

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUST FILM, INC.; RAINBOW BUSINESS SOLUTIONS, doing business as PRECISION TUNE AUTO CARE; BURLINGAME MOTORS, INC.; DIETZ TOWING, INC.; THE ROSE DRESS, INC.; VOLKER VON GLASENAPP; JERRY SU; VERENA BAUMGARTNER; TERRY JORDAN; LEWIS BAE; and ERIN CAMPBELL, on behalf of themselves, the general public and those similarly situated,

No. C 10-1993 CW  
ORDER  
SUPPLEMENTING  
OCTOBER 31, 2012  
ORDER (DOCKET NO. 411)

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL PAYMENT PROCESSING; UNIVERSAL MERCHANT SERVICES, LLC; UNIVERSAL CARD, INC.; JASON MOORE; NATHAN JURCZYK; ROBERT PARISI; ERIC MADURA; FIONA WALSH; ALICYN ROY; MBF LEASING, LLC; NORTHERN FUNDING, LLC; NORTHERN LEASING SYSTEMS, INC.; GOLDEN EAGLE LEASING, LLC; LEASE SOURCE-LSI, LLC; LEASE FINANCE GROUP, LLC; JAY COHEN; LEONARD MEZEI; SARA KRIEGER; BRIAN FITZGERALD; SAM BUONO; MBF MERCHANT CAPITAL, LLC; RBL CAPITAL GROUP, LLC; WILLIAM HEALY; JOSEPH I. SUSSMAN; JOSEPH I. SUSSMAN, P.C.; and SKS ASSOCIATES, LLC,

Defendants.

Having reviewed the declaration of Kristen Simplicio offered by Plaintiffs in response to the Court's October 31, 2012 order, Docket No. 411 (hereinafter, Simplicio declaration), the Court ORDERS as follows:

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1 By November 14, 2012, Plaintiffs shall file in the docket of  
2 this action the written consents they have received from non-  
3 parties waiving their confidentiality designations to certain  
4 exhibits, or portions thereof, that are at issue in the pending  
5 motion to seal, and any communication that they have had with  
6 MasterCard regarding Exhibit Z after the Simplicio declaration was  
7 filed.

8 The Court notes that Plaintiffs did not address in the  
9 Simplicio declaration the portions of their pending motion for  
10 leave to file a third amended complaint that are at issue in the  
11 motion to seal. See Docket No. 383, 3:15, :26. By November 14,  
12 2012, Plaintiffs shall file a supplemental declaration providing  
13 the information requested in the October 31, 2012 order for these  
14 portions.

15 In their original motion to seal and supporting declaration,  
16 Plaintiffs represented that Defendants had designated the  
17 documents that they sought to seal as confidential. Docket No.  
18 385. In the Simplicio declaration, Plaintiffs now attest that it  
19 was actually they or certain nonparties, and not Defendants, that  
20 designated some of those documents as confidential. In the  
21 supplemental declaration that Plaintiffs must file by November 14,  
22 2012, Plaintiffs shall provide an explanation for the incorrect  
23 statements made in the original motion to seal and supporting  
24 declaration.

25 In the Simplicio declaration, Plaintiffs purport to provide  
26 reasons that they have designated as confidential Exhibits W,  
27 PPPP, QQQQ, RRRR, WWWW, VVVV and XXXX. Because the public  
28 interest favors filing all court documents in the public record,

1 any party seeking to file a document under seal in connection with  
2 a non-dispositive motion must demonstrate good cause to do so.

3 Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010).

4 If the motion is dispositive, the Ninth Circuit requires that the  
5 party seeking to seal records meet a more stringent "compelling  
6 reasons" standard. See Kamakana v. City & Cnty. of Honolulu, 447

7 F.3d 1172, 1178-81 (9th Cir. 2006). Neither standard can be met  
8 simply by showing that the document is subject to a protective

9 order or by stating in general terms that the material is

10 considered to be confidential, but rather must be supported by a  
11 sworn declaration demonstrating with particularity the need to

12 file each document under seal. See Civil Local Rule 79-5(a).

13 Although Plaintiffs have generally identified the contents of

14 these exhibits as "bank statements and related banking documents"

15 and "consumer credit reports," they have not provided specific

16 reasons supporting the sealing of these documents, either in part

17 or in their entirety. Plaintiffs are granted leave to do so in

18 the supplemental declaration that they must file by November 14,

19 2012. Failure to do so will result in denial of their motion to

20 seal as to these documents, subject to the privacy protections

21 contained in Federal Rule of Civil Procedure 5.2(a).

22 Finally, there appear to be multiple errors in the Simplicio  
23 declaration, including:

24 (1) In Table C, Plaintiffs state that no portion of Exhibit U  
25 was designated as confidential, but identify Fiona Walshe as  
26 having designated Exhibit U as confidential;

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(2) In Table C, Plaintiffs state that Exhibits HHH, III and JJJ have been designated as confidential in their entirety, but do not identify which party or non-party designated them as such; and

(3) In paragraph 3(b), Plaintiffs identify Exhibit XXXX as the "consumer credit reports for Plaintiffs Volker Von Glasenapp and Lewis Bae," but Exhibit XXXX does not contain a credit report and is not identified as confidential in Table C. It appears Plaintiffs intended to identify Exhibit YYYY, which they state in Table C was designated as confidential by Plaintiffs.

Plaintiffs shall address these apparent errors in the supplemental declaration that they must file by November 14, 2012.

IT IS SO ORDERED.

Dated: 11/13/2012

  
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CLAUDIA WILKEN  
United States District Judge