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8 *Company and Vemma International Holdings, Inc.*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11  
12 Federal Trade Commission,  
13 Plaintiff,  
14 vs.  
15 Vemma Nutrition Company, *et al.*,  
16 Defendants.  
17

NO. CV-15-01578-PHX-JJT

**CORPORATE DEFENDANTS'  
QUARTERLY REPORT DATED  
JUNE 20, 2016**

18 Pursuant to Section V(B) of the Court's Preliminary Injunction Order (Doc. 118),  
19 entered September 18, 2015 ("the Order"), Vemma Nutrition Company and Vemma  
20 International Holdings, Inc. (collectively, "Vemma" or the "Corporate Defendants")  
21 submit this quarterly report describing the Corporate Defendants' business operations over  
22 the past three months.

23 **I. BACKGROUND**

24 Despite the significant operational challenges resulting from the Temporary  
25 Receiver's shutdown of Vemma's worldwide business on August 24, 2015, Vemma has  
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1 been able to slowly rebuild and stabilize its business. Gross sales for March 2016 through  
2 May 2016 are as follows:

3	March 2016	\$998,606.00
4	April 2016	\$919,309.00
5	May 2016	\$909,057.00

6 Between March 29, 2016 and April 7, 2016, the company was unable to process  
7 any credit card orders or run its scheduled auto ship program because its foreign  
8 merchant, processing through the Bank of Mauritius, unilaterally terminated Vemma's  
9 account without any prior notice. The Bank also withheld over \$600,000 of Vemma's  
10 funds, of which approximately \$300,000 have been released. The Bank's actions  
11 adversely affected both April and May 2016 gross sales. During the preceding five  
12 months, Vemma had processed over \$4,800,000 worth of credit card orders with the bank  
13 with an extremely low rate of charge backs and had not received any communication  
14 indicating there was a problem with the account. Vemma finally secured another foreign  
15 merchant in Canada and started processing orders on April 8, 2016. Vemma has also been  
16 able to secure the services of a second merchant processor.

17 **II. FINANCIAL ANALYSIS**

18 The following table sets forth Vemma's revenue and operating results for March  
19 2016 through May 2016. As discussed further below, Vemma is currently generating  
20 positive net operating income before depreciation. The monthly loss shown on the  
21 Vemma income statement is solely a result of extraordinary expenses that arose from the  
22 Temporary Receiver's worldwide shutdown of the business. Vemma has been addressing  
23 these expenses on a case by case basis.

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North America	<u>March 2016</u>	<u>April 2016</u>	<u>May 2016</u>
Revenue:	\$998,606	\$919,309	\$909,057
Cost of Sales:	\$531,053	\$469,494	\$457,184
Operating Expenses:	\$189,262	\$220,452	\$203,174
General and Administrative Expenses	\$452,405	\$371,411	\$317,719
Operating Income/( Loss)	(\$174,114)	(\$142,048)	(\$69,019)
Other Income and (Expense)	(\$90,112)	(\$85,186)	(\$38,327)
Net Operating Income/ (Loss)	(\$264,226)	(\$227,234)	(\$107,346)
Operating Income/(Loss) Before Depreciation	(\$190,028)	(\$153,508)	(\$34,067)
Extraordinary Expense		(\$55,768)	(\$54,249)
Income/(Loss) before income taxes	(\$264,226)	(\$283,002)	(\$161,595)

Vemma's revenue for June 1- 15, 2016 is \$504,637.43.

Exhibit A sets forth Vemma's financial position from an operational cash flow standpoint for the months of January 2016 through May 2016. Only cash actually received from sales is recorded, as deposits from other sources are excluded.<sup>1</sup> Vemma receives its credit card receipts about a week and a half in arrears and its foreign merchant processor applies a 5% to 8% hold back on all sales. Accordingly, the monthly revenue numbers for March, April and May 2016 set forth in the chart above will be different than the actual cash receipt numbers contained in Exhibit A. Exhibit A also reflects payment

<sup>1</sup> Examples of other deposits received by the company include refunds of credit card reserves held by credit card processors, and a \$500,000 loan to Vemma from Peggi Enders, a cousin of Benson Keith Boreyko.

1 for current invoices and does not include payments for accounts payable in existence at  
 2 the time the Temporary Receiver shut down the business and other extraordinary expenses  
 3 resulting from the Temporary Receiver's shut down of the business.

4 Prior to the FTC action against Vemma, Vemma's commission expense averaged  
 5 approximately 42% of the Company's monthly sales revenue. Commission expense for  
 6 March 2016 through May 2016 averaged 11% of Vemma's monthly revenue.  
 7 Notwithstanding a 31% reduction in commission expense, both Affiliates and Customers  
 8 continue to purchase Vemma's products. The company's sales continue to be driven by  
 9 consumer demand for its products and are not motivated by a desire to earn commissions.

### 10 **III. CHARGE BACKS**

11 Vemma's charge backs for March 2016 through May 2016 are set forth below. In  
 12 March and April, 2016, Vemma was the victim of certain fraudulent transactions. The  
 13 company became aware of the matter and took several actions to stop the fraudulent  
 14 conduct. The charge backs for May 2016 are representative of the company's monthly  
 15 average charge backs.

17 Month	Total of Charge backs	% of Monthly Sales
18 March 2016	\$ 5,955.66	0.60%
19 April 2016	\$ 10,169.69	1.11.%
20 May 2016	\$ 412.82	0.05%

### 22 **IV. CUSTOMERS AND AFFILIATES**

23 Despite the significant operational obstacles discussed above and in its previous  
 24 Quarterly Reports, to date 19,089 Customers and 1,270 Affiliates have purchased  
 25 nutritional products from Vemma since the Company restarted its operations on  
 26 October 8, 2015.

1 **V. COMPENSATION PLAN**

2 Vemma added a new bonus to its Compensation Plan for the months of May, 2016  
3 and June, 2016. Referred to as the “New Customer Bonus,” this bonus further emphasizes  
4 retail sales.<sup>2</sup> Pursuant to the new bonus, an Affiliate will be paid \$10 for every 25 point  
5 product order that was purchased by a new Customer<sup>3</sup>. If the new Customer did not sign  
6 up for auto ship the Affiliate would also receive the applicable retail sales bonus as well.<sup>4</sup>  
7 In addition, Vemma will set aside \$2 per 25 points of new Customer volume into a New  
8 Customer Bonus Pool. The pool will be divided among those Affiliates who generate  
9 minimum sales of 200 new Customer points during the two month promotion. The three  
10 Affiliates with the most new Customer points will receive an additional bonus of \$500,  
11 \$300 and \$200 respectively.

12 **VI. LEGAL**

13 In May 2016, Hanover Insurance Company sued Vemma in Federal District Court  
14 in Arizona, Case No. CV-16-1071-PHX-JJT. The issue in this case concerns whether  
15 Vemma is entitled to insurance coverage on its Director and Officer Insurance Liability  
16 Policy issued by Hanover Insurance Company. Other than the Hanover matter, there is no  
17 other new litigation.

18 **VII. THE FUTURE**

19 Vemma continues to address the issues created by the Temporary Receiver’s  
20 shutdown of the business. Monthly sales have stabilized and Vemma is focused on  
21 increasing its customer base and growing sales. Once the Company completes its

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22 <sup>2</sup> The FTC reviewed this new bonus and did not object prior to its implementation.

23 <sup>3</sup> For example, if an Affiliate sold the new Customer a one pack of 32 ounce Vemma  
24 (two bottles which is 25 points), the Affiliate would receive a new customer bonus of \$10.

25 <sup>4</sup> There is a price discount for signing up for auto ship. If the Customer does not sign  
26 up for auto ship, the difference is paid out as the retail bonus.

1 resolution of the extraordinary expenses caused by the Temporary Receiver's actions, the  
2 Company will be operating in a profitable manner.

3 DATED this 20th day of June, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2016, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and a copy was electronically submitted to counsel at the e-mail addresses below:

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*s/ Donna Lockwood*

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**EXHIBIT A**Vemma Nutritional Company  
Monthly Cash Flow

	January-16	February-16	March-16	April-16	May-16	YTD
<b>Cash In from Sales</b>	<b>\$ 745,194</b>	<b>\$ 956,970</b>	<b>\$ 833,232</b>	<b>\$ 1,037,451</b>	<b>\$ 889,008</b>	<b>\$ 4,461,855</b>
Payroll	\$ (160,089)	\$ (160,400)	\$ (215,619)	\$ (138,803)	\$ (139,636)	\$ (814,547)
Commissions	\$ (8,395)	\$ (47,373)	\$ (116,061)	\$ (77,990)	\$ (91,368)	\$ (341,186)
Outside Warehouses	\$ (33,567)	\$ (42,647)	\$ (52,777)	\$ (42,729)	\$ (36,726)	\$ (208,446)
Rent	\$ (13,671)	\$ (13,941)	\$ (13,022)	\$ (13,424)	\$ (13,427)	\$ (67,485)
Commercial Insurance	\$ (24,062)	\$ (24,062)	\$ (24,062)	\$ (22,441)	\$ (21,373)	\$ (116,001)
FedEx <sup>(1)</sup>	\$ (92,059)	\$ (118,200)	\$ (131,143)	\$ (112,876)	\$ (216,180)	\$ (670,457)
Direct DC	\$ (5,000)	\$ -	\$ (8,932)	\$ (4,091)	\$ (6,179)	\$ (24,202)
IT Expenses	\$ (36,196)	\$ (36,666)	\$ (38,353)	\$ (53,449)	\$ (50,552)	\$ (215,216)
WF Financing	\$ -	\$ (10,000)	\$ (10,000)	\$ (10,000)	\$ (25,000)	\$ (55,000)
Medical Benefits	\$ (14,313)	\$ (14,313)	\$ (18,360)	\$ (15,829)	\$ (12,272)	\$ (75,087)
Contract Labor	\$ (4,860)	\$ (10,910)	\$ (5,660)	\$ (4,490)	\$ (18,750)	\$ (44,670)
Phone Bills	\$ (17,531)	\$ (17,781)	\$ (16,535)	\$ (15,685)	\$ (16,190)	\$ (83,723)
Equipment Rental	\$ (4,702)	\$ (4,702)				\$ (9,405)
Vehicles	\$ (4,402)	\$ (4,402)	\$ (4,407)	\$ (4,407)	\$ (4,407)	\$ (22,024)
Product	\$ (237,035)	\$ (148,979)	\$ (83,038)	\$ (257,174)	\$ (352,237)	\$ (1,078,462)
Product Freight	\$ (4,707)	\$ (12,177)	\$ (9,495)	\$ (10,202)	\$ (17,494)	\$ (54,074)
Sales Taxes	\$ (42,000)	\$ (43,398)	\$ (52,887)	\$ (56,492)	\$ (44,916)	\$ (239,694)
Lawyers	\$ (23,821)	\$ (104,272)	\$ (4,326)	\$ -	\$ (32,376)	\$ (164,795)
Misc Expenses	\$ (8,417)	\$ (9,855)	\$ (25,070)	\$ (15,319)	\$ (15,577)	\$ (74,239)
<b>Total Expenses</b>	<b>\$ (734,827)</b>	<b>\$ (824,079)</b>	<b>\$ (829,746)</b>	<b>\$ (855,400)</b>	<b>\$ (1,114,660)</b>	<b>\$ (4,358,713)</b>
<b>Net Cash</b>	<b>\$ 10,367</b>	<b>\$ 132,892</b>	<b>\$ 3,485</b>	<b>\$ 182,050</b>	<b>\$ (225,652)</b>	<b>\$ 103,142</b>

<sup>(1)</sup> Includes 6 weeks of invoices as one week of April was paid first week of May and May had five weeks.

<sup>(2)</sup> Due to the current status with the FTC, Vemma vendors are requiring 100% prepayment of orders resulting in Vemma paying for product approximately 10 weeks prior to delivery to Vemma.