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2 liquidation or reorganization; (3) the number of creditors other than the plaintiff; (4)  
3 whether the defendant consented to the receivership; (5) what is in the best interests of the  
4 entity and parties; and (6) whether fraud or mismanagement was the reason for the  
5 receiver being appointed. *See, e.g., U.S. Royal Business Funds*, 724 F.2d at 15-17;  
6 *Securities and Exchange Commission v. Lincoln Thrift Association*, 577 F.2d 600, 606-  
7 608 (9th Cir. 1978); *Esbitt*, 335 F.2d at 143-144.

8         The most important factor in the majority of courts' analysis is what stage of  
9 liquidation the receivership is in when the defendant requests to file a bankruptcy petition,  
10 if the receivership is in its early stages a filing should be allowed. *See, e.g., U.S. Royal*  
11 *Business Funds*, 724 F.2d at 16; *Lincoln Thrift Ass'n*, 577 F.2d at 607-608; *Esbitt*, 335  
12 F.2d at 143. Courts also consider whether bankruptcy court is the better option for  
13 reorganization or liquidation, compared with available non-bankruptcy options. *In re*  
14 *Republic Trust & Sav. Co.*, 59 B.R. 606 (N.D. Okla. 1986). The availability of federal or  
15 state procedures for liquidation does not mean an entity is ineligible for bankruptcy relief.  
16 *Id.* What is important is whether bankruptcy is a better venue. Many courts have held  
17 that bankruptcy courts are a better and more proper choice for liquidation or restructure  
18 proceedings. *Esbitt*, 335 F.2d at 143; *Los Angeles Trust Deed & Mortgage Exchange v.*  
19 *SEC*, 285 F.2d 162, 182 (9th Cir. 1961).

20         Every applicable factor supports the Court lifting the prohibition on a bankruptcy  
21 filing by Vemma. The receivership is in its earliest stages. Because of the size and  
22 complexity of Vemma, and the number of affected parties and constituencies, the statutory  
23 bankruptcy framework designed to deal with restructure or liquidation of such entities is  
24 far superior to a receivership. Vemma has a very large number of creditors who will be  
25 affected by its future operation or disposition. Vemma strongly disputes that any  
26 receivership is proper. For the reasons discussed above in Section III.B., continued

1 operation of Vemma under Court supervision in the interests of Vemma and all interested  
2 parties. A federal bankruptcy court is designed for and best equipped to supervise such a  
3 process. Finally, the evidence shows that Vemma and its management have not engaged  
4 in fraud or mismanagement; and more importantly, Vemma's interim operation proposal  
5 provides for transparent and court supervised operation (including in a bankruptcy  
6 proceeding).

7 **IV. CONCLUSION.**

8 For these reasons, the FTC has not met its burden for issuance of the preliminary  
9 injunction, continued asset freeze, and the continued appointment of a receiver over the  
10 Vemma's assets and operations. The Motion should be denied in its entirety.

11 RESPECTFULLY SUBMITTED this 10th day of September, 2015.

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Clerk of the District Court.

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