	Case 2:15-cv-01578-JJT Document 123 F	Filed 09/30/15 Page 1 of 14			
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9	Company and Vemma International Holdings, Inc.				
10					
11	IN THE UNITED STATES DISTRICT COURT				
12	FOR THE DISTRIC	T OF ARIZONA			
13		101			
14	Federal Trade Commission,	NO. CV-15-01578-PHX-JJT			
15	Plaintiff,	DEFENDANTS VEMMA NUTRITION COMPANY AND			
16	vs.	VEMMA INTERNATIONAL			
17	Vemma Nutrition Company, et al.,	HOLDINGS, INC.'S ANSWER TO PLAINTIFF FEDERAL TRADE			
18	Defendants.	COMMISSION'S COMPLAINT FOR PERMANENT INJUNCTION			
19		AND OTHER EQUITABLE RELIEF			
20	Defendants Vemma Nutrition Company	y and Vemma International Holdings, Inc.			
21	(the "Corporate Defendants") hereby answer the Federal Trade Commission's Complaint				
22	for Injunctive and other Equitable Relief.				
23	1. Paragraph 1 contains no allegations that require a response. The Corporate				
24	Defendants nonetheless deny any allegation in Paragraph 1 that they violated Section 5(a)				
25	of the FTC Act, 15 U.S.C. § 45(a), and further deny that the FTC is entitled to the relief it				
26	seeks.				
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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		
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18	this district and throughout the United States; and that it advertises and markets business		
18 19	this district and throughout the United States; and that it advertises and markets business opportunities to consumers throughout the United States. Vemma Nutrition Company		
19	opportunities to consumers throughout the United States. Vemma Nutrition Company		
19 20	opportunities to consumers throughout the United States. Vemma Nutrition Company denies the remaining allegations in Paragraph 6. Vemma Nutrition Company		
19 20 21	opportunities to consumers throughout the United States. Vemma Nutrition Company denies the remaining allegations in Paragraph 6. Vemma Nutrition Company affirmatively alleges that there is no cost to become a Vemma Affiliate.		
19 20 21 22	 opportunities to consumers throughout the United States. Vemma Nutrition Company denies the remaining allegations in Paragraph 6. Vemma Nutrition Company affirmatively alleges that there is no cost to become a Vemma Affiliate. 7. Responding to the allegations in Paragraph 7, Vemma International 		
 19 20 21 22 23 	 opportunities to consumers throughout the United States. Vemma Nutrition Company denies the remaining allegations in Paragraph 6. Vemma Nutrition Company affirmatively alleges that there is no cost to become a Vemma Affiliate. 7. Responding to the allegations in Paragraph 7, Vemma International Holdings, Inc. ("Vemma International") admits that it is an Arizona corporation with its 		

8. Responding to the allegations in Paragraph 8, the Corporate Defendants
 admit only that Defendant Benson K. Boreyko ("Boreyko") is the Chief Executive
 Officer, Secretary, and a director of Vemma Nutrition Company, that he is the President,
 Secretary, and a director of Vemma International and that he resides in this District. The
 Corporate Defendants deny the remaining allegations in Paragraph 8.

9. The allegations in Paragraph 9 are not directed at the Corporate Defendants,
and therefore require no response. However, if deemed to contain allegations against the
Corporate Defendants, the Corporate Defendants deny the allegations.

9 10. The allegations in Paragraph 10 are not directed at the Corporate
10 Defendants, and therefore require no response. However, if deemed to contain allegations
11 against the Corporate Defendants, the Corporate Defendants deny the allegations.

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COMMON ENTERPRISE

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

COMMERCE

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

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DEFENDANTS' BUSINESS PRACTICES

13. Responding to the allegations in Paragraph 13, the Corporate Defendants
admit that Vemma Nutrition Company was founded in 2004, that Vemma Nutrition
Company is a multilevel marketing company that promotes health and wellness drinks
through independent distributors called "Affiliates", that the products promoted include
health, energy and weight loss products, and that Vemma International is the sole or

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

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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.

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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.

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

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

19. Responding to the allegations in Paragraph 19, the Corporate Defendants
admit only that there was a campaign knows as "YPR." The Corporate Defendants deny
the remaining allegations in Paragraph 19. The Corporate Defendants affirmatively allege
that the YPR campaign was no longer an active campaign as of the time of the filing of
the Complaint.

- 20. The Corporate Defendants deny the allegations in Paragraph 20.
 - 21. The Corporate Defendants deny the allegations in Paragraph 21.

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

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

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

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

- 26. The Corporate Defendants deny the allegations in Paragraph 26.
- 27. The Corporate Defendants deny the allegations in Paragraph 27.

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

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

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

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1 31. Responding to the allegations in Paragraph 31, the Corporate Defendants admit that each Affiliate is provided a personal website. The Corporate Defendants deny the remaining allegations in Paragraph 31.

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32. Responding to the allegations in Paragraph 32, the Corporate Defendants admit that Affiliates may create training and promotional materials related to Vemma and that company approval is required prior to the distribution of materials created by Affiliates. The Corporate Defendants deny the remaining allegations in Paragraph 32.

Defendants' Income Claims

9 33. The Corporate Defendants deny the allegations in Paragraph 33 that are 10 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has 11 not accurately and completely summarized the statements described in Paragraph 33, and 12 has taken them out of context.

13 The Corporate Defendants deny the allegations in Paragraph 34 that are 34. directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has 14 15 not accurately and completely summarized the statements described in Paragraph 34, and 16 has taken them out of context.

The allegations in Paragraph 35 are not directed at the Corporate 17 35. 18 Defendants, and therefore require no response. However, if deemed to contain allegations 19 against the Corporate Defendants, the Corporate Defendants deny the allegations.

20 36. The allegations in Paragraph 36 are not directed at the Corporate 21 Defendants, and therefore require no response. However, if deemed to contain allegations 22 against the Corporate Defendants, the Corporate Defendants deny the allegations.

23 37. The Corporate Defendants deny the allegations in Paragraph 37 that are 24 directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has 25 not accurately and completely summarized the statements described in Paragraph 37, and 26 has taken them out of context.

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

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

40. The Corporate Defendants deny the allegations in Paragraph 40 that are
directed to the Corporate Defendants. The Corporate Defendants allege that Plaintiff has
not accurately and completely summarized the statements described in Paragraph 40, and
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.

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

- 43. The Corporate Defendants deny the allegations in Paragraph 43.
- 44. The Corporate Defendants deny the allegations in Paragraph 44.

Vemma's Compensation Plan

- 45. The Corporate Defendants admit the allegations in Paragraph 45.
- 46. The Corporate Defendants admit the allegations in Paragraph 46.
- 47. The Corporate Defendants deny the allegations in Paragraph 47.

48. Responding to the allegations in Paragraph 48, the Corporate Defendants admit that in order to be eligible for financial compensation under the compensation plan an Affiliate must be "qualified." The Corporate Defendants further admit that under the compensation plan in effect prior to the filing of the Complaint, to be qualified an 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 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 personally purchasing products worth 60 QV that month for personal consumption or 14 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.

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

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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.

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Responding to the allegations in Paragraph 54, the Corporate Defendants 54. 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.

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

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56. The Corporate Defendants deny the allegations in Paragraph 56. The Corporate Defendants allege that Plaintiff has not accurately and completely summarized 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.
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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 Plaintiff has accurately and completely summarized them. The Corporate Defendants 14 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.

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

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

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63. The Corporate Defendants deny the allegations in Paragraph 63. 1

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VIOLATIONS OF SECTION 5 OF THE FTC ACT

2 64. The allegations in Paragraph 64 set forth conclusions of law as to which no
3 response is required. However, if deemed to contain allegations of fact, the Corporate
4 Defendants deny the allegations.

5 65. The allegations in Paragraph 65 set forth conclusions of law as to which no
6 response is required. However, if deemed to contain allegations of fact, the Corporate
7 Defendants deny the allegations.

<u>COUNT I</u>

Illegal Pyramid

66. The Corporate Defendants deny the allegations in Paragraph 66.67. The allegations in Paragraph 67 set forth conclusions of law as to which no

response is required. However, if deemed to contain allegations of fact, the Corporate
Defendants deny the allegations.

<u>COUNT II</u>

Income Claims

68. The Corporate Defendants deny the allegations in Paragraph 68.

69. The Corporate Defendants deny the allegations in Paragraph 69.

18 70. The allegations in Paragraph 70 set forth conclusions of law as to which no19 response is required. However, if deemed to contain allegations of fact, the Corporate

20 Defendants deny the allegations.

COUNT III

Failure to Disclose

71. The Corporate Defendants deny the allegations in Paragraph 71.

72. The Corporate Defendants deny the allegations in Paragraph 72.

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73. The allegations in Paragraph 73 set forth conclusions of law as to which no
 response is required. However, if deemed to contain allegations of fact, the Corporate
 Defendants deny the allegations.

4 74. The allegations in Paragraph 74 set forth conclusions of law as to which no
5 response is required. However, if deemed to contain allegations of fact, the Corporate
6 Defendants deny the allegations.

COUNT IV

Means and Instrumentalities

75. The Corporate Defendants deny the allegations in Paragraph 75.

10 76. The allegations in Paragraph 76 set forth conclusions of law as to which no
11 response is required. However, if deemed to contain allegations of fact, the Corporate
12 Defendants deny the allegations.

COUNT V

Relief Defendant

15 77. The allegations in Paragraph 77 are not directed at the Corporate
16 Defendants, and therefore require no response. However, if deemed to contain allegations
17 against the Corporate Defendants, the Corporate Defendants deny the allegations.

18 78. The allegations in Paragraph 78 are not directed at the Corporate
19 Defendants, and therefore require no response. However, if deemed to contain allegations
20 against the Corporate Defendants, the Corporate Defendants deny the allegations.

79. The allegations in Paragraph 79 are not directed at the Corporate
Defendants, and therefore require no response. However, if deemed to contain allegations
against the Corporate Defendants, the Corporate Defendants deny the allegations.

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The Corporate Defendants deny the allegations in Paragraph 80.

CONSUMER INJURY

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1 THIS COURT'S POWER TO GRANT RELIEF 2 81. The allegations in Paragraph 81 set forth conclusions of law as to which no 3 response is required. However, if deemed to contain allegations of fact, the Corporate 4 Defendants deny the allegations. 5 82. The Corporate Defendants deny all allegations of the Complaint, either 6 express or implied, not specifically admitted to or otherwise pled to herein. 7 **AFFIRMATIVE DEFENSES** 8 1. The Complaint fails to state a claim upon which relief can be granted. 9 2. The FTC's claims for injunctive relief are not authorized or available at law 10 or equity. 11 3. The FTC's claims for injunctive relief, as sought here, may be 12 unconstitutional. 13 4. The Corporate Defendants acted reasonably, in good faith, and in 14 accordance with any applicable standards and duties. The FTC and/or the consumers it purports to represent have failed to 15 5. 16 mitigate their losses, if any. Any losses sustained by the FTC and/or the consumers it purports to 17 6. 18 represent were caused by the acts or omissions of third parties over whom the Corporate 19 Defendants had no control or right to control. 20 7. Consumers represented by the FTC knowingly and voluntarily, and possibly 21 unreasonably, exposed themselves to any claimed losses with knowledge or appreciation 22 of the risk involved. 23 8. The Corporate Defendants maintain and enforce policies to prevent 24 "inventory loading", such as their policy that at least 70% of an Affiliate's purchased 25 product must be consumed or sold to an end user, in addition to their liberal return and 26 buyback policies. See Amway, 93 F.T.C. 618.

1	PRAYER FOR RELIEF		
2	WHEREFORE, having fully responded to the Complaint, the Corporate		
3	Defendants respectfully request that the FTC's requests for a permanent injunction and		
4	other equitable relief be denied in their entirety, and that the Court award the Corporate		
5	Defendants their attorneys' fees and costs, and any further relief the Court deems		
6	appropriate.		
7	RESPECTFULLY SUBMITTED this 30th day of September, 2015.		
8	QUARLES & BRADY LLP		
9	Renaissance One Two North Central Avenue		
10	Phoenix, AZ 85004-2391		
11	Pu s/ Kavin D. Quialau		
12	By <u>s/ Kevin D. Quigley</u> Brian R. Booker		
13	John A. Harris Kevin D. Quigley Edward A. Salanga		
14			
15	Attorneys for Defendants Vemma Nutrition Company, Vemma International Holdings, Inc.		
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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:		
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23			
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