

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 07-80138-CR-MARRA/VITUNAC(S)

UNITED STATES OF AMERICA,

Plaintiff,

-versus -

FRANK SARCONA
aka Frank Sarcone,
aka Dave Johnson,

Defendant.

**GOVERNMENT'S UNOPPOSED MOTION
TO RESTRICT DISCOVERY TO COUNSEL
AND INCORPORATED MEMORANDUM OF LAW**

COMES NOW the UNITED STATES OF AMERICA, by and through the undersigned Assistant United States Attorney, and unopposed by the defendant, and moves for a protective order requiring certain discovery to be disclosed to counsel and his staff as confidential, and states as follows:

The trial in the above matter is set for January, 2008. This case involves the alleged defrauding of over 100,000 victims. In brief, the defendant is accused of fraudulently marketing a dietary supplement. To that end the company has amassed countless victim/customer names, addresses, phone numbers; medical and financial records (checks, credit card accounts).

The government has been working closely with counsel for the defense to provide discovery. During the course of the discovery process it is apparent that the defense is entitled to see the business records of the company, which records include victim personal, medical and

financial information. These records will be part of the government's case in chief, particularly as to allegations that there were unnecessary delays in making refunds due to a lack of customer financial records (which they possessed). Moreover, since there is an allegation that the victims were defrauded by being falsely identified by particular test survey numbers; their mailings and responses are important to the government's case. Additionally, the indictment alleges that as part of the fraud no medical survey was being conducted; the victim records in the files of the company will help establish this. Lastly, the medical condition of the customers is an intrinsic part of the case (both for the defense and the government).

However, it is equally apparent that with over 100,000 victims and mirror imaging of computer files it is virtually impossible to redact medical, financial and identification information.

Federal Rule of Criminal Procedure 16 permits the defense the opportunity to inspect and to copy items material to preparing the defense, which the government intends to use the item in its case-in-chief at trial; and was obtained from or belongs to the defendant. However, Rule 16 also permits this Court, for good cause to restrict discovery and inspection, or such other appropriate relief.

To that end, the United States requests that this Court issue a protective order requiring that the disclosure of customer identification (addresses, telephone numbers), financial information (account numbers) and medical information (weight, illnesses, etc.) be held in confidence by defense counsel and his staff; and not disclosed to the defendant or in a non-redacted format in any public pleading.

Moreover, following the completion of this matter, including any appeal, such records be returned to the United States Attorney's Office or that defense counsel shall advise this Court by

pleading that such records have been destroyed.

The undersigned has consulted with counsel for the defendant who advises that he has no objection to the items being disclosed in confidence to counsel and his staff.

WHEREFORE, the United States requests that this Court grant the government's motion for a protective order restricting disclosure of customer/victim records in a confidence to the defendant's counsel and his staff, that such information not disclosed to the defendant or in any public pleading in a non redacted format, and for any and all further relief as this Court may deem appropriate.

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 20, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/KERRY S. BARON
KERRY S. BARON
ASSISTANT UNITED STATES ATTORNEY