

Valueclick Inc v. Revenue Science Inc

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No. CV 07-2052 MMM(JCx) Date October 16, 2007
Title Valueclick, Inc. v. Revenue Science, Inc.

Present: The Honorable Jacqueline Chooljian, United States Magistrate Judge

Nancy Hackney none none
Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs: none Attorneys Present for Defendants: none

Proceedings: **(In Chambers)**

**ORDER DENYING REQUEST TO APPROVE STIPULATED
PROTECTIVE ORDER WITHOUT PREJUDICE**

The parties' request for a stipulated protective order (Proposed Order) has been referred to the magistrate judge and is denied without prejudice. The parties may choose to submit for court approval, an amended proposed protective order which remedies the deficiencies described below. Alternatively, the parties may wish to enter into a confidentiality agreement among themselves, obviating the need for a protective order from the court.

1. While this court is generally willing to enter a protective order to facilitate the conduct of discovery when parties are able to make the requisite showing of good cause, this court is unwilling to approve any protective order which includes provisions relating to or potentially relating to evidence presented at non-discovery related pretrial court proceedings and/or trial. (See paragraph 1, page 2; paragraph 25, pages 12-13; paragraph 30, page 16; paragraph 39, page 20). Issues relating to the presentation of evidence presented at such non-discovery related pretrial court proceedings and/or trial will need to be taken up with the judicial officer conducting such proceedings at the appropriate time.

2. The Proposed Order purports to afford protections to, and to impose duties upon non-parties who produce or receive materials covered by the Proposed Order (e.g., by including non-parties in the definitions of "Qualified Person," "Disclosing Party," and "Receiving Party", which terms are later used throughout the Proposed Order). The Proposed Order also contemplates that other persons may be included within the definition of "Qualified Person" by agreement of the parties. The court further notes that the definition of Receiving Party is ambiguous as it could be construed to include the court and court personnel. The court is not willing to issue an order binding non-parties or other third parties not affiliated with the litigants who have neither had an opportunity to make their positions regarding such order known to the court nor agreed in writing to be bound by the terms of the parties' Proposed Order. Further, to the extent the term "Receiving Party" is intended to encompass the court and court personnel, the court is unwilling to issue any order binding the court and court personnel.

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3. Paragraph 29 of the Proposed Order, at pages 15-16, sets forth a procedure the parties propose to follow in the event a discovery request calls for information subject to confidentiality obligations owed to third parties. The parties do not address the potential source of such obligation (e.g., agreement or protective order entered by another court). The court is unwilling to approve the currently proposed procedure as it provides insufficient protection to the third parties whose confidential information is in issue (and in fact does not itself even require that notice, let alone timely notice be given to such third parties) and potentially contemplates the production of materials in violation of other court's protective orders.

4. Multiple portions of the Proposed Order address the procedures to be followed by the parties in the event that a dispute or matter requiring court intervention arises. Although paragraph 35 of the Proposed Order acknowledges that "the procedures governing discovery disputes" will apply to resolution of the specific type of dispute referenced in that paragraph, the Proposed Order does not so specify regarding resolution of other potential disputed issues. In the event of a dispute or other need for court intervention arises under the Protective Order, the procedure for obtaining a decision from the court is set forth in Local Rule 37.

5. In paragraph 42 of the Proposed Order, the parties purport to agree upon the non-admissibility of certain information. Although the parties may appropriately agree that they will not seek to admit the information in issue, this court, as noted in paragraph 1 above, is unwilling to issue a blanket order regarding the non-admissibility of information.

6. In paragraph 45, the Proposed Order appears to reflect that the parties themselves may amend the Proposed by a stipulation which is not necessarily approved by the court. While nothing in this order precludes the parties from entering into a confidentiality agreement among themselves, any amendment to the Proposed Order which is not approved by the court will not constitute and will not be enforceable as a court order. Any modified Proposed Order which contains a provision similar to paragraph 45, should make this fact clear.

7. Although not the basis of the court's order, it notes that the Proposed Order contains typographical errors that should be corrected in any future submission of a modified proposed order: (a) paragraph 15, page 7 references "Qualified Persons (as defined in paragraph 89 above) – The Proposed Order presumably intends to refer to paragraph 9; and (b) paragraph 28, page 15 contains a proposed legend which references a case number from a different case – The Proposed Order presumably intends to refer to the instant case number.

IT IS SO ORDERED.

Initials of Deputy Clerk

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