

1 Boreyko denies the allegations.

2 **COUNT V**

3 **Relief Defendant**

4 77. The allegations in Paragraph 77 are not directed at Defendant Boreyko,
5 and therefore require no response. However, if deemed to contain allegations against
6 Defendant Boreyko, Defendant Boreyko denies the allegations.

7 78. The allegations in Paragraph 78 are not directed at Defendant Boreyko,
8 and therefore require no response. However, if deemed to contain allegations against
9 Defendant Boreyko, Defendant Boreyko denies the allegations.

10 79. The allegations in Paragraph 79 are not directed at Defendant Boreyko,
11 and therefore require no response. However, if deemed to contain allegations against
12 Defendant Boreyko, Defendant Boreyko denies the allegations.

13 **CONSUMER INJURY**

14 80. Defendant Boreyko denies the allegations in Paragraph 80.

15 **THIS COURT'S POWER TO GRANT RELIEF**

16 81. The allegations in Paragraph 81 set forth conclusions of law as to which
17 no response is required. However, if deemed to contain allegations of fact, Defendant
18 Boreyko denies the allegations.

19 82. Defendant Boreyko denies all allegations of the Complaint, either
20 express or implied, not specifically admitted to or otherwise pled to herein.

21 **AFFIRMATIVE DEFENSES**

22 A. The Complaint fails to state a claim upon which relief can be granted.

23 B. The FTC's claims for injunctive relief are not authorized or available at
24 law or equity.

25 C. The FTC's claims for injunctive relief, as sought here, were and are
26 unconstitutional.

27 D. Defendant Boreyko acted reasonably, in good faith, and in accordance
28 with any applicable standards and duties.

1 E. The FTC and/or the consumers it purports to represent have failed to
2 mitigate their losses, if any.

3 F. Any losses sustained by the FTC and/or the consumers it purports to
4 represent were caused by the acts or omissions of third parties over whom Defendant
5 Boreyko had no control or right to control.

6 G. Consumers purportedly represented by the FTC knowingly and
7 voluntarily, and possibly unreasonably, exposed themselves to any claimed losses with
8 knowledge or appreciation of the risk involved.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, having fully responded to the Complaint, Defendant Boreyko
11 respectfully requests that the FTC's requests for a permanent injunction and other
12 equitable relief be denied in their entirety, and that the Court award Defendant
13 Boreyko any further relief the Court deems appropriate.

14 Respectfully submitted this 30th day of September 2015.

15 GALLAGHER & KENNEDY, P.A.

16 By /s/ John R. Clemency
17 John R. Clemency
18 Lindsy M. Weber
19 2575 East Camelback Road
20 Phoenix, Arizona 85016-9225
21 *Attorneys for Benson K. Boreyko a/k/a*
22 *B.K. Boreyko*

23 **CERTIFICATE OF SERVICE**

24 I hereby certify that on this 30th day of September, 2015, I electronically
25 transmitted a PDF version of this document to the Clerk of the Court, using the
26 CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to all
27 CM/ECF registrants and non-registered parties.

28 /s/ Gloria Kannberg