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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

O'M AND ASSOCIATES, LLC, an)	Civil No. 10cv2130 AJB(RBB)
Illinois limited liability)	
company, d/b/a O'Malley and)	ORDER DENYING DEFENDANT MATTHEW
Associates; PRESERVE CAPITAL,)	STOEN'S <u>AMENDED</u> MOTION FOR
LLC, an Illinois limited)	ORDER TO SHOW CAUSE WHY
liability company; and MBM)	PLAINTIFFS AND/OR PETER HILGER
SETTLEMENTS, LLC, an Illinois)	SHOULD NOT BE HELD IN CONTEMPT
limited liability company,)	OF COURT FOR VIOLATION OF THE
)	JANUARY 3, 2011 PROTECTIVE
Plaintiffs,)	ORDER [ECF NO. 120]
)	
v.)	
)	
BRENDAN K. OZANNE, BRIAN C.)	
DAWSON, AND DAWSON & OZANNE, a)	
California general partnership,)	
as escrow agent; MATTHEW STOEN,)	
individually and as manager and)	
agent for KODIAK FAMILY, LLC, a)	
Nevada limited liability)	
company; KODIAK FAMILY, LLC,)	
individually and as agent for)	
XYZ CORPORATION,)	
)	
Defendants.)	

On February 23, 2011, Defendant Matthew Stoen filed a Motion for Order to Show Cause Why Plaintiffs and/or Peter Hilger Should Not Be Held in Contempt of Court for Violation of the January 3, 2011 Protective Order [ECF No. 111]. Stoen asked that the Court

1 issue an order to show cause why Plaintiffs and Hilger should not
2 be held in contempt of court, and that the Limited Temporary
3 Restraining Order issued by United States District Court Judge
4 Marilyn E. Huff be dissolved. (Mot. Order Show Cause 6, ECF No.
5 111.) On March 1, 2011, Judge Huff referred the Motion to this
6 Court, vacated the motion hearing, and reset the hearing for April
7 4, 2011, at 10:00 a.m. before this Court [ECF No. 116].¹

8 On March 3, 2011, Defendant Matthew Stoen filed an Amended
9 Motion for Order to Show Cause Why Plaintiffs and/or Peter Hilger
10 Should Not Be Held in Contempt of Court for Violation of the
11 January 3, 2011 Protective Order, along with Exhibit A and a
12 redacted version of Exhibit B [ECF No. 120]. The Defendant
13 subsequently lodged the confidential version of Exhibit B with the
14 Court, pursuant to the Protective Order entered on January 3, 2011
15 [ECF Nos. 72-73, 118-119].

16 On March 18, 2011, Plaintiffs' Response in Opposition to
17 Defendant's Amended Motion for Order to Show Cause Why Plaintiffs
18 and/or Peter Hilger Should Not Be Held in Contempt of Court for
19 Violation of the January 3, 2011 Protective Order was filed, along
20 with the Affidavit of Peter Hilger [ECF No. 125]. On March 28,
21 2011, this Court vacated the April 4, 2011 motion hearing and
22 reset it for May 23, 2011, at 10:00 a.m. A redacted version of
23 Defendant Stoen's Reply and a redacted exhibit was filed on May
24 16, 2011 [ECF No. 159]. The next day, Defendant Stoen lodged a
25 confidential version of the Reply and exhibit with chambers [ECF
26 Nos. 160, 164]. The Court found Defendant Stoen's Motion suitable

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28 ¹ This case was transferred to United States District Court
Judge Anthony J. Battaglia on March 15, 2011 [ECF No. 124].

1 for resolution on the papers, pursuant to Southern District of
2 California Civil Local Rule 7.1(d)(1), and vacated the hearing set
3 for May 23, 2011, at 10:00 a.m. [ECF No. 168].

4 The Court has reviewed Defendant's Amended Motion and
5 exhibits, Plaintiffs' Opposition and Affidavit of Peter Hilger,
6 and Defendant's Reply and exhibit. For the reasons stated below,
7 Defendant's Amended Motion for Order to Show Cause is **DENIED**.

8 **I.**

9 **BACKGROUND**

10 On January 3, 2011, Judge Marilyn Huff granted the parties'
11 Joint Motion for Entry of Protective Order. (Joint Mot. Entry
12 Protective Order 1, ECF No. 72; Order Granting Joint Mot.
13 Protective Order 1, ECF No. 73.) In his Amended Motion for Order
14 to Show Cause, Defendant Matthew Stoen generally argues that Peter
15 Hilger, a member of Plaintiff Preserve Capital, LLC [ECF No. 120],
16 violated the Protective Order by deliberately and wrongfully
17 disclosing confidential information to Stoen's father-in-law, Jon
18 Monson. (Am. Mot. Order Show Cause 5, ECF No. 120; Reply 2, ECF
19 No. 159.) Stoen claims that on January 31, 2011, after the
20 default against him was set aside, he produced confidential
21 information to Plaintiffs' counsel in compliance with the Limited
22 Temporary Restraining Order [ECF Nos. 36-37, 96, 100]. (Am. Mot.
23 Order Show Cause 3, ECF No. 120.) The Defendant alleges that on
24 February 17, 2011, Peter Hilger sent an e-mail to Stoen's father-
25 in-law disclosing the signatory on a bank account into which a
26 portion of the disputed funds had been deposited. (Id. at 5.) In
27 response, Plaintiffs argue that the mere identity of the holder of
28 the account into which the funds were deposited is not

1 "confidential information" within the meaning of the Protective
2 Order. (Opp'n 3, ECF No. 125.) Even if it is, Plaintiffs assert,
3 Peter Hilger's belief that it did not constitute confidential
4 information was a reasonable interpretation of the Protective
5 Order, and any violation was unintentional. (Id.; see id. Attach.
6 #1 Hilger Aff. 2.)

7 **A. The November 2, 2010 Limited Temporary Restraining Order**

8 On October 13, 2010, Plaintiffs filed a Verified Motion for
9 Temporary Restraining Order with supporting affidavits attached
10 [ECF No. 4]. Plaintiffs sought an order prohibiting the
11 Defendants from spending or disbursing approximately \$700,000 in
12 escrowed funds that had been wired into the Defendants' IOLTA
13 account until further court order. (Verified Mot. TRO 4-6, 10,
14 ECF No. 4.) On November 2, 2010, Judge Huff granted a Limited
15 Temporary Restraining Order [ECF Nos. 36-37], instructing the
16 following:

- 17 (1) Brendan Ozanne and Dawson & Ozanne and its
18 principals, including but not limited to Matthew
19 Stoen, individually and as agent of Kodiak Family,
20 LLC, are enjoined and restrained from directly or
21 indirectly transferring the Deposited Funds plus
22 any interest earned thereon, or any portion
23 thereof, from any account over which any of
24 Defendants have ownership, possession, or control
25 and into which the Deposited Funds have been
26 identifiably transferred;
- 27 (2) Ozanne, Dawson & Ozanne, Stoen and Kodiak are to
28 provide, within 10 days from the effective date of
this order, all relevant information regarding all
accounts to which the Deposited Funds were
transferred and are now held, including but not
limited to: the location and identity of the
transferee account, the date on which the funds
were transferred, the accounts to which they were
transferred, the reason for the transfer, and the
identities of all signatories to the account to
which the funds were transferred;

1 (3) Discovery may commence in this matter immediately
2 and be expedited as to accounting and issues raised
3 in the application for the temporary restraining
order

4 (Order Granting Limited TRO 3-4, ECF No. 36; Mem. Decision
5 Granting Limited TRO 8-9, ECF No. 37.)

6 **B. The Protective Order**

7 On January 3, 2011, the parties filed a Joint Motion for
8 Entry of Protective Order. (Joint Mot. Entry Protective Order 1,
9 ECF No. 72.) That same day, the Court issued an Order Granting
10 Joint Motion for Entry of Protective Order as Modified by the
11 Court. (Order Granting Joint Mot. Protective Order 1, ECF No.
12 73.) The Protective Order states that all confidential
13 information or documents shall be used by the receiving party
14 solely for litigation purposes. (Id. at 2.) The Order limited
15 the dissemination of "confidential information."

16 1. For purposes of this Order, "Confidential
17 Information" shall mean information or data of any
18 kind or description containing proprietary,
19 competitively sensitive, and/or financial or
20 customer information which is produced by any party
21 or third party, is confidential to the producing
22 party in that it is not generally available to the
23 public or third persons, and is designated in good
24 faith by the producing party as "Confidential,"
25 including, but without limitation, tax returns,
26 financial statements, bank account records and
27 statements, and other financial information.

28

3. Except as expressly stated herein or by further
Order of this Court, Confidential Information shall
not be given, shown, made available, communicated,
or disclosed to anyone other than:

- 26 (a) The attorneys of record in this action,
27 and their legal assistants and staff
members;
- 28 (b) the parties to this action;

- 1 (c) Independent consultants and/or experts
2 retained by the parties to work on the
3 action, provided that before any such
4 consultant or expert is shown or receives
5 any Confidential Information he must read
6 a copy of this Order and agree to abide
7 by same by executing an affidavit
8 specifying that such person has read a
9 copy of the Order and agrees to abide by
10 same;
- 11 (d) Stenographic reporters engaged for
12 depositions or other proceedings
13 necessary to the conduct of this action;
- 14 (e) Such persons as counsel for the parties
15 may mutually consent to in writing or on
16 the record prior to the proposed
17 disclosure; and
- 18 (f) The Court and appropriate Court
19 personnel.

20 (Id.)

21 **II.**

22 **LEGAL STANDARDS**

23 "Civil contempt . . . consists of a party's disobedience to
24 a specific and definite court order by failure to take all
25 reasonable steps within the party's power to comply.'" Reno Air
26 Racing Ass'n v. McCord, 452 F.3d 1126, 1130 (9th Cir. 2006)
27 (quoting In re Dual-Deck Cassette Recorder Antitrust Litig., 10
28 F.3d 693, 695 (9th Cir. 1993)). When a party violates a
protective order, a district court may impose the remedies it
deems appropriate. Westinghouse Elec. Corp. v. Newman &
Holtzinger, P.C., 992 F.2d 932, 934-35 (9th Cir. 1993); Lew v.
Kona Hosp., 754 F.2d 1420, 1426-27 (9th Cir. 1985); see Yates v.
Applied Performance Techs., Inc., 205 F.R.D 497, 500 (S.D. Ohio
2002) (citing 6 James Wm. Moore et al., Moore's Federal Practice §
26.108[2] (3d ed. 1997)).

29 Rule 37(b) of the Federal Rules of Civil Procedure authorizes
30 district courts to impose a wide range of sanctions, including

1 contempt, on a party that fails to comply with a discovery order
2 or a protective order. Fed. R. Civ. P. 37(b)(2)(A)(vii);
3 Westinghouse Elec. Corp., 992 F.2d at 934-35 (citing support for
4 the proposition that Rule 37(b)(2) should provide for enforcement
5 of Rule 26(c) joint protective orders); United States v. Nat'l
6 Med. Enters., Inc., 792 F.2d 906, 910 (9th Cir. 1986) (upholding a
7 Rule 37(b) sanction for a party's violation of the protective
8 order); see O'Phelan v. Loy, No. 09-00236, 2010 U.S. Dist. LEXIS
9 129030, at *7-8 (D. Haw. Dec. 6, 2010); Mora v. Target Corp., No.
10 07cv719 MMA (WMc), 2010 U.S. Dist. LEXIS 123681, at *2-3 (S.D.
11 Cal. Nov. 22, 2010); Lambright v. Ryan, No. CV-87-235-TUC-JMR,
12 2010 U.S. Dist. LEXIS 52781, at *14-15 (D. Ariz. May 4, 2010)
13 (citations omitted); contra Lipscher v. LRP Publ'g, Inc., 266 F.3d
14 1305, 1323 (11th Cir. 2001) (finding that violating a protective
15 order is not sanctionable under Rule 37(b)(2) because a protective
16 order is not an order "to provide or permit discovery").

17 "Civil contempt is a refusal to do an act the court has
18 ordered for the benefit of a party; the sentence is remedial.
19 Criminal contempt is a completed act of disobedience; the sentence
20 is punitive to vindicate the authority of the court." Bingman v.
21 Ward, 100 F.3d 653, 655 (9th Cir. 1996) (quoting In re Sequoia
22 Auto Brokers Ltd., 827 F.2d 1281, 1283 n.1 (9th Cir. 1987)). In
23 the Ninth Circuit, a contempt order is for civil contempt if the
24 sanction coerces compliance with a court order or compensates the
25 injured party for losses sustained. Koninklijke Philips Elecs.,
26 N.V. v. KXD Tech., Inc., 539 F.3d 1039, 1044 (9th Cir. 2008).
27 Civil contempt sanctions are often imposed against individuals who
28 violate protective orders. 6 James Wm. Moore et al., Moore's

1 Federal Practice § 26.108[2], at 26-570 (3d ed. 2011); see Quinter
2 v. Volkswagen of Am., 676 F.2d 969, 975 (3d Cir. 1982) (finding
3 that the court properly imposed a civil contempt sanction when the
4 expert witness disclosed confidential information to another
5 attorney).

6 Defendant Stoen seeks an award of fees incurred to address
7 Hilger's conduct, monetary sanctions, and the dissolution of the
8 Limited Temporary Restraining Order. (Am. Mot. Order Show Cause
9 6, ECF No. 120.) Although Stoen does not specify whether he seeks
10 an order holding Hilger in civil or criminal contempt, the failure
11 to comply with a protective order or other discovery order in
12 these circumstances would give rise to civil contempt. 6 James
13 Wm. Moore et al., Moore's Federal Practice § 26.108[2], at 26-570
14 (citing Quinter, 676 F.2d at 975); see Reno Air Racing Ass'n, 452
15 F.3d at 1130.

16 "The party alleging civil contempt must demonstrate that the
17 alleged contemnor violated the court's order by 'clear and
18 convincing evidence,' not merely a preponderance of the evidence."
19 In re Dual-Deck Cassette Recorder Antitrust Litig., 10 F.3d at
20 695; Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc., 689 F.2d
21 885, 889 (9th Cir. 1982). Therefore, a court may impose a civil
22 contempt sanction only if there is clear and convincing evidence
23 that "(1) the contemnor violated a court order, (2) the
24 noncompliance was more than technical or de minimis (substantial
25 compliance is not punishable as contempt), and (3) the contemnor's
26 conduct was not the product of a good faith or reasonable
27 interpretation of the violated order." 7 James Wm. Moore et al.,
28 Moore's Federal Practice § 37.51[7], at 37-109 (footnotes

1 omitted); see United States v. Bright, 596 F.3d 683, 694 (9th Cir.
2 2010) (quoting Labor/Cmty. Strategy Ctr. v. L.A. County Metro.
3 Trans. Auth., 564 F.3d 1115, 1123 (9th Cir. 2009)). "Any doubts
4 as to whether these requirements have been met in a particular
5 case must be resolved in favor of the party accused of the civil
6 contempt." 7 James Wm. Moore et al., Moore's Federal Practice §
7 37.51[7], at 37-109 (footnote omitted).

8 III.

9 DISCUSSION

10 Defendant argues that the information Peter Hilger disclosed
11 to Stoen's father-in-law, Jon Monson, was confidential, and the
12 disclosure was wrongful. (Am. Mot. Order Show Cause 2-3, 5, ECF
13 No. 120; Reply 2, ECF No. 159.) On January 31, 2011, Stoen served
14 Plaintiffs a "Compliance Document" and bank statements identifying
15 the account into which funds were transferred, in accordance with
16 the Limited Temporary Restraining Order requiring that Stoen
17 produce the identities of the signatories to the transferee
18 accounts. (Am. Mot. Order Show Cause 3, ECF No. 120 (quoting
19 Order Granting Limited TRO 3, ECF No. 36); see Order Granting Def.
20 Matthew Stoen's Mot. Set Aside Default 6-7, ECF No. 100; Notice
21 Compliance Ct.'s Order 1-2, ECF No. 103.) The Defendant argues
22 that the signatory to the transferee account falls within the
23 definition of "confidential information" in the Protective Order.
24 (Reply 2-3, ECF No. 159.)

25 Even if the information was not confidential, Stoen contends
26 the information was still designated confidential by defense
27 counsel in good faith, and Plaintiffs did not challenge the
28 designation. (Id.; see Am. Mot. Order Show Cause 3-5, ECF No. 120

1 (citing id. Attach. #1 Ex. A, at 2.) Defendant Stoen filed under
2 seal and lodged with the Court a confidential version of a copy of
3 the e-mail sent from Hilger to Monson disclosing the identity of
4 one of the transferee accounts. (Am. Mot. Order Show Cause 5, ECF
5 No. 120; see id. Attach. #2 Ex. B, at 2.) Based on this
6 disclosure, Defendant asks that the Court issue an order to show
7 cause why Peter Hilger should not be held in contempt and to
8 ultimately find him in contempt. (Am. Mot. Order Show Cause 6,
9 ECF No. 120; Reply 4, ECF No. 159).)

10 In response, the Plaintiffs argue that the identity of the
11 holder of the account into which funds were transferred is not
12 "confidential information." (Opp'n 3, ECF No. 125.) Plaintiffs
13 point to the language in the Protective Order describing
14 "confidential information" as including "bank account records and
15 statements, and other financial information," to demonstrate that
16 Hilger did not disclose confidential information. (Id. at 2-3.)

17 Alternatively, Plaintiffs argue that any violation was
18 unintentional because Hilger did not believe he was disclosing
19 information he could not share. (Id. at 3; see id. Attach. #1
20 Hilger Aff. 2.) Plaintiffs contend that Hilger believed that the
21 actual bank statements and similar financial documents constituted
22 confidential information, which is a good faith interpretation of
23 the Protective Order. (Opp'n 3, ECF No. 125.) The Plaintiffs ask
24 the Court to strike paragraphs eight and nine in Defendant's
25 Amended Motion as "irrelevant and unsubstantiated" and to strike
26 Stoen's request that the Limited Temporary Restraining Order be
27 dissolved. (Id. at 4.) Plaintiffs conclude their Opposition by
28 asking the Court to strike the Amended Motion in its entirety or,

1 alternatively, to find that an order to show cause should not
2 issue. (Id.)

3 **A. Violation of a Court Order**

4 Defendant Stoen must show by clear and convincing evidence
5 that Peter Hilger violated a court order. In re Dual-Deck
6 Cassette Recorder Antitrust Litig., 10 F.3d at 695. The
7 Protective Order defines confidential information as "information
8 or data of any kind or description containing proprietary,
9 competitively sensitive, and/or financial or customer information
10 . . . including, but without limitation, tax returns, financial
11 statements, bank account records and statements, and other
12 financial information." (Order Granting Joint Mot. Entry
13 Protective Order 2, ECF No. 73.) Defense counsel designated both
14 the Compliance Document and the bank statements as confidential,
15 and Plaintiffs did not object in writing to the designations as
16 required by the Protective Order. (Id. at 3-4; see Am. Mot. Order
17 Show Cause Attach. #1, at 2, ECF No. 120; see also Reply 3, ECF
18 No. 159.) Additionally, the Limited Temporary Restraining Order
19 expressly required Defendant Stoen to disclose information
20 regarding "the identities of all signatories to the account to
21 which the funds were transferred." (Order Granting Limited TRO 3,
22 ECF No. 36.)

23 There is clear and convincing evidence that the definition of
24 "confidential information" in the Protective Order is broad enough
25 to include the identity of a transferee account holder.
26 Accordingly, Peter Hilger violated the Order. See In re Dual-Deck
27 Cassette Recorder Antitrust Litig., 10 F.3d at 695.

28

1 **B. Substantial Compliance**

2 “‘Substantial compliance’ with the court order is a defense
3 to civil contempt, and is not vitiated by ‘a few technical
4 violations’ where every reasonable effort has been made to
5 comply.” Id. at 695 (citing Vertex Distrib., Inc., 689 F.2d at
6 891). The Limited Temporary Restraining Order required that
7 Defendant Stoen produce the identities of the transferee account
8 holders to Plaintiffs; their identities is among the confidential
9 information relevant to this lawsuit. (See Order Granting Limited
10 TRO 3, ECF No. 36; Order Granting Def. Matthew Stoen’s Mot. Set
11 Aside Default 6-7, ECF No. 100.) After granting Stoen’s request
12 to set aside the default judgment entered against him on January
13 26, 2011, Judge Huff ordered him to “provide Plaintiffs with
14 information regarding all accounts to which deposited funds were
15 transferred” within five days, or by January 31, 2011. (Order
16 Granting Def. Matthew Stoen’s Mot. Set Aside Default 6-7, ECF No.
17 100.) Hilger’s disclosure of the identity of one of the
18 transferee account holders to Jon Monson is a violation of the
19 Protective Order. See In re Dual-Deck Cassette Recorder Antitrust
20 Litig., 10 F.3d at 695. Although much financial information has
21 been produced to Plaintiffs, Hilger wrongfully disclosed one item
22 of confidential information. He is in substantial compliance with
23 the court order. Therefore, Defendant has not produced clear and
24 convincing evidence of more than a technical violation. See id.

25 **C. Based on a Good Faith and Reasonable Interpretation**

26 Finally, Defendant Stoen must demonstrate by clear and
27 convincing evidence that Hilger’s disclosure was not based on a
28

1 good faith interpretation of the protective order. See id. at
2 695; Vertex Distrib., Inc., 689 F.2d at 889.

3 The Plaintiffs state that Hilger's belief that the actual
4 bank statements and similar financial information constitute
5 confidential information is a good faith interpretation of the
6 Protective Order. (Opp'n 3, ECF No. 125.) They further allege,
7 "Mr. Hilger did not believe he was disclosing information he could
8 not share, as well as the fact that he understood that such
9 information (which he could not share) existed." (Id.) Peter
10 Hilger contends, "In the e-mail to [the third party], I did not
11 disclose any confidential information or documents; I specifically
12 told [Jon Monson] I could not." (Id. Attach. #1 Hilger Aff. 2.)

13 Stoen disputes Hilger's claim that any disclosure of
14 confidential information was unintentional; Defendant argues that
15 Hilger's conduct was "willful, deliberate, and wrongful." (Reply
16 3-4, ECF No. 159.) The Defendant notes that Hilger "alludes to
17 his knowledge that he is prohibited from disclosing the
18 information" in the e-mail. (Am. Mot. Order Show Cause 6, ECF No.
19 120.) Stoen further maintains, "Hilger was acutely aware that
20 there was something (the Protective Order) that prohibited him
21 from disclosing the information. Hilger said it himself -- he
22 would supply the information to Monson when he could 'legally
23 release' it." (Reply 4, ECF No. 159.)

24 The Court has reviewed the e-mail sent by Peter Hilger on
25 February 17, 2011, that was filed under seal in support of
26 Defendant's Motion. In the sentence that precedes disclosing the
27 identity of the transferee account holder, Hilger stated, "[W]ill
28 be able to share info with you shortly." (Am. Mot. Order Show

1 Case Attach. #2 Ex. B, at 2, ECF No. 120.) Additionally, in
2 support of Stoen's Reply, he submitted an earlier e-mail sent from
3 Peter Hilger to Monson on January 25, 2011. (Reply Attach. #1 Ex.
4 A, at 2, ECF No. 159.) There, Hilger explained, "As soon as I can
5 legally release the massive amount of info to you I will so you
6 can see the facts." (Id.)

7 Defendant Stoen submitted new material, the January 25, 2011
8 e-mail, with his Reply. "It is improper for a moving party to
9 introduce new facts or different legal arguments in the reply
10 brief than those presented in the moving papers." United States
11 ex rel. Giles v. Sardie, 191 F. Supp. 2d 1117, 1127 (C.D. Cal.
12 2000) (citing Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 894-95
13 (1990)); see Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007)
14 ("The district court need not consider arguments raised for the
15 first time in a reply brief."). Further, Civil Local Rule 7.1
16 provides, "[C]opies of all documentary evidence which the movant
17 intends to submit in support of the motion, or other request for
18 ruling by the court, must be served and filed with the notice of
19 motion." S.D. Cal. Civ. L.R. 7.1(f)(2)(a). Therefore, Defendant
20 Stoen improperly submitted additional new evidence in the Reply,
21 depriving Plaintiffs of their opportunity to respond. The e-mail,
22 however, does not prejudice Plaintiffs or Hilger. On the
23 contrary, the January 25 and February 17 e-mails show that Hilger
24 consistently intended to comply with the Protective Order.

25 Stoen has not produced clear and convincing evidence that
26 Peter Hilger's violation was based on an unreasonable
27 interpretation of the Protective Order. Hilger's statements in
28 the two e-mails demonstrate that he knew a protective order was in

1 place. Peter Hilger's acknowledgment suggests that he believed
2 the identity of a transferee account holder was not confidential
3 information. Hilger stated that he "will be able to share info
4 with you shortly," and "[a]s soon as [he] can legally release the
5 massive amount of info" to Monson, he will. (Am. Mot. Order Show
6 Case Attach. #2 Ex. B, at 2, ECF No. 120; Reply Attach. #1 Ex. A,
7 at 2, ECF No. 159.) Hilger understood there was a large amount of
8 financial information that was confidential and could not be
9 shared at that time; his disclosure of the identity of one of the
10 transferee account holders is consistent with Hilger's belief that
11 this piece of information was not confidential.

12 A good faith and reasonable reading of the Protective Order
13 is that it applied to confidential financial records, "including,
14 but without limitation, tax returns, financial statements, bank
15 account records and statements, and other financial information."
16 (Order Granting Joint Mot. Protective Order 2, ECF No. 72); see In
17 re Dual-Deck Cassette Recorder Antitrust Litig., 10 F.3d at 695
18 ("For the protective order to comply with common sense, a
19 reasonable reading must connect its prohibitions to its purpose .
20 . . .") It is not unreasonable to construe the language of the
21 Order as applying to actual bank statements and financial
22 documents, but not to the general identity of an account holder.
23 Defendant Stoen has not established by clear and convincing
24 evidence that Peter Hilger's interpretation of the Protective
25 Order was unreasonable. Id.; Vertex Distrib., Inc., 689 F.2d at
26 889. Doubts must be resolved in Hilger's favor.

27

28

1 **CONCLUSION**

2 There can no longer be any question that the identity of a
3 transferee account holder is confidential information covered by
4 the definition set forth in the Protective Order. Peter Hilger
5 disclosed this confidential information to a third party who is
6 not among the categories of persons to whom disclosure is
7 permitted. Accordingly, he violated the Protective Order.
8 Nonetheless, the Defendant has failed to establish by clear and
9 convincing evidence that at the time of the disclosure, Peter
10 Hilger's conduct was not based on a good faith and reasonable
11 interpretation of the Order. See In re Dual-Deck Cassette
12 Recorder Antitrust Litig., 10 F.3d at 695. For all of these
13 reasons, Defendant Matthew Stoen's Motion for Order to Show Cause
14 is **DENIED**. Plaintiffs' request that the Court strike the Amended
15 Motion for Order to Show Cause, or portions thereof, is also
16 **DENIED**.

17 IT IS SO ORDERED.

18
19 DATED: June 1, 2011


Ruben B. Brooks, Magistrate Judge
United States District Court

20
21 cc:
22 Judge Battaglia
23 All Parties of Record
24
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26
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