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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CAT BROOKS and RASHEED SHABAZZ, individually and on behalf of all others similarly situated, Plaintiffs, v. THOMSON REUTERS CORPORATION, Defendant.	Case No. 3:21-cv-1418-EMC **PLAINTIFFS' OPPOSITION TO MOTION FOR PROTECTIVE ORDER (ECF NO. 88)**

INTRODUCTION

For months, Thomson Reuters refused to produce its data-licensing agreements for CLEAR with third parties—arguing that confidentiality provisions in these agreements shielded them from discovery. The Court overruled Thomson Reuters' objection and ordered the company to produce all such agreements. Order Re Parties' Joint Disc. Letter Br. of March 24, 2022 1-2, ECF No. 82 ("Order"). Thomson Reuters did so—with one exception.

Thomson Reuters did not produce its data-licensing agreement for CLEAR with File & ServeXpress ("FSX") because this company, which compiles and sells publicly filed court documents, objected to the disclosure. FSX then moved to intervene in this litigation to block the requested discovery, arguing that its data-licensing agreement is irrelevant to the claims and defenses in this litigation, and that the confidential and proprietary nature of the agreement is such that it should not be disclosed to Plaintiffs under any circumstances. *See* Mot. for Protective Order by Non-Party File & ServeXpress, LLC, ECF No. 88 ("Mot.").

Consistent with this Court's recent Order, the Court should overrule FSX's objections to disclosure.[1] *First*, FSX's data-licensing agreement with Thomson Reuters is no less relevant than Thomson Reuters' other agreements. Indeed, Thomson Reuters itself does not dispute the relevancy of this (or any) such data-licensing agreement. *See* Order at 1. FSX nevertheless contends that because, in this instance, it sells only Delaware court data, its agreement has no bearing on the Californians in Thomson Reuters' database. But FSX makes no showing that its court data in fact has no connection to Californians. It would strain credulity to suggest that only Delaware residents litigate in Delaware courts.

Second, FSX has not established good cause to block the requested discovery. It makes no particularized showing of harm or prejudice that will result from disclosing its licensing agreement pursuant to the parties' agreed-upon protective order, which this Court already determined protects confidentiality. Order at 2. Even assuming a particularized harm, the public and private interests at stake, on balance, do not support blocking the requested discovery.

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[1] Plaintiffs do not contest FSX's request to intervene for the limited purpose of requesting a protective order.

For these reasons and more, the Court should deny FSX's request to block Thomson Reuters from producing its data-licensing agreement.

FACTS

This Court entered its Order on March 24, 2022, compelling Thomson Reuters to produce its data-licensing agreements to Plaintiffs within 21 days. Order at 3. In its Order, the Court found (among other things) that the parties' agreed-upon protective order would protect confidentiality. *Id.* at 2 (citing *In Re: Vizio, Inc., Consumer Privacy Litig*., No. 8:16-ML-02693, Dkt. 260 at 14 (C.D. Cal. Feb 5. 2018)); *see* Stipulated Protective Order, ECF No. 70.

Thomson Reuters identified the FSX agreement as an agreement that it intended to produce pursuant to the Court's order. FSX, however, chose to move to intervene to request a protective order. To facilitate the orderly consideration of FSX's position, Plaintiffs agreed to a short extension of time to allow FSX to file its motion.

From what Plaintiffs can tell at this stage, Thomson Reuters has otherwise timely produced all other data-licensing agreements and has designated them as "highly confidential" under the parties' protective order.

LEGAL STANDARD

To obtain a particularized protective order addressing a specific document, a party must show that "specific prejudice or harm will result if no protective order is granted." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002) (citations omitted); *see* Fed. R. Civ. P. 26(c)(1). "[B]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *In re Roman Cath. Archbishop of Portland Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) (citation omitted).

Upon a showing of particularized harm, the Court must balance the public and private interests at stake using the following factors:

> (1) whether disclosure will violate any privacy interests; (2) whether the information is being sought for a legitimate purpose or for an improper purpose; (3) whether disclosure of the information will cause a party embarrassment; (4) whether confidentiality is being sought over information important to public health and safety;

> (5) whether the sharing of information among litigants will promote fairness and efficiency; (6) whether a party benefitting from the order of confidentiality is a public entity or official; and (7) whether the case involves issues important to the public.

Id. at 424 n.5 (citation omitted).

ARGUMENT

I. Thomson Reuters' agreement to acquire data from FSX for CLEAR is relevant.

Thomson Reuters has not disputed the relevancy of its CLEAR data-licensing agreements. Order at 1. And for good reason. These contracts are what enable Thomson Reuters to create its 360-degree view of Californians. As such, the agreements are critical sources of information about what data Thomson Reuters collects, shares, or sells, with whom, and under what terms—and thus are highly relevant to the claims *and* defenses in this case. Compl., ECF No. 1-1; *e.g.*, Answer, ECF No. 60 ¶¶ 1-4.

FSX likewise does not disagree, as a general matter, that such licensing agreements are relevant to this litigation. It argues instead that this particular agreement is irrelevant because it only covers data from Delaware courts, and this lawsuit is brought on behalf of Californians.

But FSX fails to show that its agreement "does not relate to California *at all*." Mot. at 4 (emphasis added) (citing "see" Carter Decl., ¶ 7.). Carter's Declaration does not go that far. It says only that the agreement "does not address, contemplate, or apply to any material that *originates* in the State of California or its court system," Carter Decl., ¶ 7 (emphasis added)—a caveat that, even if true, does not prove that its agreement is irrelevant to the claims or defenses in this litigation.

Ultimately, FSX's claim that its agreement does not "at all" relate to California is unsupported and cannot be credited. *Cf. V5 Technologies v. Switch, Ltd.*, 334 F.R.D. 306, 310 (D. Nev. 2019) ("[T]he party opposing discovery bears the burden of showing the disputed discovery is not relevant, a burden that is met by specifically detailing the reasons why each request is irrelevant") (citations omitted).[2] FSX

[2] This case is nothing like the "burdensome" discovery sought in *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co.*, 981 F.2d 429, 438–39 (9th Cir. 1992), on which FSX relies. Mot. at 6. There, the plaintiff "demanded millions of pages of documents" about the defendant's relationships with its "private power suppliers, only a fraction of which could be deemed relevant" to the plaintiff's claim. *Id.* at 438. Here, on the other hand, FSX asks this Court to prevent Plaintiffs from discovering a *single*

fails to offer evidence, for example, that Delaware court records concern only non-Californians. Nor does FSX attempt to show—more specifically—that CLEAR's Delaware court records pertain only to non-Californians. FSX simply cannot find any evidence to support the notion that Delaware court records are per se irrelevant to CLEAR's impact on Californians.

FSX's position also strains belief. Californians, of course, litigate in Delaware state courts. *See, e.g.*, *Schmidt v. Washington Newspaper Publ'g Co.*, No. CV N19C-03-262 CLS, 2019 WL 4785560 (Del. Super. Ct. Sept. 30, 2019), *amended on reconsideration*, No. CV N19C-03-262 CLS, 2019 WL 7000039 (Del. Super. Ct. Dec. 20, 2019) (defamation suit of California resident against business entity); *Focus Fin. Partners, LLC v. Holsopple*, 241 A.3d 784, 807 (Del. Ch. 2020); *Ascension Ins. Holdings, LLC v. Underwood*, No. CV 9897-VCG, 2015 WL 356002, at *3 (Del. Ch. Jan. 28, 2015). And given that this case pertains to several years of CLEAR operations, it's worth remembering that Delawareans move to California, and vice-versa. Stacker, *Where people in Delaware are moving to most* (May 9, 2022), https://tinyurl.com/msdyv455 (reporting, based on data from the U.S. Census Bureau, that in 2019, 5.8% of residents (1,655 people) moved from Delaware to California). As such, the agreement between Thomson Reuters and FSX, like Thomson Reuters' other licensing agreements, sheds light on the data Thomson Reuters buys—and therefore sells—on Californians and what its costs are in doing so.

Finally, FSX also claims its agreement may be irrelevant because it is with West Publishing Corporation and doesn't mention the word "CLEAR." These breadcrumbs do not lead to the conclusion that FSX's agreement is irrelevant. West Publishing Corporation is a subsidiary of Thomson Reuters Corporation. *See* Thomson Reuters Website, Company History, https://tinyurl.com/bd6caz7e.[3] And other licensing agreements produced to date do not explicitly mention CLEAR. More importantly, Thomson Reuters itself identified FSX's agreement as a data-licensing agreement for CLEAR. There is no good reason to conclude otherwise.

document that's directly relevant to their claims.

[3] As such, FSX's claim (at 5) that its agreement "does not involve <u>any</u> of the parties to this litigation" creates a misimpression.

II. The existing stipulated protective order provides FSX adequate protection.

FSX's other argument for barring production of its agreement is that it is confidential and proprietary to FSX's business model. Mot. at 6-7. But this does not distinguish FSX's agreement from every single other licensing agreement produced to date. Each has been produced with the designation "highly confidential," and no other business has asserted that the parties' agreed-upon protective order is insufficiently protective of confidentiality or proprietary business interests. Doubtless, that is because the protective order *already* protects those interests. *See* Order at 2. FSX may disagree—claiming "the only way to safeguard" its agreement is to prevent its disclosure to anyone—but it makes no particularized showing that harm will result from the disclosure of its agreement to a limited set of individuals involved in this litigation. *See* Mot. at 6 (mentioning experts, court staff, and others—all of whom must sign the protective order in order to receive documents designated as "highly confidential").

Nothing distinguishes FSX's agreement from the many others already produced under existing protections. For example, the company asserts (at 5-6, 8) that the privacy rights of West Corporation, FSX, and the state of Delaware will somehow be compromised if its contract for selling Delaware court records is disclosed. But it's not clear what privacy rights West and FSX might have that could possibly be implicated in a business contract—let alone what privacy rights the state of Delaware might have in its court records, which FSX itself admits are public.

FSX also asserts that its agreement has not been publicly disclosed. Mot. at 7. But there is no reason to think the other agreements have, either. Even still, that fact hardly demonstrates that a particularized harm will result if an agreement is disclosed pursuant to the existing protective order.[4] *See* Order at 2 (finding the protective order sufficient to protect confidential information).

Lastly, FSX claims that a complete bar to production is warranted because otherwise there is the possibility that the agreement may become public as part of a future court filing. That argument ignores that the protective order would allow any licensee to ask this Court to keep its agreement

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[4] *Richard v. City and Cnty. of San Francisco*, 2021 WL 5298829 (N.D. Cal. 2021), does not help FSX. The court discussed particularized harm and the balancing of private and public interests in the context of the *public*'s interest in immediate disclosure of criminal investigatory records. *Id.* at *1-3.

under seal.[5] *See* Stipulated Protective Order 12-13 ("Filing Protected Material"), ECF No. 70.

In sum, FSX has failed to make any particularized showing that harm or prejudice will result *even if* its agreement is produced as "highly confidential" under the existing protective order, which this Court has already determined sufficiently protects confidentiality. Order at 2. Accordingly, FSX's request to bar disclosure fails, and there is no need to consider the balancing step of the inquiry. *See In re Outlaw Labs., LP Litig.*, 2021 WL 1102421, at *8 (S.D. Cal. 2021). Even still, the balance of public and private interests does not weigh in favor of total non-disclosure. Rather, the existing protective order already strikes an appropriate balance between Plaintiffs' right to discover relevant evidence in pursuit of class-action claims for Californians, and FSX's private interest in confidentiality.

CONCLUSION

For the foregoing reasons, FSX's motion for a protective order should be denied.

May 9, 2022

Respectfully submitted,

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[5] FSX's argument also proves too much: If a complete bar to disclosure were warranted whenever there exists the possibility of public access, then the default rule would not be that the public is generally permitted "access to litigation documents and information produced during discovery." *Phillips*, 307 F.3d at 1210.

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