

1 VON S. HEINZ
 Nevada Bar No. 859
 E. LEIF REID
 2 Nevada Bar No. 5750
 DARREN J. LEMIEUX
 3 Nevada Bar No. 9615
 Lewis and Roca LLP
 4 3993 Howard Hughes Parkway
 Suite 600
 5 Las Vegas, NV 89169
 Telephone: (702) 949-8200
 6 Facsimile: (702) 949-8351
 Email: VHeinz@LRLaw.com

7
 8 JEFFREY D. MORRIS*
 NICK J. KURT*
 RYAN C. HUDSON*
 9 Berkowitz Oliver Williams Shaw & Eisenbrandt LLP
 2600 Grand Blvd.
 10 Suite 1200
 Kansas City, MO 64108
 11 Telephone: (816) 561-7007
 Facsimile: (816) 561-1888
 12 Email: jmorris@berkowitzoliver.com
 (*Admitted pro hac vice)

13
 14 *Attorneys for Defendants AMG Capital Management, LLC; Level 5 Motorsports, LLC;
 LeadFlash Consulting LLC; Black Creek Capital Corporation; Broadmoor Capital
 15 Partners; Scott A. Tucker; and Nereyda M. Tucker, as Executor of the Estate of Blaine A.
 Tucker*

16 **UNITED STATES DISTRICT COURT**
 17 **DISTRICT OF NEVADA**

18 FEDERAL TRADE COMMISSION

19 Plaintiff,

20 v.

21 AMG SERVICES, INC., et al.

22 Defendants, and

23 PARK 269 LLC, et al.,

24 Relief Defendants.
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Case No. 2:12-cv-00536-GMN-VCF

**UNOPPOSED EMERGENCY MOTION
 (LR 26-7) FOR EXPEDITED BRIEFING
 SCHEDULE REGARDING THE
 TUCKER DEFENDANT’S MOTION TO
 ENFORCE THE AUGUST 28 ORDER
 FOR THE FTC TO PRODUCE A
 PRIVILEGE LOG**

1 Defendants Scott A. Tucker, AMG Capital Management, LLC, Level 5 Motorsports,
2 LLC, LeadFlash Consulting LLC, Black Creek Capital Corporation, Broadmoor Capital Partners,
3 and Nereyda M. Tucker, as Executor of the Estate of Blaine A. Tucker's ("the Tucker
4 Defendants") hereby move that the Tucker Defendants' Motion to Enforce the August 28 Order
5 for the FTC to Produce a Privilege Log be subject to an expedited briefing schedule.

6 At issue is whether the FTC must produce a privilege log to the Tucker Defendants.
7 With the deposition of the FTC's 30(b)(6) witness quickly approaching on November 13, which
8 implicates the documents and responses at issue here, and the close of discovery occurring
9 shortly thereafter on November 30, time is short for the Tucker Defendants to obtain relief. The
10 accompanying Declaration from counsel for the Tucker Defendants sets forth further reasons that
11 an expedited briefing schedule is necessary.

12 The Tucker Defendants consulted the FTC before bringing this emergency motion. The
13 FTC advised the Tucker Defendants that it does not agree to the Tucker Defendants'
14 characterization of the dispute or the emergent grounds surrounding the dispute, but the FTC
15 does agree to an expedited briefing schedule to resolve the Tucker Defendants' motion. The
16 parties agree that the deadline for the FTC to file its response to the Motion would be Tuesday,
17 November 3, 2015 and the deadline for the Tucker Defendants to file their reply would be
18 Thursday, November 5, 2015.

19 Defendants Scott A. Tucker, AMG Capital Management, LLC, Level 5 Motorsports,
20 LLC, LeadFlash Consulting LLC, Black Creek Capital Corporation, Broadmoor Capital Partners,
21 and Nereyda M. Tucker, as Executor of the Estate of Blaine A. Tucker's ("the Tucker
22 Defendants") submit the following memorandum of points and authorities in support of the
23 Unopposed Emergency Motion (LR 26-7) for an Expedited Briefing Schedule Regarding the
24 Tucker Defendants' Motion to Enforce the August 28 Order for the FTC to Produce Privilege
25 Log:

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On Friday, October 23, 2015, the Tucker Defendants filed a motion seeking relief under
3 previous orders entered by this Court (Docs 849 and 856). The issue is whether the FTC must
4 produce a privilege log to the Tucker Defendants. With the deposition of the FTC's 30(b)(6)
5 witness quickly approaching on November 13, which implicates the documents, responses, and
6 privilege at issue here, and the close of discovery occurring shortly thereafter on November 30,
7 the parties have agreed to request expedited consideration of the Tucker Defendants' motion.
8 Fed. R. Civ. P. 1.

9 The Tucker Defendants have complied with the requirements of Local Rule 26-7(c)
10 governing emergency discovery disputes, as detailed in the accompanying Declaration from
11 counsel for the Tucker Defendants.

12 The parties agree that the deadline for the FTC to file its response to the Motion would be
13 Tuesday, November 3, 2015 and the deadline for the Tucker Defendants to file their reply would
14 be Thursday, November 5, 2015.

15 For the foregoing reasons, the parties request that the Court grant this Unopposed
16 Emergency Motion and set the expedited briefing schedule as set forth above, and grant all other
17 relief the Court deems just and proper.

18 Dated this 26th day of October, 2015.

19 **BERKOWITZ OLIVER WILLIAMS**
20 **SHAW & EISENBRANDT LLP**

--and--

21 **LEWIS ROCA ROTHGERBER LLP**

22 By: /s/ Von S. Heinz

VON S. HEINZ

23 Nevada Bar No. 859

3993 Howard Hughes Parkway, Suite 600

24 Las Vegas, NV 89169

25 *Attorneys for AMG Capital Management,*

LLC; Level 5 Motorsports; Blackcreek

Capital Corporation; Broadmoor Capital

26 *Partners; Scott A. Tucker; Leadflash*

27 *Consulting, LLC, and Nereyda M. Tucker,*
as Executor of the Estate of Blaine A.

28 *Tucker*

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2015, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to counsel of record receiving electronic notification.

/s/ Judy Estrada

LEWIS ROCA ROTHGERBER LLP

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Declaration of Ryan Hudson in Support of the Emergency Motion

I, Ryan Hudson, hereby declare and state as follows:

1. My name is Ryan Hudson. I am a partner at the law firm of Berkowitz Oliver Williams Shaw & Eisenbrandt LLP. I am counsel for the Tucker Defendants in this matter. I am an attorney admitted to practice law in the States of Kansas, Missouri, and Texas. I have been admitted *pro hac vice* in this matter. I am submitting this declaration in accordance with Local Rule 26-7.

2. The facts surrounding the Emergency Motion are as follows: the Tucker Defendants contend the FTC is violating this Court's Order (Doc. 849 and Doc. 856) that it must produce a privilege log to the Tucker Defendants. *See* LR 26-7(1). Counsel for Mr. Tucker have conferred with the FTC, which contends that its privilege declaration complies with the Court's orders. The parties have exhausted efforts to resolve their dispute without Court intervention.

3. Normally, the Tucker Defendants would move for relief on a discovery issue in the ordinary course. *See id.*

4. However, resolution of this issue is necessary in advance of the deposition of the FTC's Rule 30(b)(6) representative on November 13. That deposition likely will implicate similar privilege issues as those at issue in the instant motion to enforce. *See id.*

5. A ruling on the privilege log issue after the deposition could have multiple negative effects on both parties, including having to resume the deposition at a later date, and could deprive the Tucker Defendants of access to relevant discovery materials at the deposition and impair their ability to prepare their dispositive motions and prepare for trial. *See id.*

6. The office address of Tucker Defendants' counsel is 2600 Grand Blvd, Suite 1200, Kansas City, MO 64086. The email address for counsel is rhudson@berkowitzoliver.com and a direct phone line is 816.627.0269. *See* LR 26-7(2).

7. The office address of the FTC's counsel is 600 Pennsylvania Ave., NW Mail Stop CC-10232, Washington, D.C. 20580. The email address for counsel is nsinghvi@ftc.gov and a direct phone line is 202.326.3480. *See* LR 26-7(2).

8. I certify that after personal consultation and sincere effort to do so, the Tucker Defendants have been unable to resolve the matter without court intervention, as detailed more fully in Ryan Hudson's Declaration accompanying the Motion to Enforce the August 28 Order. *See* LR 26-7(3) and Doc. 864.

9. As counsel for the Tucker Defendants, we first contacted Mr. Singhvi for the FTC on Monday, October 19, about this possible motion, and met and conferred with him, as detailed more fully in my Declaration accompanying the recently filed Motion to Enforce. *See* Doc. 864.

10. Although the parties could not reach agreement regarding the substance of the Motion to Enforce, the parties agreed to the following briefing schedule: the Tucker Defendants would file their motion on October 23, 2015, the FTC would respond to the motion on November 3, 2015, and the Tucker Defendants would reply in support of their motion on November 5, 2015.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED October 26, 2015, in Kansas City, MO.

/s/ Ryan Hudson
Ryan Hudson

1 VON S. HEINZ
Nevada Bar No. 859
2 E. LEIF REID
Nevada Bar No. 5750
3 DARREN J. LEMIEUX
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4 Lewis and Roca LLP
3993 Howard Hughes Parkway
Suite 600
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7
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9 RYAN C. HUDSON*
Berkowitz Oliver Williams Shaw & Eisenbrandt LLP
2600 Grand Blvd.
10 Suite 1200
Kansas City, MO 64108
11 Telephone: (816) 561-7007
Facsimile: (816) 561-1888
12 Email: jmorris@berkowitzoliver.com
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14 *Attorneys for Defendants AMG Capital Management, LLC; Level 5 Motorsports, LLC;*
15 *LeadFlash Consulting LLC; Black Creek Capital Corporation; Broadmoor Capital*
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16 **UNITED STATES DISTRICT COURT**
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20 v.

21 AMG SERVICES, INC., et al.

22 Defendants, and

23 PARK 269 LLC, et al.,

24 Relief Defendants.

Case No. 2:12-cv-00536-GMN-VCF

**[PROPOSED] ORDER GRANTING THE
UNOPPOSED EMERGENCY MOTION**

1 Before the Court is the Unopposed Emergency Motion from Defendants Scott A. Tucker,
2 AMG Capital Management, LLC, Level 5 Motorsports, LLC, LeadFlash Consulting LLC, Black
3 Creek Capital Corporation, Broadmoor Capital Partners, and Nereyda M. Tucker, as Executor of
4 the Estate of Blaine A. Tucker (“Tucker Defendants”).

5 The Court is of the opinion that good reason exists for the requested relief such that the
6 motion should be and hereby is GRANTED.

7 The deadline for the FTC to file its response to the Tucker Defendants’ Motion to
8 Enforce the August 28 Order for the FTC to Produce a Privilege Log is Tuesday, November 3,
9 2015. The deadline for the Tucker Defendants to file their reply is Thursday, November 5, 2015.

10 IT IS SO ORDERED.

11 Dated this 27th day of October, 2015.

12 
13 _____
14 United States Magistrate Judge

15 IT IS HEREBY ORDERED that a hearing on the Motion to Enforce the August 28 Order for the
16 FTC to Produce a Privilege Log (#864) is scheduled for 10:00 a.m., November 2, 2015, in
17 courtroom 3D.
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