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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Shopko Stores Operating Co., LLC, and
SVS Trucking, LLC

Case No. 8:16-cv-99 JLS (KESx)

Plaintiffs,

**DECLARATION IN SUPPORT OF
PLAINTIFFS’ APPLICATION
FOR LEAVE TO FILE UNDER
SEAL**

vs.

Balboa Capital Corporation,

Defendant.

DECLARATION OF DEBRA DEVASSY BABU

I, Debra Devassy Babu, being first duly sworn, depose and state as follows:

1. I am over the age of eighteen.

2. I have personal knowledge of the matters set forth herein, and if called to testify, I would testify as set forth herein.

3. I am a shareholder at Askounis & Darcy P.C., and I represent Defendant Balboa Capital Corporation (“Balboa”) in the above-captioned matter.

4. Pursuant to Local Rule 79-5.2.2(b)(i), I submit this Declaration in support of Plaintiffs’ Application for Leave to File Under Seal (the “Application”). See Doc. 122.

5. By their Application, Plaintiffs seek to file under seal the Expert Report (the “Report”) and Rebuttal Report (the “Rebuttal Report”) of Gordon Rausser, Ph.D., dated February 7 and March 7, 2017, respectively, as set forth below:

Exhibit	Description
Exhibit D: Expert Report of Gordon Rausser	Footnote 131 and related statements concerning Balboa’s incentive compensation policies.
Exhibit E: Expert Rebuttal Report of Gordon Rausser	Footnote 23 and related statements concerning Balboa’s incentive compensation policies.

1 6. Balboa has sought to file the same documents and information under
2 seal. See Doc. 125 and related Declaration, Doc. 125-1, currently pending before
3 the Court. Pursuant to 79-5.2.2(b)(i), Balboa concurs with the proposed redactions
4 filed by ShopKo, as they are identical to the proposed redactions requested by
5 Balboa.

6 7. The information sought to be filed under seal in the Report and
7 Rebuttal Report (and in redacted form publically) was designated “Confidential”
8 pursuant to the Parties’ Stipulated Protective Order entered July 8, 2016 (Doc. 56).

9 8. Further, the Court already permitted the Report to be filed under seal
10 pursuant to the Order Granting Plaintiffs’ Renewed Application for Leave to File
11 Under Seal dated March 29, 2017 (Doc. 114) to redact the same information (the
12 “March 29, 2017 Order”). The Report was previously filed under seal as Doc. 117-
13 5.

14 9. Finally, the information sought to be filed under seal is related to
15 Balboa’s compensation policies and specific employee compensation, which the
16 Court justified being sealed pursuant to the March 28, 2017 Order and the Order
17 Granting Defendant’s Application for Leave to File Under Seal dated April 4, 2017
18 (Doc. 115).

19 10. Courts may allow all or a portion of a court file to be sealed, thus
20 protecting “only the particular information that is genuinely privileged or
21 protectable as a trade secret or otherwise has a compelling need for
22 confidentiality.” Pabst v. Maxtor Corp., No. C 05-80042 JSW, 2005 WL 578107
23 (N.D. Cal. March 10, 2005). “Access to judicial records is not absolute. A narrow
24 range of documents is not subject to the right of public access at all because the
25 records have traditionally been kept secret for important policy reasons.”
26 Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)
27 (internal quotation omitted). If compelling reasons exist, a litigant may overcome
28 the presumption in favor of public access to documents, and a documents attached

1 to a dispositive motion may be sealed. Id. at 1178, 180. “[C]ompelling reasons
2 sufficient to outweigh the public's interest in disclosure and justify sealing court
3 records exist when such court files might have become a vehicle for improper
4 purposes, such as the use of records to . . . release trade secrets.” Id. at 1179.

5 11. Compelling reasons exist to seal the information listed in Paragraph 7,
6 because it contains commercially-sensitive proprietary information and trade
7 secrets related to Balboa’s compensation policies. Pursuant to California Civil
8 Code § 3426.1, “trade secret” means “information, including a formula, pattern,
9 compilation, program, device, method, technique, or process” that:

- 10 (1) Derives independent economic value, actual or potential, from
11 not being generally known to the public or to other persons who can
12 obtain economic value from its disclosure or use; and
- 13 (2) Is the subject of efforts that are reasonable under the
14 circumstances to maintain its secrecy.

15 The information sought to be sealed relates to Balboa’s compensation structure and
16 contains Balboa’s trade secrets (which Balboa traditionally retains private and is
17 not public knowledge), and private employee data. See e.g. Zuccaro v.
18 MobileAccess Networks, Inc., C11-272 MJP, 2012 WL 261342, at *5 (W.D.
19 Wash. Jan. 30, 2012) (sealing documents attached to a dispositive motion related to
20 employee private data, including compensation). Further, disclosure of this
21 information could cause Balboa competitive harm. Finally, Balboa’s employee
22 compensation, including that of David White, is private, and disclosure would
23 violate Mr. White’s right to privacy in his personal financial affairs. See e.g.
24 California Constitution, Art. 1, § 1.; Int’l Fed’n of Prof’l & Tech. Engineers, Local
25 21, AFL-CIO v. Superior Court, 42 Cal. 4th 319, 330, 165 P.3d 488, 493 (Cal.
26 2007) (“[I]ndividuals have a legally recognized privacy interest in their personal
27 financial information.”); Pagano v. Oroville Hosp., 145 F.R.D. 683, 698 (E.D. Cal.
28 1993) (noting the compelling privacy interests related to disclosure of employees’
personnel, financial and disciplinary records).

1 12. Balboa seeks to seal information regarding actual employee
2 compensation information. This information contains detailed statements regarding
3 Balboa's commission and incentive compensation structure, particularly David
4 White's employee compensation calculations, which constitute private employee
5 data. Publically disclosing this information would allow Balboa's competitors to
6 analyze Balboa's compensation structure and potentially alter their own to entice
7 Balboa's employees or other potential employees to join their companies. This
8 information derives independent economic value from not being known, because
9 Balboa has put forth time and resources to develop its employee compensation
10 policies and gains economic value from using those policies to retain and recruit
11 employees, including David White. Moreover, disclosure of David White's
12 personal employee compensation information is subject to his privacy rights,
13 which are granted to him by the California State Constitution and recognized by
14 California courts, and should not be overlooked freely.

15 13. Balboa has also maintained efforts to keep the above information
16 private by only giving access to certain Balboa employees. Balboa has also
17 maintained all efforts to have this information redacted from any disclosures
18 whenever necessary. At no point has Balboa disclosed the above information
19 publically without reservation. Balboa believes that the requested redactions are
20 narrowly tailored to serve compelling interests.

21
22 I declare under penalty of perjury that the foregoing is true and correct.

23
24 Dated: April 13, 2017

By: /s/ Debra Devassy Babu
Debra Devassy Babu