

1 Joseph A. Salazar, Jr.
2 Lewis Brisbois
3 2020 West El Camino Avenue
4 Suite 700
5 Sacramento, CA 95833
6 TEL: 916-646-8201
7 E-MAIL: Joe.Salazar@lewisbrisbois.com

8 *Local Counsel for Defendant*
9 *General Information Solutions LLC*

10 John G. Papianou (admitted *pro hac vice*)
11 Alexandra S. Jacobs (admitted *pro hac vice*)
12 Erin A. Novak (admitted *pro hac vice*)
13 Montgomery, McCracken, Walker
& Rhoads, LLP
14 123 S. Broad St.
15 Philadelphia, PA 19109
16 TEL: 215.772.7510
17 E-MAIL: jpapianou@mmwr.com
18 ajacobs@mmwr.com
19 enovak@mmwr.com

20 *Counsel for Defendant*
21 *General Information Solutions LLC*

22
23
24
25
26
27
28
**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO**

19 ROBERT G. SMITH
20 Plaintiff,
21 v.
22 GENERAL INFORMATION SERVICES,
23 INC.
24 Defendant.

Case No. 1:17-cv-00542-DAD-SAB

ORDER RE STIPULATION FOR
DISCOVERY PROTECTIVE
ORDER

(ECF No. 21)

24 Plaintiff Robert G. Smith and Defendant General Information Solutions LLC
25 (collectively, the “Parties”), hereby stipulate and agree, pursuant to Federal Rule of
26 Civil Procedure 26(c) and Local Rules of Civil Procedure 141.1 and 143 that the terms
27 of this Stipulated Discovery Protective Order (hereafter “Order”) as set forth hereafter
28

1 shall govern the confidential treatment of information produced in the discovery
2 process of the above-captioned action and the treatment of inadvertently produced
3 information and documents. In support thereof, the parties state as follows:

4 1. This Order shall govern all documents produced within the context of
5 this litigation and is designed to protect personal, financial, tax, and other proprietary
6 information that the Parties have an interest in keeping confidential.

7 2. "Document" as used herein shall have the broadest possible meaning and
8 shall include, without limitation;

9 a. "writings," "recordings," "photographs," and "duplicates" as
10 defined in

11 b. Rule 1001 of the Federal Rules of Evidence;

12 c. any and all tangible things upon which any handwriting, typing,
13 printing,

14 d. drawing, representation, photostatic copy, magnetic or electrical
15 impulse, or other form of communication is recorded or produced;

16 e. floppy disks, hard disks, magnetic tape, and/or computer memory;

17 f. written discovery responses and the contents thereof, including,
18 without

19 g. limitation, responses to interrogatories, requests for admission, and
20 document requests;

21 h. deposition transcripts and their contents; and

22 i. any physical means or medium of recording or storing information.

23 3. As used herein, the term "counsel of record" shall mean the attorneys of
24 record in this proceeding, their partners and associates, clerks, assistants, and other
25 persons employed by such attorneys, all of whom shall be bound by the provisions of
26 this Order.

1 4. As used herein, the term “person” shall mean, in the plural as well as in
2 the singular, any individual, corporation, firm, association, partnership, business, trust,
3 governmental body, or any other legal or business entity, unless specified to the
4 contrary by this Order.

5 5. As used herein, the term “Party” shall mean, in the plural as well as the
6 singular, any named plaintiff or defendant in this action, and shall include its present
7 members, directors, officers, and/or employees.

8 6. In connection with discovery proceedings in this action, any Party to this
9 action (hereinafter the “Designating Party”) shall have the right to designate any
10 document, thing, material, testimony, or other information derived therefrom, as
11 confidential under the terms of this Order.

12 7. Confidential information is information which has not been made public
13 and which concerns or relates to the employment records, financial records, tax
14 records, processes, policies, procedures, operations, purchases, amount or source of
15 any income, profits, losses, or expenditures of any persons, firm, partnership,
16 corporation or other organization, the disclosure of which information may have the
17 effect of invading the privacy or causing harm to the competitive position of the
18 person, firm, partnership, corporation, or to the organization from which the
19 information was obtained. In this case, the information sought to be used under this
20 protective order concerns confidential tax records, bank statements and wage records
21 of Plaintiff and Defendant’s proprietary information, such as its policies and
22 procedures related to compiling and preparing consumer reports, its policies and
23 procedures related to consumer disputes and disclosures, its methodology for
24 obtaining, analyzing and assessing public records information, its agreements with
25 users of its reports, its agreements with its vendors or sources of consumer
26 information and its financial records. This information needs to be protected as it
27 contains information which could be used by a competitor to hurt Defendant (for
28

1 example, financial stability of the company, vendors used, policies and procedures
2 employed to prepare consumer reports and prices paid for competitive goods, etc.) and
3 confidential employee information. Confidential information does not include any
4 document that is generally available to the public, nor does it include any document
5 that has previously been disclosed to third parties without being designated as
6 “Confidential.” By designating a document, thing, material, testimony or other
7 information derived therefrom as “confidential,” under the terms of this order, the
8 party making the designation is certifying to the court that there is a good faith basis
9 both in law and in fact for the designation within the meaning of Federal Rules of
10 Civil Procedure, Rule 26.

11 8. All documents designated confidential pursuant to this Order shall
12 remain confidential until the Court declares that the designated material is not subject
13 to the protection of this Order.

14 9. As used herein, the term “Confidential Material” shall refer to:

15 a. Any documents (including any portions thereof and any information
16 contained therein) designated to be confidential by any Party which has had stamped
17 or affixed thereon the word “CONFIDENTIAL.” Stamping the legend
18 “CONFIDENTIAL” on the cover of any multi-page document shall designate all
19 pages of the document as confidential, unless otherwise indicated by the Designating
20 Party;

21 b. All deposition testimony, including oral testimony, deposition
22 transcripts and the information contained therein, shall initially be treated as
23 Confidential Material and be included within the terms of this Order without the
24 necessity of designating the testimony as “Confidential Material.” Upon
25 transcription of the deposition, counsel shall have 30 days after receipt of the
26 transcript to notify the deposition reporter and other counsel of record in writing
27 that certain portions of the transcript are designated as confidential. Depositing
28

1 the written notice in the United States mail within such 30 days shall be deemed
2 timely compliance with this requirement. All other portions, or the entire
3 transcript if no designations made, shall not be confidential and shall not be
4 within the terms of this Order. Alternatively, and in addition to the above
5 method, deposition testimony may be designated as “Confidential Material”
6 during the deposition, in which case the transcript of the designated testimony
7 shall be bound in a separate volume and marked “CONFIDENTIAL” by the
8 reporter as the Designating Party directed; and

9 c. “Confidential Material” does not include any information or
10 documents obtained or produced by a third party outside the context of
11 discovery in this litigation. However, nothing in this Order shall affect the
12 rights of either Party to enforce any rights it may have regarding the
13 confidentiality of documents and other information disclosed or transferred to
14 another party or person prior to the institution of the present litigation.

15 10. “Confidential Material” shall be disclosed only to:

16 a. The Court and its officers in this litigation;

17 b. Any Party, or an officer, director, or employee of a Party to the
18 extent deemed reasonably necessary by counsel to aid in the prosecution,
19 defense, or settlement of this action;

20 c. Experts and/or consultants (together with their clerical staff)
21 retained by counsel of record on behalf of the Parties;

22 d. Counsel of record and the respective personnel of the law firms as
23 set forth in paragraph 3;

24 e. Court reporter(s) employed in this action; and

25 f. Any other person(s) as to whom the Parties agree pursuant to
26 paragraph 11.

1 11. If counsel for any Party should conclude that, for the purpose of this
2 action, such Party needs to disclose any Confidential Material or information derived
3 therefrom, to any person not described in paragraph 10 of this Order, counsel for such
4 Party must request permission from counsel for the Designating Party in writing and
5 state the purpose of the disclosure. If the Designating Party objects to the proposed
6 disclosure, no such disclosure shall be made unless the Court, upon motion and for
7 good cause shown, orders otherwise. However, each Party may disclose its own
8 Confidential Material without regard to this Order unless otherwise under an existing
9 duty to another person not to do so. Disclosure by a Party of that Party's own
10 Confidential Material will not, under any circumstances, constitute a waiver or a
11 breach of this Order.

12 12. Confidential Material shall be treated as confidential by all persons to
13 whom such information may be disclosed and shall be used by all such persons solely
14 for the prosecution, defense, or settlement of the claims at issue in this action.

15 13. Any person to whom the Confidential Material may be shown pursuant to
16 paragraphs 10(b), (c), or (f), or paragraph 11 shall first be supplied a copy of this
17 Order and shall agree in writing to be bound by its terms by signing a certification on
18 a copy of this order, which states:

19
20 I certify that I have received and read a copy of the Protective Order
21 entered in the case captioned Robert G. Smith v. General Information
22 Services, Inc. et al. and I agree to be bound by the Order. I understand
23 that information designated as confidential or protected in this case, and
24 any information derived from it, may not be used, copied or disclosed by
25 me to anyone else except in accordance with the terms of the Protective
26 Order and then only assist in the prosecution or defense of this case.

1 The law firm obtaining the person's signature on the Order will retain the
2 original signed copy of the signed certification.

3 14. If a Party objects as to a producing person's determination that material
4 marked as "CONFIDENTIAL" by the producing person falls within the type of
5 material described by Paragraph 9 above, the objecting Party may bring a motion
6 before the Court to contest the designation of such material as "CONFIDENTIAL."
7 The Parties agree that before seeking any relief from the Court under this paragraph,
8 they will make a good faith effort to resolve any disputes concerning the confidential
9 treatment of any such material.

10 15. Upon final termination of this action, each Party shall, at the option of the
11 Party designating the information as "CONFIDENTIAL," (1) promptly assemble and
12 return all Confidential Material including all copies thereof, to the Designating Party
13 or to such other Party which produced the Confidential Material in this action; or (2)
14 promptly destroy all Confidential Material and certify in writing that all Confidential
15 Material, including all copies thereof, has been destroyed.

16 16. In the event that a party seeks to file materials that have been designated
17 "CONFIDENTIAL" by another party or individual, the filing party shall provisionally
18 file the materials under seal in accordance with Local Civil Rule 141, with notice
19 served on the party or individual who desires to maintain the materials under seal.
20 Either party wishing to file any document under seal must first present a motion to
21 seal. The motion to seal may be filed without a supporting memorandum only if the
22 filing party can cite a statute or rule (federal, local or standing order) that requires the
23 filing to be sealed. Absent such authority, the filing party must submit a supporting
24 memorandum that specifies:

- 25 a. the exact document or item, or portions thereof, for which filing
26 under seal is requested;

- 1 b. how such request to seal overcomes the common law or the First
- 2 Amendment presumption to access;
- 3 c. the specific qualities of the material at issue which justify sealing
- 4 such material, taking into account the balance of competing interest in access;
- 5 d. the reasons why alternatives to sealing are inadequate; and
- 6 e. whether there is consent to the motion.

7 In addition to the motion and supporting memorandum, the filing party must set
8 out such findings in a proposed order to seal.

9 17. This Order does not constitute a waiver of any Party's rights to object to
10 discovery on any grounds, except the ground that the information sought contains
11 information in which a Party has a privacy right. Nor does this Order constitute any
12 admission by any Party that any information that it or any opponent designates as
13 Confidential Material is, in fact, information in which a Party has a privacy right.

14 18. This Order is not intended to govern the use of Confidential Material at
15 any hearing or trial of this action. Questions of the protection of such material during
16 any hearing or trial will be presented to the Court prior to or during the hearing or trial
17 as each Party deems appropriate.

18 19. If another court or administrative agency subpoenas or orders production
19 of Confidential Material that a Party has obtained under the terms of this Order, such
20 Party shall promptly notify the designating Party of the pending subpoena or order and
21 shall not produce the Confidential Material until the Designating Party has had
22 reasonable time to object or otherwise to take appropriate steps to protect the material.

23 20. This Order shall not prevent any of the Parties from moving the Court for
24 an order that Confidential Material may be disclosed other than in accordance with
25 this Order. This Order is without prejudice to the right of any Party to seek
26 modification of it from the Court. It shall remain in effect until such time as it is
27 modified, amended, or rescinded by the Court. If applicable, the Court shall have
28

1 continuing jurisdiction to modify, amend, or rescind this Order notwithstanding the
2 termination of this action.

3 21. The Parties agree to submit this Stipulation to the Court for entry of a
4 Protective Order by the Court. Prior to the execution and entry of the Protective Order
5 by the Court, the Parties agree to abide by its terms as if fully executed and entered by
6 the Court, and this Order, prior to execution and entry by the Court, shall constitute a
7 fully binding agreement of the Parties.

8 22. In adopting the Parties' agreement, the Court's corresponding Order does
9 not operate to conflict with the Federal Rules of Civil Procedure and/or the Federal
10 Rules of Evidence, including F.R.E. 502 and/or any applicable local rules. The
11 Judge's corresponding Order indicates the Court's approval of the Parties' agreement
12 and provides a mechanism for enforcing it.

13
14 IT IS SO ORDERED.

15 Dated: March 8, 2018


UNITED STATES MAGISTRATE JUDGE

1 DATED: February 28, 2018

2 DHF Law, P.C.

3
4 /s/ Devin H. Fok

5 Devin H. Fok, Esq.
6 234 E. Colorado, Blvd. 8th Fl.
7 Pasadena, CA 91101
8 TEL: 888-651-6411
9 E-MAIL: devin@devinfoklaw.com

10 *Counsel for Plaintiff*
11 *ROBERT SMITH*

12 Montgomery, McCracken, Walker & Rhoads,
13 LLP

14 /s/ Erin A. Novak

15 John G. Papianou (admitted *pro hac vice*)
16 Alexandra S. Jacobs (admitted *pro hac vice*)
17 Erin A. Novak (admitted *pro hac vice*)
18 123 S. Broad St.
19 Philadelphia, PA 19109
20 TEL: 215.772.7510
21 E-MAIL: jpapianou@mmwr.com
22 ajacobs@mmwr.com
23 enovak@mmwr.com

24 *Counsel for Defendant*
25 *GENERAL INFORMATION SOLUTIONS LLC*
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. The protective order is entered;
2. The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and
3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion.
Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).