

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 11-cv-01468-WJM-BNB

SOLIDFX, LLC,

Plaintiff,

v.

JEPPESEN SANDERSON, INC.,

Defendant.

ORDER

This matter arises on the following:

(1) **Plaintiff SOLIDFX, LLC's Unopposed Amended Motion to Restrict Public Access to Plaintiff's Response and Exhibits In Opposition to Defendant Jeppesen Sanderson, Inc.'s Motion to Strike and/or Compel Expert Disclosures and New Depositions**

[Doc. # 119, filed 5/8/2012] (the "First Motion to Restrict Access");

(2) **Defendant Jeppesen Sanderson, Inc.'s Motion to Restrict Public Access to Jeppesen's Motion for Summary Judgment and Exhibits Submitted In Support Thereof**

[Doc. # 132, filed 7/5/2012] (the "Second Motion to Restrict Access"); and

(3) **Defendant Jeppesen Sanderson, Inc.'s Motion to Restrict Public Access to Exhibits Filed In Support of Jeppesen's Opposition to SOLIDFX's Partial Motion for Summary Judgment** [Doc. # 133, filed 7/5/2012] (the "Third Motion to Restrict Access").

I. Legal Standard to Restrict Access

Local rule of practice 7.2, D.C.COLO.LCivR, governs motions to restrict access. It provides in relevant part:

A. Policy. The public shall have access to all documents filed with the court and all court proceedings, unless restricted by court order or as provided in Section D of this rule.

B. Motions to Restrict Access. Any motion to restrict public access will be open to public inspection and must:

1. Identify the document or the proceeding for which restriction is sought;
2. Address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restricted access);
3. Identify a clearly defined and serious injury that would result if access is not restricted;
4. Explain why no alternative to restricted access is practicable or why only restricted access will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
5. Identify the restriction level sought (i.e., Level 1 = access limited to the parties and the court; Level 2 = access limited to the filing party and the court; Level 3 = access limited to the court).

The important public interests in open court records are discussed in Huddleson v. City of Pueblo, 270 F.R.D. 635 (D. Colo. 2010), as follows:

People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing. The public has a fundamental interest in understanding the disputes presented to and decided by the courts, so as to assure that they are run fairly and that judges act honestly.

Id. at 635 (quoting Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 509 (1984)).

The right to inspect and copy judicial records is not absolute, however:

All courts have supervisory powers over their own records and files. Thus a court, in its discretion, may seal documents if the public's right of access is outweighed by competing interests.

* * *

[B]ecause the analysis of the question of limiting access is necessarily fact-bound, there can be no comprehensive formula for decisionmaking. The decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.

United States v. Hickey, 767 F.2d 705, 708 (10th Cir. 1985). Privacy and preservation of trade secrets are among the interests which have been found, under certain circumstances, to overcome the presumption of openness. Huddleson, 270 F.R.D. at 637. In addition, “[a]ccess properly is denied where court files might serve as a source of business information that could harm a litigant’s competitive standing.” SBM Site Services, LLC v. Garrett, 2011 WL 1375117 at *3 (D. Colo. April 12, 2011).

II. The First Motion to Restrict Access

As initially filed, SOLIDFX sought to restrict access to its Response In Opposition to Defendant’s Motion to Strike and/or Compel Expert Disclosures and New Depositions [Doc. # 93] (the “Response”) and all of the 14 exhibits thereto (totaling 405 pages). Now, through the First Motion to Restrict Access, SOLIDFX seeks instead only to provide redacted versions of Exhibits 1, 4, 6, 7, and 9;¹ to replace Exhibits 11-13, which are deposition transcripts, with

¹I am concerned here with the situation where a party submits an unredacted document for the court’s consideration in ruling on a disputed matter, but attempts to restrict public access to all or a part of the information the court has been asked to consider. Not at issue here is the less troublesome situation where redactions are made before filing and the redacted material is not before the court in connection with a pending motion.

partial transcripts that include only the pages cited in the Response, and to redact certain information contained in those transcripts; and to replace Exhibit 14, another deposition transcript, with a partial transcript which includes only those pages cited in the Response.

SOLIDFX no longer seeks to restrict access to the Response proper or to any portion of Exhibits 2, 3, 5, 8, or 10.

Exhibits 1, 4, and 9: SOLIDFX seeks to redact portions of Exhibits 1, 4, and 9 “as those exhibits contain personal contact information for SOLIDFX’s principals and employee.” First Motion to Restrict Access [Doc. # 119] at ¶8. Specifically, Exhibit 1 redacts the street addresses, telephone numbers, and email addresses of Dona Flamme and Jeff McDonald, SOLIDFX’s principals. Exhibit 4 redacts the street addresses and telephone numbers of Ms. Flamme and Mr. McDonald, and the street address and telephone number of Lonnie Lyon, an expert witness expected to testify on behalf of SOLIDFX. Exhibit 6 redacts the street address, telephone and fax numbers, and email address of Dona Flamme.

The First Motion to Restrict Access is wholly misguided insofar as it seeks to redact the contact information contained in Exhibits 1, 4, and 9. Contact information is not a trade secret, and SOLIDFX has made no showing that Flamme, McDonald, and Lyon maintain their contact information as private or confidential. To the contrary:

[C]ommon experience is that most people do not adequately protect from disclosure their birth dates, home addresses or telephone numbers, e-mail addresses, or drivers’ license numbers so as to reasonably call them private or confidential. Instead, that information is regularly disclosed to friends, relatives, vendors, credit card companies, schools, children’s sports teams, on hotel registers, and the like.

Estate of Rice v. City and County of Denver, 2008 WL 2228702 at *4 (D. Colo. May 27, 2008).

People and entities maintain addresses and telephone numbers for the purpose of distributing them to others to enable contact. Here, for example, Exhibit 1 includes resumes which obviously were distributed and which contain no prohibition against further circulation. There is no indication that the people to whom these resumes were distributed entered into confidentiality agreements to maintain them as secret.

I find that SOLIDFX has failed to identify an interest in restricting the contact information contained in Exhibits 1, 4, and 9 which outweighs the presumption of public access and has failed to identify a clearly defined and serious injury that would result if access to Exhibits 1, 4, and 9 is not restricted. See D.C.COLO.LCivR 7.2B(2)-(3). The First Motion to Restrict Access is denied insofar as it seeks to restrict access or redact information contained in Exhibit 1 [Doc. # 93-1], Exhibit 4 [Doc. # 93-4], and Exhibit 9 [Doc. ## 93-9 through 93-11], and those documents shall be open to public inspection.

Exhibit 6: SOLIDFX seeks to redact portions of Exhibit 6, a damages spreadsheet, because “it contains confidential information regarding future obligations.” First Motion to Restrict Access [Doc. # 119] at ¶9. This conclusory assertion, without any supporting evidence or explanation, does not suffice to show a clearly defined and serious injury that would result if access to Exhibit 6 is not restricted. See D.C.COLO.LCivR 7.2B(3). Out of an abundance of caution, I reviewed the “Future Obligations” portion of Exhibit 6 which SOLIDFX seeks to redact. It does not appear to contain any sensitive, proprietary information the disclosure of which could harm SOLIDFX’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3. The First Motion to Restrict Access is denied insofar as it seeks to restrict access or redact information contained in Exhibit 6 [Doc. # 93-6].

Exhibit 7: SOLIDFX seeks to redact portions of Exhibit 7 because it “contains sensitive information regarding third parties not involved in this litigation.” First Motion to Restrict Access [Doc. # 119] at ¶10. Exhibit 7 is SOLIDFX’s response to written discovery, and the “sensitive information” that SOLIDFX seeks to redact are the names of potential SOLIDFX customers and the contact information for those potential customers. I find that there is no adequate showing that the information is maintained confidentially. Nor is there any evidence or explanation as to how the disclosure of SOLIDFX’s potential customers would result in a clearly defined and serious injury if access to the information is not restricted. See D.C.COLO.LCivR 7.2B(3). Consequently, the First Motion to Restrict Access is denied insofar as it seeks to restrict access or redact information contained in Exhibit 7 [Doc. # 93-7].

Exhibits 11-14: Local rule of practice 56.1C, D.C.COLO.LCivR, provides that “[v]oluminous exhibits are discouraged. Parties shall limit exhibits to essential portions of documents.” Consequently, it was improper for SOLIDFX to file in the first instance the complete deposition transcripts. The First Motion to Restrict Access is granted insofar as it seeks to substitute as exhibits partial deposition transcripts that contain only the pages cited in the Response.

III. The Second Motion to Restrict Access

The Second Motion to Restrict Access [Doc. # 132] concerns Jeppesen’s Motion for Summary Judgment [Doc. # 128] and related exhibits. Together, the Motion for Summary Judgment and its 88 exhibits total 1,068 pages, all of which were filed subject to restricted access. By the Second Motion to Restrict Access, Jeppesen now requests that portions of the factual statement contained its Motion for Summary Judgment be redacted; Exhibits 1, 2, 5, 6, 7,

12-14, 20, 25-27, 42, 43, 50-54, 61-63, 74, 75, and 77 remain restricted in their entirety; and portions of Exhibits 28, 64, 66, 67, 69, 70, 78, 80, 81, and 84-88 be redacted. Second Motion to Restrict Access [Doc. # 132] at ¶7. Jeppesen no longer seeks to restrict access to any part of Exhibits 3, 4, 8-11, 15-19, 21-24, 29-41, 44-49, 55-60, 65, 68, 71, 72, 73, 76, 79, 82, and 83.

A. Access to the Motion for Summary Judgment

Jeppesen seeks to redact from its Motion for Summary Judgment 34 of the numbered paragraphs within the statement of material facts.

Paragraphs 24-28 address air terminal charts available from Lido, a trade name employed by Lufthansa Systems, and from NavTech, a Canadian company. The paragraphs merely state the number of airports for which Lido and NavTech distribute charts, without identifying the locations. Jeppesen has failed to show a clearly defined and serious injury that would result if access to the redacted information is not restricted, see D.C.COLO.LCivR 7.2B(3), and the Second Motion to Restrict Access is denied with respect to paragraphs 24 through 28 of Jeppesen's Motion for Summary Judgment.

Paragraph 37 addresses whether Lido, Jeppesen, and NavTech compete. That competition is well-known, and Jeppesen has failed to show a clearly defined and serious injury that would result if access to the redacted information is not restricted, see D.C.COLO.LCivR 7.2B(3). The Second Motion to Restrict Access is denied with respect to paragraph 37 of Jeppesen's Motion for Summary Judgment.

Paragraphs 39-46, 52, 55-57, and 63 address objective facts concerning the competition among air terminal chart suppliers, including identifying a few customers who have switched from Jeppesen to other providers. That is neither a trade secret nor proprietary information. In

addition, Jeppesen has failed to show a clearly defined and serious injury that would result if access to the redacted information is not restricted, see D.C.COLO.LCivR 7.2B(3), and the Second Motion to Restrict Access is denied with respect to paragraphs 39 through 46, 52, 55 through 57, and 63 of Jeppesen's Motion for Summary Judgment.

Paragraphs 114-115 concern provisions of the failed agreement between SOLIDFX and Jeppesen, including certain waived fees. Under the unique facts of this case, where the relationship contemplated under the parties' contract has failed and where that agreement is central to the parties' dispute, Jeppesen has failed to show a clearly defined and serious injury that would result if access to the redacted information is not restricted. See D.C.COLO.LCivR 7.2B(3). The Second Motion to Restrict Access is denied with respect to paragraphs 114 and 115 of Jeppesen's Motion for Summary Judgment.

Paragraphs 153-156 and 159-166 address Jeppesen's concerns about distribution of its charts in an electronic format. Those concerns are at the core of this controversy and fall squarely within the kind of information the public has a fundamental interest in accessing to assure the fair operation of its courts. In addition, Jeppesen has failed to show a clearly defined and serious injury that would result if access to the redacted information is not restricted. See D.C.COLO.LCivR 7.2B(3). The Second Motion to Restrict Access is denied with respect to paragraphs 153 through 156 and 159 through 166 of Jeppesen's Motion for Summary Judgment.

None of the redactions proposed to Jeppesen's Motion for Summary Judgment are appropriate. Consequently, access to Jeppesen's Motion for Summary Judgment [Doc. # 128] should not be restricted, and it shall be open to public inspection.

B. Access to the Exhibits

Jeppesen's first argument to restrict access to the exhibits filed in support of its Motion for Summary Judgment is that "[a] number of the exhibits and testimony attached filed in support of Jeppesen's Motion were designated as 'Confidential' or 'Highly Confidential' when produced by Jeppesen or, in the case of deposition transcripts, during the depositions themselves pursuant to the terms of the Amended Stipulated Protective Order entered by this Court on December 6, 2011." Second Motion to Restrict Access [Doc. # 132] at ¶3. This argument, and Jeppesen's overall approach to seeking to restrict access, demonstrate a fundamental misunderstanding of the use of blanket protective orders and of the purpose of allowing information to be filed with the court subject to restricted public access only in exceptional circumstances.

The Amended Stipulated Protective Order [Doc. # 67] entered in this case is modeled after the form of blanket protective order sanctioned by Gillard v. Boulder Valley School Dist. RE-2, 196 F.R.D. 382 (D. Colo. 2000). Gillard recognized the value of blanket protective orders--where, in the first instance, the parties themselves (and not the court) police the dissemination of information by designating information entitled to protection as confidential--in facilitating efficient civil discovery while protecting a party from unnecessary embarrassment or injury which might be occasioned by the widespread or public disclosure of confidential information. Id. at 386. Before a party may designate information as confidential under a blanket protective order, however, the information must be reviewed by a lawyer, and the designation as confidential must be "based on a good faith belief that it is confidential or otherwise entitled to protection." Id. In this way, Gillard extends to a lawyer's designation of a

document as confidential under a blanket protective the certification required under Fed. R. Civ. P. 26(g) that a discovery response is consistent with the Federal Rules of Civil Procedure and existing law or warranted by a nonfrivolous argument for extending or modifying existing law, and is not interposed for any improper purpose. See generally Cartel Asset Mgmt. v. Ocwen Financial Corp., 2010 WL 502721 at *10 (D. Colo. Feb. 8, 2010). Consequently, before a lawyer may designate a document produced in discovery or disclosed pursuant to Rule 26(a)(1) as confidential under a blanket protective order, the lawyer must pause and consider whether, based on a reasonable inquiry, there is a factual and legal basis for the designation. See Mancía v. Mayflower Textile Servs. Co., 253 F.R.D. 354, 358 (D. Md. 2008)(citing Fed. R. Civ. P. 26(g) advisory committee’s note to 1983 amendments). An improper designation of a document as confidential under a blanket protective order, like the improper certification of a discovery response under Rule 26(g), subjects the designating lawyer to the risk of sanctions. Fed. R. Civ. P. 26(g)(3); Mancia, 253 F.R.D. at 358.

Gillard also mandates that every blanket protective order include a procedure by which the party receiving a document designated as confidential may challenge the designation. Gillard, 196 F.R.D. at 388-89. If the parties are unable to resolve the challenge informally, the party designating the document as confidential must file a motion “requesting that the Court determine whether the disputed information should be subject to the terms [of the blanket protective order].” In connection with any motion challenging a confidential designation, the designating party “bears the burden of establishing that good cause exists for the disputed information to be treated as confidential.” Id. Failure to file a motion seeking court review of a designation results in the document losing that designation, and the document “shall not

thereafter be treated as confidential in accordance with [the blanket] protective order.” Id. at 388.

The challenge mechanism required under Gillard and the provisions of D.C.COLO.LCivR 7.2 work together to avoid the filing of unnecessary motions to restrict access. First, D.C.COLO.LCivR 7.2B(2) provides expressly that “stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restricted access.” Consequently, the mere fact that a party has designated a document as confidential is insufficient to justify restricted access.

The better practice, once a party determines that it intends to file a document designated by another as confidential but for which the filing party cannot in good faith urge restricted access under Rule 7.2B, is for the filing party first to challenge the confidential designation utilizing the procedure required under Gillard. If the designating party fails to file a motion seeking judicial determination of the propriety of the designation, or if the motion is filed and the court determines that the designation is unwarranted, the filing party may submit the document without restriction. If the designating party files a motion and the court determines that the document is properly designated as confidential, the filing party may seek restricted access based on the strength of the court’s earlier determination. Finally, pursuant to D.C.COLO.LCivR 7.2D, a party may file a document under restricted access but without a supporting motion. If no motion supporting the restricted access is filed within 14 days, “the access restriction will expire and the document will be open to public inspection.” D.C.COLO.LCivR 7.2D. Consequently, a party is never required to move to restrict access to any document it does not believe in good faith is entitled to be restricted.

Next, Jeppesen argues generally and by category, but not on a document-by-document basis, that “portions of 39 of the 88 exhibits” attached to its Motion for Summary Judgment “contain sensitive proprietary business information that is not publicly available.” Second Motion to Restrict Access [Doc. # 132] at p. 3. Jeppesen also argues:

[T]he documents and testimony at issue, including internal communications and strategy documents at Jeppesen, concern Jeppesen’s confidential business plans, relationships with third parties not involved in this litigation, and competitors. Collectively, the documents discuss Jeppesen’s internal strategy, competitive standing, and future product plans for specific products, and involve potential transactions with specific customers.

Id.

The argument is made too broadly and is too generalized to satisfy the requirements of D.C.COLO.LCivR 7.2. In my view, that rule requires that in order to overcome the “presumption of public access” a party must, with particularity and on a document-by-document basis, establish why access should be restricted, including identifying the specific injury that would result if access to a particular document is not restricted. To point generally to 39 exhibits comprising more than 250 pages and argue that those materials contain proprietary information, or are part of a confidential business plan, or concern relationships with third parties not involved in the litigation, as Jeppesen has done here, without specifying by document which of those concerns is involved and why, as to that document, “a clearly defined and serious injury . . . would result if access is not restricted,” fails to satisfy the burden imposed by Rule 7.2.

Notwithstanding the inadequacy of Jeppesen’s efforts to meaningfully justify restricted access, and for future guidance, I have reviewed individually each of the documents Jeppesen seeks to restrict to determine whether there is any basis for restricted access.

Exhibit 1 is the License and Cooperation Agreement at issue in this case. It may be the principal exhibit at trial, and it falls squarely within the kind of information the public has a fundamental interest in accessing to assure the fair operation of its courts. Jeppesen's interest in restricting access to this failed agreement does not outweigh the presumption of public access.

Exhibit 2 is "a list of airports for which Jeppesen produces terminal charts. . . ." Declaration of Robert Miller [Doc. # 128-1] (the "Miller Decl.") at ¶3. There is no indication that Jeppesen maintains this information as secret and, to the contrary, common sense dictates that Jeppesen discloses the identity of its available terminal charts in order to exploit them commercially. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 2 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 5 is composed of marketing materials concerning NavTech products. There is no evidence that the materials are maintained confidentially or include trade secrets, nor do they appear to be confidential or secret. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 5 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 6 is identified as a part of Jeppesen's "long range business planning document. . . ." Miller Decl. [Doc. # 128-1] at ¶7. That may be so, but there is nothing secret or confidential contained in the exhibit. It merely identifies, in graphic form, Jeppesen's well-known competitors; technology that is generally known to disrupt electronic chart operation; well-known substitutes for Jeppesen's charts; and some of Jeppesen's customers. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 6 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 7 is identified as a copy of SOLIDFX's "product plan." Miller Decl. [Doc. # 128-1] at ¶8. It appears to be a document prepared for public distribution or distribution to others, and not an internal document. There is no evidence that the materials are maintained confidentially or include trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 7 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 12 is an "internal Lufthansa Systems Americas . . . presentation." Miller Decl. [Doc. # 128-1] at ¶13. It is marked "Highly Confidential" and "For internal use only!" In addition, although the presentation document is undated, it states that the product is "Available on the App Store as of **January 19th 2011**." Much of the document has been redacted, especially those parts that appear to contain truly confidential information, like "marketing activities." Exhibit 12 [Doc. # 128-13] at pp. 19-20.

The Second Motion to Restrict Access [Doc. # 132] does not address Exhibit 12 individually. Instead, it argues by category and summarily, without any supporting evidence, that "a number of the exhibits are documents produced by third parties pursuant to subpoena and under the protections of the Amended Protective Order" and that they "convey sensitive business plans and information on the third parties' confidential business plans and competitors." Id. at ¶5. Jeppesen's insinuation that production of third-party documents "under the protections of the Amended Protective Order" is sufficient to justify restricted access is incorrect, and Jeppesen knows it. See D.C.COLO.LCivR 7.2B(2) (stating that "stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restricted access"); Second Motion to Restrict Access [Doc. # 132] at ¶5 (discussing restricted access to third-party documents and "recognizing that the Amended Stipulated Protective Order does not,

by itself, suffice to require the restriction of documents in question”). Nor has Jeppesen shown any clearly defined and serious injury that would result if access to Exhibit 12 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 13 is a “report concerning Thomas Cook Airlines, as produced by Jeppesen.” Miller Decl. [Doc. # 128-1] at ¶14. There is no evidence establishing that Exhibit 13 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 13 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 14 is a portion of a “Jeppesen long range business planning document. . . .” Miller Decl. [Doc. # 128-1] at ¶15. There is no evidence establishing that Exhibit 13 contains confidential information or trade secrets, and my review of the document persuades me that it does not. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 14 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 20 is a Power Point presentation by SOLIDFX to Jeppesen which occurred on December 12, 2008. Miller Decl. [Doc. # 128-1] at ¶21. There is no evidence establishing that Exhibit 20 is confidential or contains trade secrets, and my review of the document persuades me that it does not contain any confidential information. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 20 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 25 are notes from a meeting between SOLIDFX and Jeppesen that occurred on April 22, 2009. Miller Decl. [Doc. # 128-1] at ¶26. There is no evidence establishing that Exhibit 25 is confidential or contains trade secrets, and my review of the document persuades me that it does not contain any confidential information. Jeppesen has failed to show a clearly

defined and serious injury that would result if access to Exhibit 25 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibits 26 and 27 are emails transmitting drafts of the License and Cooperation Agreement between Jeppesen and SOLIDFX. I already have found that the License and Cooperation Agreement between the parties is not entitled to restricted access. See p. 13, supra. For the same reason, access to drafts of that agreement should not be restricted.

Exhibit 42 is a “copy of a SOLIDFX platform roadmap.” Miller Decl. [Doc. # 128-1] at ¶43. Jeppesen does not explain the function of a platform roadmap nor is it apparent from the face of the document. In any event, there is no evidence establishing that the contents of Exhibit 42 are confidential or trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 42 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 43 is an email exchange concerning the terms of the License and Cooperation Agreement between Jeppesen and SOLIDFX. There is no evidence establishing that Exhibit 43 is confidential or contains trade secrets, and my review of the document persuades me that it does not contain any confidential information. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 43 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 50 is Jeppesen’s “iPad and Mobile Computing Strategy and Market Requirements Document” prepared on April 26, 2010. Miller Decl. [Doc. # 128-1] at ¶51. It is composed largely of information designated as “Copyright © 2006 Jeppesen.” Exhibit 50 [Doc. # 128-51] at pp. 4-15. There is no evidence establishing that Exhibit 50 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that

would result if access to Exhibit 50 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 51 is Jeppesen's "iPad/Mobile Computing Strategy and Market Requirements Document" dated March 23, 2010. Miller Decl. [Doc. # 128-1] at ¶52. It is composed of information designated as "Copyright © 2009 Jeppesen." Exhibit 51 [Doc. # 128-52] at pp. 3-17. There is no evidence establishing that Exhibit 51 is confidential or contains trade secrets, and Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 51 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 52 is an email exchange concerning Jeppesen's strategy for dealing with SOLIDFX. The email relates directly to the central issues in this case and falls squarely within the kind of information the public has a fundamental interest in accessing in order to assure the fair operation of its courts. Jeppesen's interest in restricting access to these emails does not outweigh the presumption of public access. In addition, Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 52 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 53 is an "Internal Guidance Memo" by Jeppesen dated July 7, 2012. Although the memo states on its face that it is "not for external distribution," Exhibit 53 [Doc. # 128-54], it merely memorializes Jeppesen's decision "not to license the Jeppesen JIT c-Charts to third party application providers targeting Apple iPad/iPhone." Id. This memo concerns the central issues in this case and falls squarely within the kind of information which the public has a fundamental interest in accessing in order to assure the fair operation of its courts. I am not persuaded that Jeppesen's interest in maintaining the confidentiality of this memo outweighs the presumption of public access. In addition, Jeppesen has failed to show a clearly defined and

serious injury that would result if access to Exhibit 53 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 54 is an email from Timothy Howard of Jeppesen to the principals of SOLIDFX discussing Jeppesen's "Mobile Computing Strategy." Exhibit 54 [Doc. # 128-55]. The email concerns the central issues in this case and falls squarely within the kind of information the public has a fundamental interest in accessing in order to assure the fair operation of its courts. I am not persuaded that Jeppesen's interest in maintaining the confidentiality of this memo outweighs the presumption of public access. There is no evidence establishing that Exhibit 54 is confidential or contains trade secrets, and my review of the document persuades me that it does not contain any confidential information. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 54 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 61 is a "copy of the agenda from a November 23, 2009 SolidFX Strategic Planning Session. . . ." Miller Decl. [Doc. # 128-1] at ¶62. There is no evidence establishing that Exhibit 61 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 61 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibits 62 and 63 are emails concerning electronic chart readers. There is no evidence establishing that Exhibits 62 and 63 contain confidential information or trade secrets, and my review of the documents persuades me that they do not. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibits 62 and 63 are not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 74 is a partial transcript of the deposition of Michelle Schopp. There is no evidence establishing that the testimony contained in Exhibit 74 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 74 is not restricted. See D.C.COLO.LCivR 7.2B(3). Out of an abundance of caution, I have reviewed the testimony in Exhibit 74, and I can discern no sensitive, proprietary information the disclosure of which could harm Jeppesen’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3.

Exhibit 75 is a partial transcript of the Rule 30(b)(6) deposition of non-party Foreflight, LLC . There is no evidence establishing that the testimony contained in Exhibit 75 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 75 is not restricted. See D.C.COLO.LCivR 7.2B(3). I have reviewed the testimony in Exhibit 75. The deponent was careful not to disclose any sensitive, proprietary information that could harm Foreflight’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3.

Exhibit 77 is a partial transcript of the deposition of Axel Friedrich, Ph.D., apparently a representative of Lido. There is no evidence establishing that the testimony contained in Exhibit 77 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 77 is not restricted. See D.C.COLO.LCivR 7.2B(3). I have reviewed the testimony in Exhibit 77, and I can discern no sensitive, proprietary information the disclosure of which could harm Lido’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3.

Exhibit 28 is the expert report of Professor George John, prepared on behalf of

SOLIDFX. Jeppesen seeks to redact portions of the report which contain deposition testimony or otherwise discuss what is best characterized as generic business considerations--like the importance of the “touch and feel” of Jeppesen’s charts. None of the material sought to be redacted is detailed financial or technical data, and none of it reasonably can be characterized as a trade secret. Jeppesen has failed to show a clearly defined and serious injury that would result if access to information sought to be redacted from Exhibit 28 is not restricted. See D.C.COLO.LCivR 7.2B(3). None of the proposed redactions constitute sensitive, proprietary information the disclosure of which could harm Jeppesen’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3.

Exhibit 64 is a portion of the Rule 30(b)(6) deposition of Jeppesen. There is no evidence establishing that the testimony contained in Exhibit 64 is confidential or contains trade secrets. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 64 is not restricted. See D.C.COLO.LCivR 7.2B(3). I reviewed the testimony in Exhibit 64. None of the proposed redactions include sensitive, proprietary information the disclosure of which could harm Jeppesen’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3.

Exhibit 66 is a portion of the Rule 30(b)(6) deposition of Jeppesen. The testimony sought to be redacted concerns the identities of well-know Jeppesen competitors; the loss of an unidentified customer; discussion of generic competitive factors; the deponent’s understanding of the agreement between Jeppesen and SOLIDFX; and the practices of certain global organizations. The testimony does not concern any detailed financial or technical data or any sensitive, proprietary information the disclosure of which could harm Jeppesen’s “competitive

standing.” See SBM Site Services, 2011 WL 1375117 at *3. The testimony sought to be redacted also addresses Jeppesen’s decisions concerning its dealings with SOLIDFX. These matters are directly related to central issues in this case and fall squarely within the kind of information the public has a fundamental interest in accessing to assure the fair operation of its courts. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 66 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 67 is a portion of the deposition of Thomas Wede. The testimony sought to be redacted concerns Jeppesen’s desire to control the look and feel of the presentation of its charts; its commitment to quality; and the loss of one identified customer. None of this is reasonably characterized as a trade secret, and the testimony does not concern any detailed financial or technical data or any sensitive, proprietary information the disclosure of which could harm Jeppesen’s “competitive standing.” See SBM Site Services, 2011 WL 1375117 at *3. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 67 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibits 69 and 70 are portions of the deposition of Rick Ellerbrock and portions of the Rule 30(b)(6) deposition of Jeppesen. The testimony sought to be redacted concerns Jeppesen’s decision to develop the iPad application in-house rather than through a third-party. That decision is directly related to central issues in this case and falls squarely within the kind of information the public has a fundamental interest in accessing to assure the fair operation of its courts. The redacted testimony also concerns the identity of Jeppesen’s well-known competitors; the impact of the availability of electronic data on the chart industry; and the loss in 2006 of one identified Jeppesen customer. None of this is reasonably characterized as a trade

secret, and the testimony does not concern any detailed financial or technical data or any sensitive, proprietary information the disclosure of which could harm Jeppesen's "competitive standing." See SBM Site Services, 2011 WL 1375117 at *3. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibits 69 and 70 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 78 is a portion of the Rule 30(b)(6) deposition of Jeppesen. The testimony sought to be redacted concerns the identity of Jeppesen's well-known competitors and the fact that Jeppesen has lost some customers to those competitors, including the identities of three of the lost customers. The testimony does not concern any detailed financial or technical data or any sensitive, proprietary information the disclosure of which could harm Jeppesen's "competitive standing." See SBM Site Services, 2011 WL 1375117 at *3. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 78 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibit 80 is a portion of the deposition of Sheryl Nguyen. The testimony sought to be redacted concerns the agreement between Jeppesen and SOLIDFX. I already have ruled that this agreement is directly related to central issues in this case and falls squarely within the kind of information which the public has a fundamental interest in accessing to assure the fair operation of its courts. See p. 13, supra. The same is true with respect to Ms. Nguyen's testimony about the agreement. Jeppesen's interest in restricting access to information about this failed agreement does not outweigh the presumption of public access.

Exhibit 81 is a portion of the deposition of Christopher J. Dean. The testimony sought to be redacted concerns the delivery of charts in an electronic format. The testimony does not

include any detailed financial or technical data or other sensitive, proprietary information the disclosure of which could harm Jeppesen's "competitive standing." See SBM Site Services, 2011 WL 1375117 at *3. Jeppesen has failed to show a clearly defined and serious injury that would result if access to Exhibit 81 is not restricted. See D.C.COLO.LCivR 7.2B(3).

Exhibits 84-88 are portions of the depositions of Jeffrey Buhl, Athanasios Apostolopoulos, Tyler N. Snow, Michael Long, and Michael D. Kolman. The testimony sought to be redacted addresses Jeppesen's decision concerning its development of the iPad application and its relationship with SOLIDFX. These matters are directly related to central issues in this case and fall squarely within the kind of information the public has a fundamental interest in accessing to assure the fair operation of its courts. Jeppesen's interest in restricting access to this information does not outweigh the presumption of public access.

III. The Third Motion to Restrict Access

The Third Motion to Restrict Access [Doc. # 133] concerns Jeppesen's Opposition to SolidFX's Partial Motion for Summary Judgment [Doc. # 127] (the "Opposition"). The Opposition includes 58 exhibits and, altogether, the Opposition and its exhibits total 931 pages. Initially, the Opposition and all of the exhibits were filed subject to restricted access. By the Third Motion to Restrict Access, Jeppesen now requests that Exhibits 1, 3, 8-10, 13, 25-28, and 35-42 remain restricted in their entirety and that Exhibits 11, 43-45, 48, and 53-57 be redacted. Jeppesen no longer seeks to restrict access to the Opposition proper or to any part of Exhibits 2, 4-7, 12, 14-25, 29-34, 46, 47 49-52, and 58.

The Third Motion to Restrict Access, like the Second Motion, presents Jeppesen's arguments generally and by category, but not on a document-by-document basis. In fact, the

substance of the two motions is nearly identical. Jeppesen has failed to meet its burden under D.C.COLO.LCivR 7.2 to specify on a document-by-document basis the confidential or trade secret information involved and to identify by document the clearly defined and serious injury that would result if access is not restricted.

At least Exhibit 1 to the Opposition is duplicative of an exhibit submitted in support of Jeppesen's Motion for Summary Judgment, and perhaps there are others. I direct Jeppesen, in view of my rulings on the Second Motion to Restrict Access, to submit a revised Third Motion to Restrict Access that takes seriously the requirements of Local Rule 7.2; seeks restricted access only with respect to information that is private, confidential, constitutes a trade secret, could result in competitive harm if disclosed, or otherwise is entitled to protection; and demonstrates on a document-by-document basis the clearly defined and serious injury that would result if access to the information is not restricted. The revised Third Motion to Restrict Access must be filed, if at all, on or before July 30, 2012.

IT IS ORDERED:

(1) The First Motion to Restrict Access [Doc. # 119] is GRANTED IN PART and DENIED IN PART as follows:

- GRANTED to allow SOLIDFX to file substitute Exhibits 11-14 to its Response and Exhibits In Opposition to Defendant Jeppesen Sanderson, Inc.'s Motion to Strike and/or Compel Expert Disclosures and New Depositions. In view of the substitution, access to the following documents shall be Restricted Level 1: Doc. ## 93-13 through 93-16; and

- DENIED in all other respects. Access to the following documents shall not be restricted, and they shall be open to public inspection: Doc. # 93 and Doc. ## 93-1 through 93-

12.

(2) The Second Motion to Restrict Access [Doc. # 132] is DENIED. Access to the following documents shall not be restricted, and they shall be open to public inspection: Doc. # 128 and Doc. ## 128-1 through 128-89.

(3) The Third Motion to Restrict Access [Doc. # 133] is DENIED WITHOUT PREJUDICE. On or before **July 30, 2012**, Jeppesen shall file a revised Third Motion to Restrict Access that complies with the requirements of this Order.

Dated July 16, 2012.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge