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FEDERAL TRADE COMMISSION

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

Federal Trade Commission;

Plaintiff,

v.

Vemma Nutrition Company, et al.

Defendants.

No. CV-15-01578-PHX-JJT

**PLAINTIFF FEDERAL
TRADE COMMISSION'S
UNOPPOSED MOTION TO
SEAL RESPONSE TO
MOTION BY BENSON K.
BOREYKO TO APPROVE
SALE OF 25% INTEREST IN
LIMITED LIABILITY
COMPANY**

The Federal Trade Commission ("Plaintiff" or "FTC") moves the Court to accept for filing under seal the complete (unredacted) version of Plaintiff's Federal Trade Commission's Response to Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company, together with Exhibits A, B, and C.

I. INTRODUCTION

On November 24, 2015, Defendant Boreyko filed his Motion to Approve Sale of 25% Interest in Limited Liability Company (Doc. 167). The FTC objects to the proposed sale on the grounds that it is prohibited by the Court's preliminary injunction (Doc. 118) and will jeopardize the Court's ability to order effective equitable monetary relief. The FTC believes that the financial condition of Defendants Boreyko, Vemma International Holdings, Inc., and Vemma Nutrition Company, as stated in financial disclosures submitted to the FTC, is an important factor to be considered by the Court because it relates to Defendants' ability to satisfy a judgment for equitable monetary relief. The FTC has prepared a Response to the Motion that includes statements about Defendants' financial condition refers to the contents of the disclosure statements and attaches portions of the financial disclosures as exhibits.¹

Upon notification that the FTC intended to include statements about Defendant Boreyko's and the Corporate Defendants' financial conditions in its Response, counsel for these Defendants objected to inclusion of the statements in the public record on the grounds that they revealed personal and confidential financial information. Counsel agreed not to oppose a Motion to Seal.

¹ A redacted version of Plaintiff Federal Trade Commission's Response to Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company is being filed contemporaneously with this Motion. The redacted version includes Exhibit A, which is not confidential, but omits Exhibits B and C, which are the excerpts of the confidential financial disclosures statements.

II. ARGUMENT AND AUTHORITIES

The Supreme Court has stated that the public's right to access judicial records is "not absolute." *See Nixon v. Warner Comms., Inc.*, 435 U.S. 589, 598 (1978). This Circuit recognizes a rebuttable presumption in favor of public access for records that are not "traditionally . . . kept secret." *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003). "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes.'" *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

The Ninth Circuit treats records attached to nondispositive motions differently than records attached to dispositive motions because the "public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials." *Id.* at 1179-1180. While a party seeking to seal a judicial record ordinarily must meet the "compelling reasons" standard to overcome the strong presumption of public access, a "good cause" showing under Rule 26(c) will suffice to seal records attached to nondispositive motions. *Id.* at 1180.

The potential abuse of confidential personal and business information presents both a compelling reason and good cause to seal the financial records obtained by the FTC from Defendants. The FTC has filed in the public record contemporaneously with this Motion a version of the Response that redacts the discussion of confidential and sensitive personal and business financial information. The public has little interest in obtaining the specific financial information in light of the public redacted filing, and any

such interest is outweighed by Defendants' asserted interest in protecting such information, which is not otherwise publicly available and which could be damaging if revealed in the public record. Accordingly, Plaintiff requests the Court to order the non-redacted Response and corresponding Exhibits to be filed under seal.

III. RELIEF REQUESTED

For the reasons stated above, the FTC requests that the Court order that the non-redacted Plaintiff Federal Trade Commission's Response to Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company, with accompanying Exhibits A, B, and C, be filed in the record of this case under seal.

Dated: December 11, 2015.

Respectfully submitted,

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/s/ Jason C. Moon

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FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I certify that on December 11, 2015, Plaintiff Federal Trade Commission electronically transmitted the attached Document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Filing to all CM/ECF registrants including:

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No. CV-15-01578-PHX-JJT

**[proposed] ORDER
GRANTING PLAINTIFF
FEDERAL TRADE
COMMISSION'S
UNOPPOSED MOTION TO
SEAL RESPONSE TO
MOTION BY BENSON K.
BOREYKO TO APPROVE
SALE OF 25% INTEREST IN
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COMPANY**

Now before the Court is the Federal Trade Commission's ("FTC") Unopposed Motion to Seal Response to Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company (Doc. ***). The FTC requests that this Court allow to be filed under seal its non-redacted Response to the Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company (Doc. 167), together with accompanying Exhibits A, B, and C. The Court notes that a redacted

version of the Response, which omitted Exhibits B and C, was filed in the public record on December 11, 2015 (Doc. ***).

The non-redacted Response lodged with the Court for filing under seal includes references to Defendant Benson K. Boreyko's and the corporate Defendants' financial condition, and attaches Exhibits B and C. Exhibit B includes a detailed description of Defendant Boreyko's personal financial affairs and other private matters. Exhibit C is Vemma International Holdings, Inc.'s Consolidating Balance Sheet from July 31, 2015, and contains detailed information about the financial condition of Defendant Vemma International Holdings, Inc. and its worldwide affiliates, including Defendant Vemma Nutrition Company.

While there is generally a presumption in favor of public access of judicial records, the Court finds that the potential for abuse of this confidential personal and business information presents a compelling reason to seal these records. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). The Court finds that the public's interest in gaining access to the contents of Exhibits B and C and the information in the redacted statements in the Response is far outweighed by the potential for abuse of personal and business information.

IT IS THEREFORE ORDERED that the FTC's Unopposed Motion to Seal Response to Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company is **GRANTED**. **IT IS FURTHER ORDERED** that the Clerk file and hold under seal the non-redacted Plaintiff Federal Trade Commission's Response to

Motion by Benson K. Boreyko to Approve Sale of 25% Interest in Limited Liability Company (lodged as Doc. ***), along with Exhibits A, B, and C (lodged as Docs. ***, ***, and ***).

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