

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

BOB’S SMALL BUSINESS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:3-22-cv-980
)	
ABC, LLC; AMALGAMATED US)	
INDUSTRIES, INC.; AMALGAMATED)	
UK LTD.; AMALGAMATED AG,)	
)	
Defendants.)	

ORDER DENYING MOTION FOR PROTECTIVE ORDER

Plaintiff Bob’s Small Business, Inc. has filed this lawsuit against Defendants alleging breach of contract, fraud, and tortious interference with business relations. After the parties served their initial disclosures, Plaintiff sent requests for production to Defendants seeking various documents, including requests for (1) Amalgamated internal communications discussing the technology licensing deal that Bob’s sought to enter into with ABC and Amalgamated; (2) communications between Amalgamated AG and representatives of ABC; (3) contracts executed between Amalgamated US or Amalgamated UK and ABC; (4) presentations to executives of the Amalgamated entities about the ABC/Bob’s deal and any ensuing arrangement

between Amalgamated and ABC; (5) meeting minutes concerning the deal and Amalgamated's plans to enter relevant markets addressed by the ABC product; (6) business plans and project documents; and (7) meeting agendas, notes, and call logs evidencing any communications between Amalgamated and ABC.

Defendants objected to the requests for production on various grounds and filed a Motion for Protective Order, which is presently before the Court. Plaintiff also has filed a Motion to Compel production of the requested documents.

The main issue before the Court are the objections of Defendants Amalgamated UK and Amalgamated AG, who have asserted that disclosure of the materials is restricted under English and European Union and data privacy laws. The Amalgamated entities contend that these law bar the production of all of the information that the plaintiff seeks, because all of the documents requested inherently would include "personal information" of persons who are employed by or do business with Amalgamated, such as their names, email addresses, and calendar and phone records. In support of their motion, the defendants submitted a declaration by a European legal scholar, Johann Sebastian Bach, in which Bach outlined the substance of various commentaries on English and European data privacy laws and concluded that those laws bar the Defendants from producing the requested discovery. The Court disagrees with Herr Bach's gloss on the subject—at least as it bears on this litigation—and with Amalgamated's limiting arguments.

“It is well settled that [foreign ‘blocking’] statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 544 n.29, 107 S. Ct. 2542, 96 L.Ed.2d 461 (1987) (“It is well known that the scope of American discovery is often significantly broader than is permitted in other jurisdictions, and we are satisfied that foreign tribunals will recognize that the final decision on the evidence to be used in litigation conducted in American courts must be made by those courts.”).

“As the party seeking to rely on German and European Union law, it is [the defendants’] burden to demonstrate that these laws bar production of the documents at issue.” *BrightEdge Techs., Inc. v. Searchmetrics, GmbH*, No. 14-01009, 2014 WL 3965062, at *4 (N.D. Cal. Aug. 13, 2014). Other district courts likely would reach the same conclusion. *Id.* at *6 (“Having weighed the relevant factors, the Court finds that they weigh in favor of compelling Searchmetrics to supplement its interrogatory responses and document production to include information and documents it withheld on the basis of international privacy protection laws.”).

Moreover, even if the Court assumes that there is some conflict between domestic and foreign law governing the Defendants’ disclosure of the requested data, the factors suggested by the Restatement of Foreign Relations Law of the

United States (Revised) § 437(1)(c) weigh in favor of compelling the disclosure. Those factors are: (1) the importance to the litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located. *Aerospatiale*, 482 U.S. at 544 n.28, 107 S. Ct. 2542.

An examination of these factors compels disclosure of the requested information, particularly the fifth factor. Non-compliance with the plaintiff's discovery requests would fatally undermine the important interest of the United States in rendering an adequately informed decision on the rights of a civil plaintiff before this Court. *BrightEdge*, 2014 WL 3965062, at *5 ("The United States obviously has a substantial interest in 'vindicating the rights of American plaintiffs.'" (quoting *In re Air Crash at Taipei*, 211 F.R.D. 374, 379 (C.D. Cal. 2002))). That interest—which will be advanced with due regard to appropriate protections against unwarranted disclosure of any sensitive information that may be disclosed, under the terms of a reasonably framed protective order—is not outweighed by the concerns of the English and German governments with protecting

their citizens from unjustified compromises of their personal information, particularly where the statutes on point expressly allows disclosures that are necessary for the purposes of litigation.

Amalgamated AG, Amalgamated UK, and their American affiliate have not advanced sufficient reasons for resisting the production of documents called for in Plaintiff's written discovery requests to the Defendants.

The Court, therefore, will **GRANT** the Motion to Compel production filed by Plaintiff and **DENY** the Motion for Protective Order filed by Defendants.

DONE and ORDERED this 1st day of January, 2022.

Sylvester Stallone

Sylvester Stallone
District Judge