

IN THE CIRCUIT COURT OF THE FIRST
JUDICIAL CIRCUIT, IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VISION CONSTRUCTION ENT., INC.

Plaintiff,

CASE NO.: 2015 CA 000596

v.

DIVISION: F

WASTE PRO USA, INC. and WASTE PRO
OF FLORIDA, INC.,

Defendants.

**ORDER ON UNOPPOSED MOTION TO DETERMINE
CONFIDENTIALITY OF COURT RECORDS**

THIS CAUSE came before the Court on Defendants, Waste Pro USA, Inc. (“Waste Pro USA”) and Waste Pro of Florida, Inc.’s (“Waste Pro FL”) (jointly “Waste Pro”) Unopposed Motion to Determine Confidentiality of Court Records filed April 25, 2016. The Court has reviewed the Motion and is otherwise duly advised in the premises.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Defendants’ Motion is GRANTED.
2. The Court finds that the information and documents identified in Waste Pro’s Unopposed Motion to Determine Confidentiality of Court Records (“Confidentiality Motion”), are hereby determined to be CONFIDENTIAL and therefore exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order.
3. As Waste Pro has represented that all Parties agree to all the relief requested and the Confidentiality Motion is unopposed, the Court finds that, pursuant to Rule 2.420(e)(2), a

hearing is not required on the Confidentiality Motion, nor is a hearing necessary based on the limited scope of the Confidentiality Motion as addressed herein.

4. Pursuant to Rule 2.420(e)(3) of the Florida Rules of Judicial Administration, the Court provides the following:

a. This is a putative class action in which Plaintiff, Vision Construction Ent., Inc. (“Vision”) asserts claims against Waste Pro FL and Waste Pro USA for violations of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”), codified at Fla. Stat. §501.201 *et seq.* Vision also asserts a claim against Waste Pro USA for unjust enrichment. This action centers on Waste Pro FL’s practice of charging some of its customers a “Fuel Surcharge” and/or “Environmental Fee.” Vision claims that Waste Pro’s practices in charging and collecting these fees are deceptive and unfair in violation of FDUTPA and have unjustly enriched Waste Pro USA to the detriment of Plaintiff and the putative class members. Vision is currently seeking certification of a Fuel Surcharge Class and an Environmental Fee Class. Waste Pro is opposing certification. The documents and information that is the subject of Waste Pro’s Confidentiality Motion is a section of Waste Pro’s Response and Incorporated Memorandum of Law in Opposition to Plaintiff’s Motion for Class Certification (“Response”) and two documents in Waste Pro’s Appendix to its Response (“Appendix”), filed contemporaneously with the Response.

b. The section of its Response that Waste Pro is seeking this Court determine to be confidential contains information related to Waste Pro USA’s earnings before interest, taxes, depreciation, and amortization (“EBITDA”), Waste Pro USA’s net debt, Waste Pro USA’s outstanding term loans, Waste Pro USA’s ratio of its EBITDA to its net debt and other information from Waste Pro USA’s audited financial statements. The two documents that Waste

Pro is seeking this Court determine to be confidential are Waste Pro USA's and Subsidiaries Consolidated Financial Statements with Independent Auditor's Report December 31, 2014 and 2013 ("Waste Pro USA's Audited Financial Statement 2014") and an internal document that Waste Pro represents was prepared by a Waste Pro USA financial analyst comparing Waste Pro USA's EBITDA and ratio of EBITDA to its net debt with those of its stated major competitors ("Comparison Analysis"). The Court finds that Waste Pro USA's financial information from its audited financial statements, Waste Pro USA's Audited Financial Statement 2014 itself, and the Comparison Analysis, information that Waste Pro asserts is not publicly available, are confidential and proprietary business records and subject to protection. *See Southeastern Mechanical Servs., Inc. v. Brody*, No. 8:08-CV-1151-T-30EAJ, 2008 WL 4613046 at *11 (M.D. Fla. Oct. 15, 2008) (recognizing that "sensitive financial information" such as financial statements, income statements, balance sheets and audited statements are confidential and proprietary) (citing *Arch Aluminum & Glass Co. v. Haney*, 964 So. 2d 228, 233 (Fla. 4th DCA 2007)("financial statements are confidential information).") The Court determines this information and documentation to be confidential under subdivision (c)(9) of Rule 2.420. *See Rocket Group, LLC v. Jatib*, 114 So.3d 398 (Fla. 4th DCA 2013)(recognizing that while "confidential business documents" such as a company's corporate income tax returns, financial statements and internal documents concerning corporate governance "are not specifically included" in subdivision (c) of Rule 2.420, "any court record may be determined to be confidential if doing so is necessary to 'avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent is the specific type of proceeding sought to be closed'" or "'to comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law'")(citing Fla. R. Jud.

Admin 2.420(c)(9)(A)(vi)&(vii)).

c. Waste Pro did not request any party's name be determined to be confidential and no party's name is determined to be confidential.

d. Waste Pro did not request that the Court's docket be determined to be confidential and the Court's docket is not determined to be confidential.

e. The particular information that is determined to be confidential is section III(D)(3) of the Response, entitled "The Fees Do Not Constitute 'Double-Dipping' as Claimed by Vision," and the documents at Tabs 40 and 4 in the Appendix which are, respectively, Waste Pro USA's Audited Financial Statement 2014 and an internal comparison analysis prepared by a Waste Pro USA financial analyst comparing Waste Pro USA's EBITDA and ratio of EBITDA to its net debt with those of its stated major competitors.

f. The parties, their respective counsel, their experts, the Court and required Court personnel are permitted to view the information and documents determined to be confidential by this Order.

g. The Court finds that: (i) the degree, duration and manner of confidentiality ordered by the Court are no broader than necessary to protect the interests set forth in subdivision (c); and (ii) no less restrictive measures are available to protect the interests set forth in subdivision (c). The Court notes that Waste Pro is not seeking a determination that the entirety of its Response is confidential or that all documents in its Appendix are confidential, nor is the Court determining that the entirety of the Response is confidential and that all the documents in the Appendix are confidential.

h. The Clerk of the Court is directed to publish this Order in accordance with subdivision (e)(4) of Rule 2.420 of the Florida Rules of Judicial Administration.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this ____^h
day of _____, 2017.


eSigned by CIRCUIT COURT JUDGE J. SCOTT DUNCAN
on 05/01/2017 15:17:01 NpZgEYa0

Copies furnished to:

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