

1 **JURISDICTION AND VENUE**

2 2. The Corporate Defendants admit the allegations in Paragraph 2.

3 3. The Corporate Defendants admit the allegations in Paragraph 3.

4 **PLAINTIFF**

5 4. Responding to the allegations in Paragraph 4, the Corporate Defendants
6 admit that the FTC is an independent agency of the United States Government created by
7 statute. The Corporate Defendants further admit that the FTC enforces Section 5(a) of the
8 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
9 affecting commerce. The Corporate Defendants deny any allegation in Paragraph 4 that
10 they violated Section 5(a) of the FTC Act.

11 5. The allegations in Paragraph 5 set forth conclusions of law as to which no
12 response is required. However, if deemed to contain allegations of fact, the Corporate
13 Defendants deny the allegations.

14 **DEFENDANTS**

15 6. Responding to the allegations in Paragraph 6, Vemma Nutrition Company
16 admits that it is an Arizona corporation with its principal place of business at 1621 West
17 Rio Salado Parkway, Tempe, Arizona 85281; that it transacts or has transacted business in
18 this district and throughout the United States; and that it advertises and markets business
19 opportunities to consumers throughout the United States. Vemma Nutrition Company
20 denies the remaining allegations in Paragraph 6. Vemma Nutrition Company
21 affirmatively alleges that there is no cost to become a Vemma Affiliate.

22 7. Responding to the allegations in Paragraph 7, Vemma International
23 Holdings, Inc. (“Vemma International”) admits that it is an Arizona corporation with its
24 principal place of business at 1621 West Rio Salado Parkway, Tempe, Arizona 85281.
25 Vemma International denies the remaining allegations in Paragraph 7.

26

1 partial owner of certain entities operating in various international markets. The Corporate
2 Defendants deny the remaining allegations in Paragraph 13.

3 14. Responding to the allegations in Paragraph 14, the Corporate Defendants
4 admit that Affiliates can earn financial and other rewards for building two “teams” or
5 “downlines” of individuals who also enroll with the company, either as an Affiliate, if the
6 individual is interested in the business opportunity, or as a customer, if the individual is
7 primarily interested in purchasing Vemma products for his or her own consumption. The
8 Corporate Defendants deny the remaining allegations in Paragraph 14.

9 15. The Corporate Defendants deny the allegations in Paragraph 15.

10 16. Responding to the allegations in Paragraph 16, the Corporate Defendants
11 admit only that Vemma Nutrition Company earned more than \$200 million in annual
12 revenues in 2013 and 2014. The Corporate Defendants deny the allegation that Vemma
13 Nutrition Company earned this money using a business model that “depends upon
14 recruiting individuals to participate in Vemma as Affiliates and encouraging them to
15 purchase Vemma Products in connection with such participation, rather than selling
16 products to ultimate-user consumers.” The Corporate Defendants affirmatively allege that
17 virtually all revenues came from the sale of Vemma products to “ultimate users” – both
18 Customers and Affiliates who purchased product for their personal consumption or resale.

19 **Defendants’ Sales and Marketing Activities**

20 17. Responding to the allegations in Paragraph 17, the Corporate Defendants
21 admit only that they promote the Vemma program through a variety of channels and that
22 Defendant Boreyko has spoken at events promoting Vemma’s products and opportunities.
23 The Corporate Defendants deny the allegation that “[o]ppportunity events are meetings
24 designed to motivate and train Affiliates and to recruit new Affiliates.” The Corporate
25 Defendants affirmatively allege that opportunity events are also designed to promote the
26 sale of Vemma’s products. The allegations regarding Defendant Alkazin are not directed

1 at the Corporate Defendants, and therefore require no response. However, if deemed to
2 contain allegations against the Corporate Defendants, the Corporate Defendants deny the
3 remaining allegations.

4 18. The Corporate Defendants deny the allegations in Paragraph 18.

5 19. Responding to the allegations in Paragraph 19, the Corporate Defendants
6 admit only that there was a campaign known as “YPR.” The Corporate Defendants deny
7 the remaining allegations in Paragraph 19. The Corporate Defendants affirmatively allege
8 that the YPR campaign was no longer an active campaign as of the time of the filing of
9 the Complaint.

10 20. The Corporate Defendants deny the allegations in Paragraph 20.

11 21. The Corporate Defendants deny the allegations in Paragraph 21.

12 22. The Corporate Defendants deny the allegations in Paragraph 22.

13 23. The Corporate Defendants deny the allegations in Paragraph 23.

14 24. The Corporate Defendants deny the allegations in Paragraph 24.

15 25. The Corporate Defendants deny the allegations in Paragraph 25.

16 26. The Corporate Defendants deny the allegations in Paragraph 26.

17 27. The Corporate Defendants deny the allegations in Paragraph 27.

18 28. The Corporate Defendants deny the allegations in Paragraph 28.

19 29. The Corporate Defendants deny the allegations in Paragraph 29.

20 30. Responding to the allegations in Paragraph 30, the Corporate Defendants
21 admit that Vemma Nutrition Company provides tools and training materials for Affiliates.
22 The Corporate Defendants deny the remaining allegations in Paragraph 30 and
23 affirmatively allege that Plaintiff has not accurately and completely summarized those
24 materials.

25
26

1 38. The Corporate Defendants deny the allegations in Paragraph 38.

2 39. The Corporate Defendants deny the allegations in Paragraph 39.

3 40. The Corporate Defendants deny the allegations in Paragraph 40 that are
4 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
5 not accurately and completely summarized the statements described in Paragraph 40, and
6 has taken them out of context.

7 41. The Corporate Defendants deny the allegations in Paragraph 41 that are
8 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
9 not accurately and completely summarized the statements described in Paragraph 41, and
10 has taken them out of context.

11 42. Responding to the allegations in Paragraph 42, the Corporate Defendants
12 admit that Vemma Nutrition Company has published income disclosure statements. The
13 Corporate Defendants refer to those income disclosure statements for their true and
14 complete contents and deny that Plaintiff has accurately and completely summarized
15 them.

16 43. The Corporate Defendants deny the allegations in Paragraph 43.

17 44. The Corporate Defendants deny the allegations in Paragraph 44.

18 **Vemma's Compensation Plan**

19 45. The Corporate Defendants admit the allegations in Paragraph 45.

20 46. The Corporate Defendants admit the allegations in Paragraph 46.

21 47. The Corporate Defendants deny the allegations in Paragraph 47.

22 48. Responding to the allegations in Paragraph 48, the Corporate Defendants
23 admit that in order to be eligible for financial compensation under the compensation plan
24 an Affiliate must be "qualified." The Corporate Defendants further admit that under the
25 compensation plan in effect prior to the filing of the Complaint, to be qualified an
26 Affiliate must have (1) a minimum of 120 points in "personal volume" each month, and

1 (2) at least one “active” customer or Affiliate on each of the Affiliate’s left and right
2 teams. The Corporate Defendants deny the remaining allegations contained in Paragraph
3 48.

4 49. Responding to the allegations in Paragraph 49, the Corporate Defendants
5 admit that under the compensation plan in effect prior to the filing of the Complaint,
6 Affiliates could achieve 120 personal volume points in a month by personally purchasing
7 products worth that same number in “qualifying volume” points or “QV” for personal
8 consumption or resale, or by having double that amount (i.e., 240 QV) purchased by their
9 personally enrolled customers, or some combination of both. The Corporate Defendants
10 deny the remaining allegations contained in Paragraph 49.

11 50. Responding to the allegations in Paragraph 50, the Corporate Defendants
12 admit that under the compensation plan in effect prior to the filing of the Complaint, to be
13 “active” customers or Affiliates must have 60 personal volume points in a month by
14 personally purchasing products worth 60 QV that month for personal consumption or
15 resale, having double that purchased by their personally enrolled customers, or some
16 combination of both. The Corporate Defendants deny the remaining allegations contained
17 in Paragraph 50.

18 51. The Corporate Defendants deny the allegations in Paragraph 51.

19 52. The Corporate Defendants deny the allegations in Paragraph 52.

20 53. Responding to the allegations in Paragraph 53, the Corporate Defendants
21 allege that Plaintiff has not accurately and completely summarized the compensation plan.
22 The Corporate Defendants deny all remaining allegations in Paragraph 53.

23 54. Responding to the allegations in Paragraph 54, the Corporate Defendants
24 refer to Vemma’s compensation plan for its true and complete contents and deny that
25 Plaintiff has accurately and completely summarized them. The Corporate Defendants
26 deny all remaining allegations in Paragraph 54.

1 55. Responding to the allegations in Paragraph 55, the Corporate Defendants
2 refer to Vemma's compensation plan for its true and complete contents and deny that
3 Plaintiff has accurately and completely summarized them. The Corporate Defendants
4 deny all remaining allegations in Paragraph 55.

5 56. The Corporate Defendants deny the allegations in Paragraph 56. The
6 Corporate Defendants allege that Plaintiff has not accurately and completely summarized
7 the statements described in Paragraph 56, and has taken them out of context.

8 57. Responding to the allegations in Paragraph 57, the Corporate Defendants
9 refer to Vemma's compensation plan for its true and complete contents and deny that
10 Plaintiff has accurately and completely summarized them. The Corporate Defendants
11 deny all remaining allegations in Paragraph 57.

12 58. Responding to the allegations in Paragraph 58, the Corporate Defendants
13 refer to Vemma's compensation plan for its true and complete contents and deny that
14 Plaintiff has accurately and completely summarized them. The Corporate Defendants
15 deny all remaining allegations in Paragraph 58.

16 59. Responding to the allegations in Paragraph 59, the Corporate Defendants
17 refer to Vemma's compensation plan for its true and complete contents and deny that
18 Plaintiff has accurately and completely summarized them. The Corporate Defendants
19 deny all remaining allegations in Paragraph 59.

20 60. Responding to the allegations in Paragraph 60, the Corporate Defendants
21 refer to Vemma's compensation plan for its true and complete contents and deny that
22 Plaintiff has accurately and completely summarized them. The Corporate Defendants
23 deny all remaining allegations in Paragraph 60.

24 61. The Corporate Defendants deny the allegations in Paragraph 61.

25 62. The Corporate Defendants deny the allegations in Paragraph 62.

26 63. The Corporate Defendants deny the allegations in Paragraph 63.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PRAYER FOR RELIEF

WHEREFORE, having fully responded to the Complaint, the Corporate Defendants respectfully request that the FTC’s requests for a permanent injunction and other equitable relief be denied in their entirety, and that the Court award the Corporate Defendants their attorneys’ fees and costs, and any further relief the Court deems appropriate.

RESPECTFULLY SUBMITTED this 30th day of September, 2015.

QUARLES & BRADY LLP
Renaissance One
Two North Central Avenue
Phoenix, AZ 85004-2391

By *s/ Kevin D. Quigley*

Brian R. Booker
John A. Harris
Kevin D. Quigley
Edward A. Salanga

Attorneys for Defendants Vemma Nutrition Company, Vemma International Holdings, Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 30th, 2015, I electronically transmitted the
3 attached document to the Clerk’s Office using the CM/ECF System for filing and a copy
4 was electronically submitted to counsel at the email addresses below:

5 Jonathan E. Neuchterlein
6 General Counsel
7 Angeleque P. Linville
8 Jason C. Moon
9 Anne D. Lejeune
10 Emily B. Robinson
11 FEDERAL TRADE COMMISSION
12 alinville@ftc.gov
13 jmoon@ftc.gov
14 alejeune@ftc.gov
15 erobinson@ftc.gov
16 *Attorneys for Plaintiff*

17 John R. Clemency
18 GALLAGHER & KENNEDY
19 john.clemency@gknet.com
20 *Attorneys for Defendant Benson K. Boreyko*

21 Keith Beauchamp
22 Coppersmith & Brockelman PLC
23 kbeauchamp@cblawyers.com
24 *Attorneys for Defendant Tom Alkazin and Relief Defendant Bethany Alkazin*

25 *s/ Kelly Thwaites*
26 _____