

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

No. 5:21-CV-251-BO

BERINGER COMMERCE, INC., d/b/a)
BLUE ACORN iCi,)

Plaintiff,)

v.)

FIN CAP, INC. d/b/a)
"BLUEACORN.CO," BLUE ACORN)
PPP, LLC, and BLUE OAK FOREST,)
LLC,)

Defendants.)

**PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER WITH "HIGHLY
CONFIDENTIAL - ATTORNEYS' EYES
ONLY" DESIGNATION**

NOW COMES Plaintiff Beringer Commerce, Inc., d/b/a Blue Acorn iCi ("Plaintiff") and moves the Court for entry of a protective order pursuant to Federal Rule of Civil Procedure 26(c). In support of this motion, Plaintiff has submitted an accompanying memorandum of law and respectfully shows the Court as follows:

1. Discovery, the use of discovery materials, and information and other exchange of information in this case, including the use of such materials at hearings and trial, will involve disclosure of highly sensitive and confidential commercial information.

2. Good cause exists and justice requires that Plaintiff be protected from the undue burden of disclosing such confidential commercial information absent a protective order with sufficient provisions.

3. Counsel for both parties have attempted to resolve this dispute without Court involvement. On January 12, 2022, counsel for Plaintiff sent a proposed protective

order to Defendants' counsel, which provided for two-tiers of confidentiality ("Confidential" and "Highly Confidential - Attorneys' Eyes Only") in light of Defendants' requests for highly sensitive and confidential financial and business information. On January 13, Defendants' counsel stated it did not agree that a two-tier protective order was necessary. On January 20, the parties held a meet and confer and were unable to reach an agreement on the terms of a protective order. On January 21, Plaintiff's counsel sent a revised protective order removing the expert disclosure requirements and adding a provision indicating that nothing in the protective order shall bar any attorney from rendering advice to his or her client so long as the specific contents of any protected document are not disclosed, directly or indirectly, to the party client. On January 24, Defendants' counsel stated they did not agree to Plaintiff's proposed protective order.

4. A true and correct copy of Plaintiff's proposed protective order is attached hereto as Exhibit A. A true and correct copy of Defendants' proposed protective order is attached hereto as Exhibit B. A true and correct copy of the email chain between counsel for Plaintiff and Defendants regarding Plaintiff's proposed protective order is attached hereto as Exhibit C.

5. A true and correct copy of Defendants' First Set of Interrogatories is attached hereto as Exhibit D. A true and correct copy of Defendants' First Set of Requests for Production of Documents is attached hereto as Exhibit E.

6. A true and correct copy of the USA Today article, “Congress widens PPP fraud probe to more online financial companies” (<https://www.usatoday.com/story/news/investigations/2021/11/23/ppp-companies-blueacorn-womply-added-congressional-probe/8730237002/>) is attached hereto as Exhibit F.

7. A memorandum of law in support of Plaintiff’s motion for a protective order and Judy Geaslen’s Declaration in support of the same are also submitted herewith.

WHEREFORE, for good cause shown, Plaintiff respectfully moves that a protective order in the form submitted as Exhibit A herewith be entered by the Court.

Respectfully submitted, this 24th day of January, 2022.

By: /s/ John C. Scheller

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing PLAINTIFF'S MOTION FOR PROTECTIVE ORDER WITH "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" DESIGNATION has been filed with the Clerk for the United States District Court, Eastern District of North Carolina, using the electronic filing system of the Court. The electronic case filing system will send a "Notice of Electronic Filing" to all attorneys of record who have consented to accept service by electronic means.

This the 24th day of January, 2022.

/s/ John C. Scheller

John C. Scheller
Counsel for Plaintiff