

# EXHIBIT 7

Case No. 15-cv-1177-RDM

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

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*Plaintiffs,*

v.

Civil Action No. 15-cv-1177 (RDM)

**CONSUMER FINANCIAL  
PROTECTION BUREAU,**

*Defendant.*

**DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTION TO SEAL CASE**

The Supreme Court has stated that “the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.”

*Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) (internal footnote omitted).

Plaintiffs in this matter have moved to seal this case, which runs contrary to this right.

The starting point in considering a motion to seal court records is a “strong presumption in favor of public access to judicial proceedings.” *EEOC v. National Children’s Center, Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996) (quoting *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1277 (D.C.Cir.1991)). Indeed, where the government is a party, “[t]he appropriateness of making court files accessible is accentuated.” *National Children’s Center, Inc.*, 98 F.3d at 1409 (quoting *FTC v. Standard Financial Mgmt. Corp.*, 830 F.2d 404, 410 (1<sup>st</sup> Cir. 1987)); *see also Friedman v. Sebelius*, 672 F.Supp.2d 54, 58 (D.D.C. 2009). As the First Circuit has stated, “in such circumstances, the public’s right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch.” *Id.*

In determining whether to seal an action, courts in this Circuit examine the six factors identified in *United States v. Hubbard*, 650 F.2d 293, 317-22 (D.C. Cir. 1980). Contrary to plaintiffs' assertion, those factors weigh in favor of unsealing the action.

(1) Need for Public Access

Plaintiffs' assertion that there is no identifiable need for public access to the documents at issue here directly contradicts the myriad cases favoring public access to judicial records. *See, e.g., EEOC v. National Children's Center, Inc.*, 98 F.3d 1406 (D.C. Cir. 1996), *Friedman v. Sebelius*, 672 F.Supp.2d 54 (D.D.C. 2009); *Upshaw v. United States*, 754 F.Supp.2d 24 (D.D.C. 2010); *FTC v. Standard Financial Mgmt. Corp.*, 830 F.2d 404 (1<sup>st</sup> Cir. 1987). As noted, the fact that the government is a party to the proceedings weighs in favor of unsealing the proceedings. *Friedman*, 672 F.Supp.2d at 58. In a matter involving the Federal Trade Commission, the First Circuit noted:

It cannot be ignored that this litigation involves a government agency and an alleged series of deceptive trade practices culminating (it is said) in widespread consumer losses. These are patently matters of significant public concern.

830 F.2d at 412.

In the *Upshaw* case, the plaintiff asserted that because the case related to private matters, the public had no need to access the complaint. 754 F.Supp.2d at 28. The district court soundly rejected that assertion, stating, "Plaintiff, quite simply, misconstrues the relevant inquiry and completely ignores the strong public interest in the openness of judicial proceedings...." *Id.* Likewise, the plaintiffs here have ignored that public interest.

Plaintiffs seek not to seal only certain information, but to seal the entirety of these proceedings, a factor that weighs against their position. *Friedman*, 672 F.Supp.2d at 58. While Plaintiffs attempt to liken this motion to a discovery motion, it is not. These are proceedings that

will result in a ruling from this Court. As the D.C. Circuit has stated, “[a] court’s decrees, its judgments, its orders, are the quintessential business of the public’s institutions.” *National Children’s Center, Inc.* 98 F.3d at 1409.

(2) Prior Public Access

The Bureau is unaware of any prior access by the general public to information regarding its investigation. However, the Plaintiffs did file an Expedited Petition for Order Modifying or Setting Aside Demand and did not request confidential treatment of that petition. Such petitions and the Bureau Director’s orders ruling on such petitions “are part of the public records of the Bureau unless the Bureau determines otherwise for good cause shown.” 12 C.F.R. 1080.6(g). By filing a petition, the Plaintiffs subjected themselves to publication of that petition.<sup>1</sup>

(3) Party’s Objection to Disclosure

The Bureau acknowledges the Plaintiffs objected to disclosure in these proceedings. It notes, however, Plaintiffs did not request confidentiality of the petition filed with the Bureau on July 17, 2015.

(4) Strength of Property and Privacy Interests

The Plaintiffs make conclusory assertions that they hold “strong privacy rights” as subjects of an ongoing investigation. They do not address the fact that the Bureau, as well as other investigatory agencies such as the FTC, specifically provide for the publication of

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<sup>1</sup> Even if Plaintiffs had sought confidential treatment on the basis of potential reputational harm, it is unlikely they would have prevailed. The Bureau has previously rejected that argument in ruling on a confidentiality request. *See In re Great Plains Lending, LLC, Mobiloans, LLC & Plain Green, LLC*, 2012-MISC-Great Plains Lending-0001, Decision on Request for Confidential Treatment of Joint Petition, (available at <[files.consumerfinance.gov/f/201309\\_cfpb\\_decision-on-confidentiality\\_greatplainslending-0001.pdf](http://files.consumerfinance.gov/f/201309_cfpb_decision-on-confidentiality_greatplainslending-0001.pdf)> (last visited July 22, 2015)).

materials related to ongoing investigations, including those related to petitions and for use in court proceedings. *See* 12 C.F.R. § 1070.45(a)(4).

Instead, Plaintiffs focus on *In re Sealed Case*, 237 F.3d 657 (D.C. Cir. 2001), a case that is inapposite. That case involved the disclosure of information in a situation where the court found that disclosure was prohibited by statute, absent consent of the subject, even in court proceedings seeking enforcement of a subpoena. Nothing in the Consumer Financial Protection Act or the Bureau's regulations prohibit the disclosure of an investigation in those circumstances. Plaintiffs have not argued that any statutory provision prohibits the Bureau from disclosing the existence of an investigation in court proceedings.

(5) Possibility of Prejudice to Party Opposing Disclosure

Plaintiffs address potential prejudice to the Bureau, but the Bureau is not the party opposing disclosure. Plaintiffs have not identified any possible prejudice to them.

(6) Purposes for which the Documents were Introduced

The information and documents are being used to inform this Court's decision regarding a request for extraordinary relief against a government agency. Public disclosure of court rulings is essential to ensure the "fundamental and undeniable interest in ensuring the integrity of judicial proceedings." *Upshaw*, 754 F.Supp.2d at 30.

Consideration these factors supports unsealing of these proceedings. A strong presumption exists in favor of public access to judicial proceedings. That presumption is even stronger when the government is a party to the proceedings. Plaintiffs have failed to overcome that presumption, and their motion should be denied.

Dated: July 23, 2015

Respectfully submitted,

MEREDITH FUCHS  
General Counsel  
TO-QUYEN TRUONG  
Deputy General Counsel

/s/ John R. Coleman  
JOHN R. COLEMAN, Va. Bar  
Assistant General Counsel  
Consumer Financial Protection Bureau  
1700 G. St., N.W.  
Washington, D.C. 20552  
Telephone: (202) 435-7254  
Fax: (202) 435-9694  
[john.coleman@cfpb.gov](mailto:john.coleman@cfpb.gov)

ANTHONY ALEXIS  
Enforcement Director  
DEBORAH MORRIS  
Deputy Enforcement Director  
CRAIG COWIE  
Assistant Litigation Deputy  
WENDY WEINBERG  
202-435-7688  
SARAH PREIS  
202-435-9198  
*Enforcement Attorneys*  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served on Plaintiffs as follows:

By E-mail on July 23, 2015

Allyson Baker  
Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004  
[abbaker@venable.com](mailto:abbaker@venable.com)

Richard L. Scheff  
Montgomery McCracken Walker & Rhodes LLP  
123 South Broad Street  
Avenue of the Arts  
Philadelphia, PA 19109  
[rscheff@mmwr.com](mailto:rscheff@mmwr.com)

By Hand Delivery on July 23, 2015

Allyson Baker  
Venable LLP  
575 7<sup>th</sup> Street, NW  
Washington, DC 20004  
[abbaker@venable.com](mailto:abbaker@venable.com)

Richard L. Scheff  
Montgomery McCracken Walker & Rhodes LLP  
123 South Broad Street  
Avenue of the Arts  
Philadelphia, PA 19109  
[rscheff@mmwr.com](mailto:rscheff@mmwr.com)

/s/ John R. Coleman  
JOHN R. COLEMAN