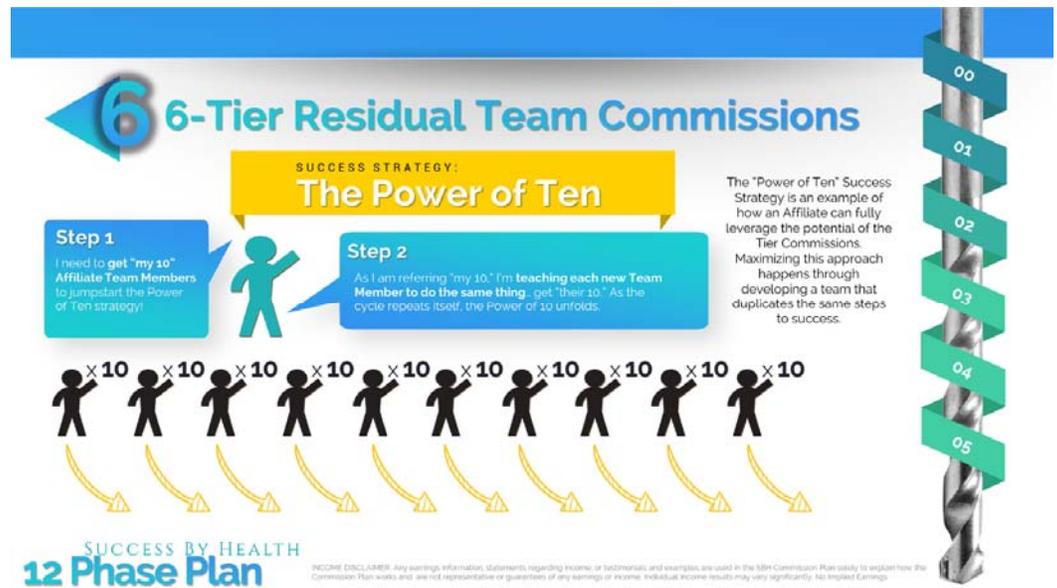
72. Defendants further push the Power of 10 by promoting a “BAM Bonus” that pays out \$1 million to an Affiliate who completes the Power of 10 with all 111,110 downline Affiliates generating \$100 in monthly purchases, and \$5 million to an Affiliate who completes the Power of 10 with all 111,110 downline Affiliates generating \$500 in monthly purchases.

1 73. In fact, as of April 2019, not a single SBH Affiliate had even completed
2 Tier 2 of the Power of 10 at the \$100-per-month level, much less all five tiers at the
3 \$500-per-month level.

4 74. For a single Affiliate to achieve the five-tier “Power of 10,” at least
5 100,000 of that Affiliate’s downline team members must lose money.

6 75. Defendants frequently emphasize that the path to millionaire status and
7 financial freedom depends on recruiting ten Affiliates and then starting the “duplication”
8 process.
9

10 a. A public SBH presentation that includes the following visual directs
11 Affiliates to “get ‘my 10’ Affiliate Team Members” and to “teach[] each new
12 Team Member to the same thing, get ‘their 10.’”
13
14



29 b. On one SBH Affiliate conference call, Harris told SBH Affiliates
30 “your ten-by-ten is the most important thing you can ever build in this company.”

1 The most important thing you can do is think about it every day. I've got to get
2 my ten, my ten on my first tier."

3 c. In another Facebook video, Sacca told Affiliates that the SBH
4 commission plan is "driven 100%" by the Power of 10 BAM Bonus. Jay Noland
5 called this training session the best training he ever saw Sacca do.
6

7 76. Defendants also encourage Affiliates to buy large amounts of products
8 when they sign up, and to continue stockpiling inventory thereafter. They encourage
9 these purchases not as a response to consumer demand, but instead as a strategy of
10 growing one's business and advancing to higher SBH ranks.
11

12 a. The SBH Fast Start system, for example, states, "The more
13 inventory you have to start your business, the faster your business typically will
14 grow."
15

16 b. Harris coached Affiliates to "make sure we keep our shelves full."
17

18 c. With just hours remaining in one monthly sales period, Jay Noland
19 pushed any Affiliate with \$500 in monthly sales over the prior 30 days to make an
20 additional \$14,500 in purchases in the final four hours, which would qualify the
21 Affiliate for SBA1 status for the following month. Noland added: "You can do it.
22 It's just in your mind . . . Listen to me. You can go in, order you a case."
23

24 d. Similarly, Harris told Affiliates at the end of another monthly sales
25 period to buy products to achieve Business Affiliate status. He acknowledged
26 receiving complaints from Affiliates who already had \$1,000 in unsold
27 merchandise in their house, but dismissed those concerns by explaining that this
28

1 unsold inventory was actually a benefit: “If you got \$1,000 [in products] in your
2 house, congratulations. If you got 4 or \$5,000 worth, congratulations. If you got
3 more than that, congratulations. Mr. Noland and I used to carry around 10, 15, 20,
4 \$25,000 or more in products.”

5
6 77. Defendants press Affiliates to take financial risks to attend trainings and
7 buy SBH products. In particular, Defendants encourage Affiliates to max out credit
8 cards, borrow from family, take loans from banks, and sell or mortgage their homes to
9 fund their SBH businesses.

10
11 78. In one Facebook video, Harris recounted telling an Affiliate that he should
12 obtain a loan to travel to Orlando for an SBH training event: “So it’s not worth getting a
13 loan to come here and build something that’s going to take care of your family for
14 generations? Right, I mean, yeah, I would get a loan if I needed one. Guess what I did
15 back in the 1990s [in a prior multilevel marketing program]? I got loans. . . . I got [my
16 credit cards] increased to the point where I couldn’t even use them no more I
17 borrowed money from people in my family and from some of my friends.”

18
19
20 79. While urging Affiliates to build large inventories of products in order to
21 improve their SBH ranks—and therefore increase their commissions and other rewards—
22 Defendants simultaneously undercut Affiliates’ ability to sell that inventory at any
23 meaningful profit.

24
25 80. Specifically, Defendants sell products to Affiliates at what they call
26 “wholesale” price.
27
28

1 81. Defendants then state that Affiliates should apply at least a 50% “markup”
2 to products in the Affiliate’s personal inventory before selling the products in hand-to-
3 hand sales at a “retail” price. Affiliates earn no commission on those in-person sales, but
4 can make money by selling at a higher price than their wholesale purchase price.
5

6 82. Defendants, however, compete with their own Affiliates by making the
7 Affiliate “wholesale” price available to the general public. Thus, both Affiliates and non-
8 Affiliates can purchase products at the exact same “wholesale” price from the SBH
9 website or Affiliate Websites.
10

11 83. As a result, non-Affiliate consumers have little reason to pay the 50% retail
12 “markup” at which SBH suggests Affiliates sell their products, and Affiliates struggle to
13 sell products from their rapidly growing inventory for any meaningful profit.
14

15 84. Defendants actually encourage Affiliates to tell their own customers that
16 they can buy products cheaper directly from SBH. SBH’s retail script directs Affiliates
17 to tell customers, “I need you to help me out by buying at least a bag or two of coffee
18 from me one time at Retail Pricing. If you like it, I will show you how to get it at
19 Wholesale Pricing from then on.”
20

21 85. Defendants also expressly tell Affiliates that their top priority is recruiting
22 rather than retail sales.
23

24 a. In describing one “cash promotion,” Jay Noland declared that the
25 goal was “to get you focused on what you should be focusing on right now, which
26 is new people getting into the company.” Noland then reminded Affiliates to
27 “get[] ten to get ten to get ten.”
28

1 b. SBH’s director of sales told Affiliates that retail sales were a “great
2 way to make some extra, part-time money, to make some quick quick money,” but
3 emphasized that “recruiting is key” and that Affiliates should spend their time
4 building a “10x10x10x10x10.”
5

6 c. Similarly, one top SBH Affiliate said she would “gloss over retail”
7 at a recruiting event in order to spend more time on the purported lucrative
8 benefits of recruiting.
9

10 86. Defendants’ “One Year Commitment Form” for new Affiliates requires
11 Affiliates to make ten commitments, none of which involve selling products to non-
12 Affiliate consumers.
13

14 **I hereby commit that I will:**

- 15 • Give 110% to my SBH Business.
16 • Be a Product of the SBH Products.
17 • Launch my Business by hosting at least 4 SBH Business Mixers within my first 30 days.
18 • Expose my SBH business to at least 2 people per day (5 days per week).
19 • Make sure my team goes through the SBH “Fast Start System” Training.
20 • Host or Attend at least 1 SBH Business Mixer (CTM) per week for the next year.
21 • Attend all Major Corporate Events (typically 2 or 3 per year).
22 • Attend all local weekly “Getting Started Trainings” and “Regional Events” in my area.
23 • Practice at least 30 minutes of Self Development Daily. Commit to “Conquer Myself”
and control my destiny.
24 • Be an Honorable Person that KEEPS MY WORD.

25 **I WILL CONDUCT MY BUSINESS BY THESE CORE PRINCIPLES AND**
26 **I FURTHER COMMIT THAT I WILL BE HERE 1 YEAR FROM NOW!**
27

28 87. Jay Noland has urged Affiliates to continue recruiting even when products
are unavailable due to shipping delays, explaining that Affiliates should “sell the vision”
instead of the products, and adding that “the bigger vision you sell, the bigger paycheck
you get.”

1 88. Jay Noland also has admitted that the products, and consumer demand for
2 the products, are unimportant to his ability to sell consumers on the promise of financial
3 freedom. Noland stated that “you can plug any company or product into this process, and
4 you can be free financially if you want to be.”
5

6 **Defendants’ Shipping Delays and Punitive Chargeback and Refund Policies**

7 89. Defendants sell products to consumers, including Affiliates, through the
8 SBH website and Affiliate Websites.
9

10 90. Defendants also sell products to Affiliates through the Affiliate’s “back
11 office”—a password-protected website managed by SBH and unique to each Affiliate.
12

13 91. Defendants do not clearly and conspicuously disclose a shipping date to
14 consumers who purchase products on the SBH website, Affiliate Websites, or Affiliate
15 back offices.

16 92. During the product-ordering process on the SBH website or Affiliate
17 Websites, Defendants do not display the SBH “terms and conditions.” Instead,
18 consumers can only find the terms and conditions by clicking on a small-print “Terms of
19 Use” hyperlink on the bottom of the SBH website or Affiliate Websites.
20

21 93. When Affiliates order products from their back offices, they can only view
22 the terms and conditions by clicking a hyperlink.
23

24 94. Buried within Defendants’ undisclosed or hyperlinked terms and
25 conditions, and spread across multiple, sometimes-unnumbered sections in small font, are
26 the specifics of SBH’s shipping, no-refund, and chargeback policies.
27
28

1 a. In the second paragraph of section 14, Defendants state that “SBH
2 [p]roducts typically ship within 48 business hours” and that “from time to time,”
3 products may not ship for “up to 60 days or more in some cases.”
4

5 b. Section 14 also states that all product purchases are nonrefundable
6 “for any reason whatsoever” and prohibits consumers from seeking credit card
7 “chargebacks” (i.e., a refund through a credit card company).
8

9 c. The unnumbered “Liquidated Damages” section of the terms and
10 conditions impose liquidated damages upon consumers who “violate[] the No
11 Refund Policy and file[] a chargeback or dispute[] a purchase they made from
12 [SBH].” Those damages equal three times the amount of each chargeback or
13 \$1,000—whichever is greater.
14

15 d. The unnumbered “Confession of Judgment” section of the terms and
16 conditions also allows SBH to confess a judgment in any court against a consumer
17 who “dispute[s]” a credit card payment or obtains a reversal of a credit card
18 transaction “for any reason.” The same section defines the confessed judgment
19 amount as three times the amount of each reversed or disputed charge or \$1,000—
20 whichever is greater—plus the amount of the original charge, along with
21 collection costs, court costs, and attorneys’ fees.
22

23
24 95. In a separate part of the SBH Affiliates’ back offices, a “frequently asked
25 questions” section responds to a “What is the SBH Shipping policy?” question by stating
26 that products “typically ship within 48 – 72 business hours from when the order is
27
28

1 placed.” Only under a separate “How do refunds work?” question do Defendants state
2 that orders may not ship for “up to 60 days or more in some cases.”

3 96. On many occasions, consumers have waited months to receive products or
4 have not received products at all.

5 97. Defendants do not obtain consumers’ consent to shipping delays.

6 98. Defendants do not offer any consumers, including consumers who wait for
7 months to receive products or who never receive their products, the option to cancel their
8 order and obtain a refund.

9 99. Defendants do not provide refunds to consumers who request them,
10 including consumers who wait months to receive their products or who never receive
11 their products.

12 100. Jay Noland has urged Affiliates to “keep ordering, keep moving, keep
13 pushing,” even when SBH runs out of products.

14 101. Defendants threaten consumers who ask questions or complain about
15 shipping delays with legal action or removal from the company.

16 102. In one Facebook video, Jay Noland said, “We’re having just a crazy
17 amount of people calling our 800 number asking where their orders are at.” He blamed
18 this on “terrible leadership” not by himself, but instead by the Affiliates who had
19 recruited the complaining Affiliates. He then threatened to remove from SBH the
20 complaining Affiliates and those Affiliates’ upline referrers.
21
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1 103. In one video posted to Facebook, Jay Noland threatened to report to the
2 police any Affiliate who requested a chargeback on a product for which he or she had
3 received a commission—even if the Affiliate had not received the product.
4

5 104. SBM Holdings sued nine SBH Affiliates in Nevada state court, alleging,
6 among other things, that the Affiliates violated the SBH terms and conditions by seeking
7 at least 12 chargebacks.
8

9 **Defendants’ Sale of Consumers Goods and Services at SBH and**
10 **Success by Media Events**

11 105. Defendants and their representatives frequently host events at which they
12 sell SBH products and tickets to future training events. These events occur at locations
13 other than the Defendants’ place of business.
14

15 106. As seen in the image accompanying paragraph 86, Defendants require new
16 Affiliates to attend all “major corporate events.” Similarly, as described in paragraph 47,
17 Defendants encourage Affiliates seeking financial freedom to attend “all SBH Corporate
18 trainings and events no matter what.”
19

20 107. The “major corporate events” referenced in paragraph 106 occur 3-4 times
21 annually at a cost \$200-3500 per ticket, excluding travel and hotel costs. These events
22 usually occur in hotel conference rooms or convention centers.
23

24 108. Defendants and their representatives also host smaller events, such as
25 “coffee tea mixers” (“CTMs”) or “Success Saturdays,” throughout the year. These events
26 usually occur in Defendants’ or their representatives’ homes or in hotel conference
27 rooms.
28

1 109. At these events, Defendants use high-pressure tactics—including threats of
2 diminished status within SBH; emotional pleas from friends, family, and SBH leaders;
3 and screaming—to sell consumer goods or services, including SBH products and tickets
4 to training events, that cost more than \$130.
5

6 110. Defendants do not inform, either orally or in writing, purchasers of goods
7 or services at the above-described events of their right to cancel the transaction within
8 three business days. Defendants also do not provide these purchasers with a form “notice
9 of cancellation” that they may use to cancel the transactions.
10

11 111. Based on the facts and violations of law alleged in this Second Amended
12 Complaint, the FTC has reason to believe that Defendants are violating or are about to
13 violate laws enforced by the Commission.
14

15 **Defendants’ “VOZ Travel” Marketing Scheme**

16 112. Defendants’ revenues from sales of SBH products and memberships
17 declined in 2019.
18

19 113. Amid these faltering sales, Defendants, in October 2019, announced a new
20 “VOZ Travel” program.
21

22 114. Defendants promoted the VOZ Travel program on daily SBH Heat Calls
23 and on the SBH Heat Facebook page. Jay Noland described VOZ as a “travel product of
24 Success By Health owned by Success By Media.”
25

26 115. During the October 7, 2019 “Strategic Mastermind Webinar” on which
27 Defendants announced VOZ, Jay Noland told SBH Affiliates that, within 1-3 months,
28 Success By Health would launch a VOZ Travel booking platform that would allow VOZ

1 members to book travel at a 75% discount from public pricing. Members would also be
 2 able to sell or otherwise provide “VOZ passes” to nonmembers, which would enable the
 3 nonmembers to obtain steep travel discounts. Members would earn commissions based
 4 on the savings obtained when nonmembers booked travel through the members or the
 5 members’ downline teams.
 6

7 116. Defendants’ false promises of substantial income and emphasis on
 8 recruiting over retail sales in SBH extended to their VOZ Travel program.
 9

10 117. Defendants, for example, explained that VOZ, like SBH, would use a “six-
 11 tier commission” structure.
 12

13 118. Defendants promoted the opportunity to earn large monetary rewards in
 14 VOZ, through the six-tier commission structure, by recruiting large teams. For example,
 15 visuals from Defendants’ VOZ remarketing presentation, pictured below, touted
 16 consumers’ ability to earn \$230,000 per year—by applying a “team building model” with
 17 “casual effort”—or over \$1.5 million per year by being “on the ball.”
 18

The slide features the VOZ Pass logo and the title "ETA Team Building Model | Casual Effort". It illustrates a "team building model" where one person ("YOU") recruits a team of 1,000 people, each of whom is a VOZ Pass customer. This team then recruits 10,000 customers. The slide lists potential earnings for the individual and the total savings for the team.

Category	Value
PAY 9% (AVG) FROM TIER 1,2 & 3	\$639 AVG/DAY
AVG/MON POTENTIAL	\$19,170
AVG/YEAR POTENTIAL	\$230,040
Trips per year/customer	10,000
Avg savings per trip	\$650
Total saved	\$6,500,000
Comm. Vol./year	2,600,000

INCOME DISCLAIMER: Any earnings information, statements regarding income, or testimonials and examples are used in the SBH Commission Plan solely to explain how the Commission Plan works and are not representative or guarantees of any earnings or income. Individual income results may vary significantly. No Implied Earnings.



119. Similarly, in one VOZ Travel training video, Sacca stated: “There will be VOZ Travel [members] making over \$1.53 [million] per year.” After adding that he could not “guarantee you income in any way, shape, form, or fashion,” Sacca proceeded to “guarantee you if you go to work, you’re gonna change your life.”

120. All of the purported benefits of VOZ Travel membership, including discounted travel and lucrative commissions, were illusory. The VOZ booking platform never launched.

121. During VOZ’s permanent “pre-launch,” consumers could buy VOZ memberships only by spending either \$1,000 for a VOZ “movement pack” or \$2,495 for a VOZ “founders pack.”

122. Defendants and VOZ Travel members sold VOZ packs in various forums, including in their homes and at hotels and conference centers. They did not, either orally or in writing, inform purchasers of VOZ packs in these forums of their right to cancel the

1 transaction within three business days. Defendants also did not provide these purchasers
2 with a form “notice of cancellation” that they may use to cancel the transactions.

3 123. There were no physical VOZ “packs,” and consumers who bought “packs”
4 never received any actual product or service. Instead, they earned the right to receive
5 rewards by recruiting additional consumers to spend \$1,000 or more on membership
6 packs.
7

8 124. For example, Defendants launched “3x3,” “4x4,” and “5x5” cash
9 promotions that rewarded the recruitment of VOZ members. To earn the 3x3 bonus, a
10 consumer had to buy a VOZ membership “pack,” personally recruit three more
11 consumers to buy VOZ membership packs, and then have each of these three new
12 recruits themselves recruit three new VOZ members. For doing so, the consumer would
13 receive a one-time bonus of \$1,000-\$2,000. The 4x4 and 5x5 bonuses worked the same
14 way, but provided higher cash rewards.
15
16

17 125. Defendants alluded to other VOZ Travel recruiting rewards more vaguely.
18 For example, Defendants frequently posted to the SBH Heat Facebook group lists
19 identifying the VOZ members who had recruited the most new members. In one such
20 post, Noland stated that there was “no telling what I’m going to do SPECIAL” for the
21 members who recruited the most new members.
22

23 126. Defendants pushed SBH Affiliates to buy VOZ Travel membership packs
24 and recruit others to do the same throughout October, November, and December 2019.
25
26
27
28

1 127. On December 18, 2019, Jay Noland stated that the VOZ Travel “pre-
2 launch” was closing that day and that Defendants expected to unveil “beta access” to the
3 VOZ booking platform by the end of December.
4

5 128. Just two days later, on December 20, 2019, Jay Noland announced that
6 VOZ Travel booking platform “beta access” would actually not be available in December
7 because, Noland claimed, he had just signed a “multibillion dollar inked deal,” which was
8 the “biggest travel deal ever.” Noland claimed that the deal would “put us in a position to
9 where we literally have the most unfair advantage in all of travel.” Defendants referred
10 to the delay as a “Strategic Timing Release Announcement” and explained that they now
11 expected to launch beta access to the VOZ booking platform between January 10-15,
12 2020.
13
14

15 129. In fact, there was no “multibillion dollar inked deal,” nor had Defendants
16 entered into any new travel-related contract. Rather, the delayed launch was due to an
17 increasingly volatile relationship between Defendants and the vendor they had hired to
18 build the VOZ Travel booking platform.
19

20 130. Defendants used the delay to announce that “Stage 2 of VOZ pre-launch
21 has begun!” Stage 2 of the pre-launch featured increased membership prices of \$1,295
22 and \$2,795. Defendants continued to reward consumers for buying memberships and
23 recruiting others to do the same.
24

25 131. On January 6 and 8, 2020, Defendants and their booking-platform vendor
26 both declared their intent to terminate the parties’ contract. As a result, Defendants had
27
28

1 no booking platform to offer VOZ Travel members, and VOZ no longer had an imminent
2 launch date.

3 132. Rather than inform SBH Affiliates and VOZ Travel members of the
4 booking platform's collapse, Defendants simply changed their messaging. On a January
5 8 conference call with VOZ members, Noland explained that VOZ was not just a
6 "discount wholesale travel program," but instead was about "freedom," "experiences,"
7 and "memories."
8

9
10 133. Between January 8 and the Court's entry of the January 13 temporary
11 restraining order, Defendants continued to push consumers to pay over \$1,000 to enroll
12 as VOZ Travel members and to recruit others to do the same.

13
14 134. As of the Court's January 13, 2020 TRO, Defendants had not retained a
15 new vendor to build the VOZ booking platform.

16
17 135. From October 2019 through January 2020, Defendants sold approximately
18 \$1 million in VOZ Travel memberships, failed to provide the product or service that their
19 members purchased the right to use and to sell, and paid out bonuses to members based
20 solely on those members' recruitment of new members.

21
22 **Corporate Defendants' Illusory Separateness**

23 136. Defendants Jay and Lina Noland formed Defendant Success By Media LLC
24 in late 2015.

25 137. Defendant Jay Noland formed Defendant Enhanced Capital Funding in
26 June 2018.
27
28

1 138. Defendants Jay and Lina Noland formed Defendant Success By Media
2 Holdings Inc. in August 2018.

3 139. Defendant Jay Noland formed Defendant Rinpark SA in October 2019.

4 140. Enhanced Capital Funding and SBM Holdings are the only two
5 shareholders of Success By Media.
6

7 141. Enhanced Capital Funding is a director of SBM Holdings.

8 142. According to SBM Holdings' SEC filings, SBM Holdings and Success By
9 Media "operat[e] as one corporation."
10

11 143. SBM Holdings, Success By Media, and Enhanced Capital Funding have all
12 used the following addresses: 1452 W Horizon Ridge Parkway, Suite 503, Henderson,
13 NV 89012; and 170 Green Valley Parkway, Suite 300, Henderson, NV 89012. Success
14 By Media LLC and Enhanced Capital Funding have each used the following address:
15 10620 Southern Highlands Parkway, 110-407, Las Vegas, NV 89141. SBM Holdings,
16 SBM International, and Enhanced Capital Funding have all used the following addresses:
17 Rambla Lorenzo Batlle Pacheco y Parada 33, Apt. 304, Punta Del Este, Maldonado,
18 Uruguay; and 6537 Alejandro Schroeder, Montevideo, Uruguay.
19
20

21 144. Beginning in or around July 2017, Defendants Jay Noland, Lina Noland,
22 Scott Harris, and Thomas Sacca operated Success By Health as an unincorporated
23 division of Success By Media.
24

25 145. After July 1, 2017, over 97% of Enhanced Capital Funding's income came
26 from Success By Media. Over 96% of Success By Media's revenues, in turn, came from
27 SBH Affiliates.
28

1 146. The Nolands used Enhanced Capital Funding to funnel money from
2 Success By Media to themselves. Jay Noland, for example, received undocumented
3 “loans” from Success By Media that were paid to Enhanced Capital Funding and were
4 never repaid. He made car payments directly from Enhanced Capital Funding for the
5 Nolands’ personal benefit.
6

7 147. In January 2017, Success By Media entered into a license agreement with
8 Enhanced Capital Funding, which at the time had not been incorporated in any state.
9 Lina Noland signed the agreement for Success By Media, and Jay Noland signed for
10 Enhanced Capital Funding. Pursuant to the license agreement, Success By Media agreed
11 to pay \$500,000 plus 15% of net profits to Enhanced Capital Funding for the right to sell
12 unspecified products in the United States for 10 years. Jay Noland described the license
13 as ‘exclusive’ without any time or geographic limitation in SEC filings for SBM
14 Holdings. The license agreement was not negotiated at arm’s length, and Defendants
15 conducted no analysis of the fair market value of the product license. Later, the
16 companies amended the agreement to require Success By Media to pay interest, without
17 any consideration.
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22 148. Defendants claim Success By Media licenses “training materials” and
23 software from Enhanced Capital Funding. No written contracts exist.

24 149. From July 1, 2017 through the filing of this case, SBH Affiliates accounted
25 for 98% of purchases of Enhanced Capital Funding-owned or –managed training
26 materials.
27
28

1 conspicuously and without prior demand, an option either to consent to a delay in
2 shipping or to cancel the buyer’s order and receive a prompt refund.” 16 C.F.R.
3 § 435.2(b)(1).
4

5 a. Any such offer “shall be made within a reasonable time after the
6 seller first becomes aware of its inability to ship.” 16 C.F.R. § 435.2(b)(1).

7 b. The offer must fully inform the buyer of the buyer’s right to cancel
8 and provide a definite revised shipping date or inform the buyer that the seller
9 cannot make any representation regarding the length of the delay. 16 C.F.R. §
10 435.2(b)(1)(i).
11

12 168. A seller must “deem an order canceled and . . . make a prompt refund to the
13 buyer whenever the seller receives, prior to the time of shipment, notification from the
14 buyer cancelling the order pursuant to any option [under the Merchandise Rule] . . . [or]
15 [t]he seller fails to offer the option [to consent to a delay or cancel required by
16 § 435.2(b)(1)] and has not shipped the merchandise” within the time required by the
17 Merchandise Rule. 16 C.F.R. § 435.2(c), (c)(1), (c)(5).
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20 169. Pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16
21 C.F.R. § 435.2, a violation of the Merchandise Rule constitutes an unfair or deceptive act
22 or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15
23 U.S.C. § 45(a).
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1 other than the seller's place of business (e.g., hotel rooms or convention centers). 16
2 C.F.R. §§ 429.0(a), 429.1.

3 175. The Cooling-Off Rule requires the seller to furnish the purchaser with a
4 fully completed receipt or copy of any contract pertaining to such sale at the time of its
5 execution, which must contain a statement summarizing the purchaser's right to cancel
6 within three business days. 16 C.F.R. § 429.1(a).
7

8 176. The Cooling-Off Rule also requires the seller to inform purchasers about
9 cancellation rights at the time of the sale by giving the purchaser two copies of a
10 cancellation form (one to keep and one to send). The Cooling-Off Rule also requires the
11 cancellation form to be captioned either "NOTICE OF RIGHT TO CANCEL" or
12 "NOTICE OF CANCELLATION" and sets forth the language that must be contained in
13 the cancellation notice. 16 C.F.R. § 429.1(b), (c).
14

15 177. The Cooling-Off Rule also requires that, at the time the purchaser signs the
16 contract or purchases the goods or services, the seller orally inform the purchaser of the
17 purchaser's right to cancel. 16 C.F.R. § 429.1(e).
18

19 178. Pursuant to Section 18 of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16
20 C.F.R. § 429.1, a violation of the Cooling-Off Rule constitutes an unfair or deceptive act
21 or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15
22 U.S.C. § 45(a).
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THIS COURT’S POWER TO GRANT RELIEF

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2 183. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
3 grant injunctive and such other relief as the Court may deem appropriate to halt and
4 redress violations of any provision of law enforced by the FTC. The Court, in the
5 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or
6 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
7 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced
8 by the FTC.
9

10
11 184. Section 19 of the FTC Act, 15 U.S.C. § 57b, the Merchandise Rule, and the
12 Cooling-Off Rule authorize this Court to grant such relief as the Court finds necessary to
13 redress injury to consumers resulting from Defendants’ violations of the Merchandise
14 Rule and the Cooling-Off Rule, including the rescission or reformation of contracts, and
15 the refund of money.
16
17

PRAYER FOR RELIEF

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19 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15
20 U.S.C. §§ 53(b), 57b, the Merchandise Rule, the Cooling-Off Rule, and the Court’s own
21 equitable powers, requests that the Court:
22

23 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
24 necessary to avert the likelihood of consumer injury during the pendency of this action
25 and to preserve the possibility of effective final relief, including but not limited to
26 temporary and preliminary injunctions, and an order providing for immediate access, the
27 turnover of business records, an asset freeze, and the appointment of a receiver;
28

1 B. Enter a permanent injunction to prevent future violations of the FTC Act by
2 Defendants;

3 C. Award such relief as the Court finds necessary to redress injury to
4 consumers resulting from Defendants' violations of the FTC Act, the Merchandise Rule,
5 and the Cooling-Off Rule, including but not limited to, rescission or reformation of
6 contracts, restitution, the refund of monies paid or return of property, the payment of
7 damages, and the disgorgement of ill-gotten monies; and
8

9
10 D. Award Plaintiff the costs of bringing this action, as well as such other and
11 additional relief as the Court may determine to be just and proper.
12

13
14
15 Respectfully submitted,

16 ALDEN F. ABBOTT
17 General Counsel

18 Dated: September 23, 2020

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