

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| COMMONWEALTH OF PENNSYLVANIA, by | : | |
| Attorney General JOSH SHAPIRO, | : | |
| | : | |
| Plaintiff, | : | |
| | : | CIVIL ACTION |
| v. | : | |
| | : | NO. 14-cv-7139 |
| THINK FINANCE, INC., et al., | : | |
| | : | |
| Defendants. | : | |

MEMORANDUM

Joyner, J.

July 26, 2017

Before the Court are Plaintiff's Motion to Unseal the Second Amended Complaint (Doc. No. 162) and Defendants' Letter Application for Protective Order (Doc. No. 168), together with the Parties' respective oppositions (Doc. No. 166, 169). For the following reasons, the Plaintiff's Motion is granted and the Defendants' Motion is denied.

I. Factual and Procedural Background

This action concerns high-interest rate, short-term loans made to Pennsylvania citizens over the Internet.¹ The plaintiff, the Office of the Attorney General ("OAG"), alleges that Defendants violated Pennsylvania and federal laws prohibiting

¹ The allegations in this case are set out in further detail in this Court's earlier opinion denying in part and granting in part the Defendants' Motions to Dismiss. See Pennsylvania v. Think Finance, Inc., No. 14-CV-7139, 2016 WL 183289, at *1-2 (E.D. Pa. Jan. 14, 2016). We repeat here only what is relevant to the present Motions.

usurious and otherwise illegal lending practices.

In June 2016, this Court entered a Confidentiality and Protective Order ("Protective Order," Doc. No. 136) allowing persons producing discovery materials to designate certain materials as "Confidential." Almost exactly a year later and with leave of Court, the OAG filed a Second Amended Complaint ("SAC," Doc. No. 162). Because portions of the SAC drew on material produced in discovery and designated "Confidential," the OAG filed the SAC under seal. Believing that none of the documents relied upon are genuinely entitled to confidentiality under the Protective Order, however, the OAG then quickly moved to unseal the SAC. (Doc. No. 162). Defendants Think Finance, Inc., TC Loan Service, LLC, Tailwind Marketing, LLC, TC Decision Sciences, LLC, and Financial U, LLC (collectively, "Think Finance") timely filed a response opposing that Motion. (Doc. No. 166). In addition, Think Finance has separately applied to the Court for a second Protective Order that would declare that 23 specific documents relied on by the OAG in the SAC be treated as "Confidential" for all purposes of this litigation. (Doc. No. 168). Because the relief sought by the parties raise identical issues of fact and law, we will analyze both requests together.

II. Applicable Law

"It is well-settled that there exists, in both criminal and civil cases, a common law public right of access to judicial

proceedings and records.” In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001). It is also well-settled that “a party wishing to obtain an order of protection over discovery material must demonstrate that ‘good cause’ exists for the order of protection.” Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). “Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity.” Id. (citation omitted). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing.” Id. (citation and internal quotation marks omitted). “The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order.” Id. at 786-87.

The Third Circuit has instructed that courts should consider seven non-exhaustive factors in determining whether to grant a protective order, including (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. Shingara v. Skiles, 420 F.3d 301, 306 (3d Cir. 2005). Although not dispositive, the public's interest in disclosure is "particularly legitimate and important where, as in this case, at least one of the parties to the action is a public entity or official." See Pansy, 23 F.3d at 786.

III. Analysis

The OAG and Think Finance agree that, for purposes of analysis, the 23 disputed documents divide neatly into two categories. Nineteen of the disputed documents are business agreements among Think Finance and third parties that Think Finance argues contain detailed operations information that could impact its competitiveness. As for the other four documents (three of which are PowerPoint presentations), Think Finance maintains that they are appropriately designated as "Confidential" because they contain non-public financial data and business development information. In support of their argument for confidential treatment of these documents, Think Finance has submitted a sworn declaration from its former chief risk officer, Ranganath Kothamasu, stating that public dissemination of the information contained in these documents onto the open market would prejudice Think Finance. (Doc. No. 168). Upon careful

review of the disputed documents, however, the Court finds that Think Finance has failed to carry its burden of showing that good cause exists for the issuance of a protective order and that all of these documents, as well as the SAC, are subject to public inspection.

We consider first the 19 business agreements. As Think Finance notes, these agreements contain detailed information on the structure, economics, and specific costs of Think Finance's business relationships, along with particular prices for services performed. Should their contents become public, the argument goes, current or prospective competitors in the consumer lending sector would gain valuable insight into Think Finance's competitive strategies, financial obligations, and economics. Those substantial privacy interests are said to outweigh any public interest in inspecting these documents, which Think Finance dismisses as "minimal." (Doc. No. 168).

Even putting aside the public interest in disclosure—which, in this civil enforcement action brought in the public's name, is of course substantial—Think Finance has lodged only "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning." Cipollone v. Liggett Grp., Inc., 785 F.2d 1108, 1121 (3d Cir. 1986). The business agreements in question are all dated between 2007 and 2011, and Think Finance has offered no specific reasoning as to how or why the disclosure

of (to pick one example) a price term in a seven-year old agreement, see TF-PA-003901 (Doc. No. 168), would harm its competitive position today. See Leucadia, Inc. v. Applied Extrusion Techs., Inc., 998 F.2d 157, 167 (3d Cir. 1993)

("continued sealing must be based on *current* evidence to show how public dissemination of the pertinent materials *now* would cause the competitive harm they claim") (emphasis in original)

(alterations and internal quotation marks omitted). Think Finance has also failed to identify at any level of specificity any competitors or potential market entrants that could or would use the information in these agreements to Think Finance's detriment.

Turning to the seven relevant factors identified by the Third Circuit in Pansy, 23 F.3d at 787-91, and its progeny, see Shingara, 420 F.3d at 306; Glenmede Trust Co. v. Thompson, 56 F.3d 476 (3d Cir. 1995), the Court finds that none of the factors weigh in favor of granting a protective order. For the reasons discussed above, Think Finance has not shown that disclosure of these documents will violate any privacy interests, the first Pansy factor. As to the second and third factors, the OAG's interest in transparency regarding its enforcement action is clearly a legitimate purpose, and there is no suggestion that disclosure of these documents will cause any party embarrassment. The fourth and fifth factors (whether confidentiality is being

sought over information important to public health and safety and whether the sharing of information among litigants will promote fairness and efficiency) are "either neutral or weigh against the protective order." Shingara, 420 F.3d at 308. The sixth and seventh factors also tilt against confidentiality because this is not a case between private litigants. See Pansy, 23 F.3d at 788. Instead, this civil enforcement action brought by a state attorney general axiomatically "involves issues important to the public," the seventh Pansy factor.

We turn finally to the remaining four documents, which are said to include non-public financial data and business development information the disclosure of which would be harmful to Think Finance. The first of these documents (TF-PA-013270) is a copy of a PowerPoint presentation titled "Great Plains Lending," dated December 2010. The second (TF-PA-013418) is a one-page undated document titled "Great Plains Lending: Flow of Funds for Ongoing Loan Originations and Sales," which appears to be either talking points or a handout associated with the aforementioned PowerPoint presentation. The third and fourth documents are also copies of PowerPoint presentations (TF-PA-098567; TF-PA-228133), one titled "Emergency Cash Lending - A New Source of Tribal Revenue," and dated February 2011, and the other titled "Rise Debt Deal" and dated January 2014. (Doc. No. 168).

Think Finance has again failed to demonstrate how any of

these documents, three of which appear to be at least six years old and the newest of which is still more than three years old, remain competitively sensitive today. Instead it suggests that unspecified competitors could replicate Think Finance's flowchart of potential operations or use their market analysis and potential strategies as a "roadmap" to compete more effectively. (Doc. No. 168). As with the business agreements, however, Think Finance's conclusory arguments as to competitive harm are not enough to justify confidential treatment in light of the considerable countervailing public interest in access to court filings in this proceeding.

IV. Conclusion

For the foregoing reasons, Plaintiff's Motion to Unseal the SAC is granted and Defendants' Motion for a Protective Order is denied. An appropriate Order follows.