

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

August 9, 2021

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00007
FACEBOOK, INC.,)	
)	
Respondent.)	

ORDER GRANTING UNOPPOSED MOTION FOR ENTRY OF
JOINT STIPULATED PROTECTIVE ORDER

I. INTRODUCTION AND FACTUAL BACKGROUND

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On June 21, 2021, the Court issued an Order on Discovery & Scheduling Conference for this case, in which it ordered the parties to file a joint discovery plan with the Court. The Order directed the parties to include, among other things, proposals regarding whether the Court should impose limitations on discovery.

On July 19, 2021, the Court issued an Order Rejecting Stipulated Protective Order “because the parties failed to file a motion in support of their request, and likewise failed to establish good cause, their joint filing is both procedurally and substantively defective[.]” *United States v. Facebook, Inc.*, 14 OCAHO no. 1386c, 2 (2021).¹

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw

On August 1, 2021, Respondent filed a Notice of Respondent Facebook, Inc.’s Motion for entry of a Joint Stipulated Protective Order and Respondent’s Memorandum of Law in Support of Its Motion for Entry of a Joint Stipulated Protective Order (Motion for Entry of Joint Stipulated Protective Order). Complainant filed United States’ Notice of Non-Opposition to Respondent’s Motion for Entry for Joint Stipulated Protective Order on August 2, 2021.

II. LAW AND ANALYSIS

Respondent filed its motion seeking a protective order “to govern the production and disclosure of confidential material in this case, including with non-parties and experts” and attached a joint stipulated protective order. Mot. Entry Joint Stip. Pro. Order 1. Complainant does not oppose the motion.

A protective order helps “avoid the dissemination of potentially injurious information which might, even unintentionally, jeopardize a litigant’s legitimate interests in non-disclosure” and “encourage[es] the cooperation of litigants in providing sensitive information by ensuring some protection to those interests.” *McCaffrey v. LSI Logic Corp.*, 6 OCAHO no. 883, 663, 665 (1996). Upon motion and a showing of good cause, 28 C.F.R. § 68.18(c) authorizes protective orders.

The moving party must “show some plainly adequate reason for the issuance of a protective order, and courts have required a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.” *United States v. Agripac, Inc.*, 8 OCAHO no. 1017, 268, 271 (1998) (first citing *Hawley v. Hall*, 131 F.R.D. 578, 584 (D. Nev. 1990); and then citing *United States v. City of Torrance*, 163 F.R.D. 590, 594 (C.D. Cal. 1995)). “The procedure of determining good cause seeks to accommodate competing interests and requires balancing the harm to the party seeking protection with the importance of open proceedings.” *McCaffrey*, 6 OCAHO no. 883, at 665–66; *cf. Agripac, Inc.*, 8 OCAHO no. 1017, at 272 (citation omitted). However, “[a]t the discovery stage, there is minimal public interest to be accommodated.” *McCaffrey*, 6 OCAHO no. 883, at 666.

Relevant to good cause for the protective order, Respondent asserts that public disclosure of the confidential materials, which include “sensitive business policies and procedures, descriptions of proprietary technology, evaluations of job applicants, and personally identifiable information of employees and un-hired third-party job candidates” would be detrimental. Mot. Entry Joint Stip. Pro. Order 1, 4. Specifically, public disclosure “would harm Respondent by exposing its confidential and proprietary commercial information regarding its business processes.” *Id.* at 4

database “FIM-OCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

(citing *Khatami v. Guardsmark, Inc.*, 4 OCAHO no. 614, 249, 256 (1994). Public disclosure would also harm its employees and applicants “by exposing their personally identifiable information and sensitive job-related evaluations.” *Id.* at 4–5 (first citing *McCaffrey*, 6 OCAHO no. 883, at 667, then citing *Dorsett v. Cnty. of Nassau*, 762 F. Supp. 2d 500, 521 (E.D.N.Y. 2011); and then citing *DaCosta v. City of Danbury*, 298 F.R.D. 37, 41 (D. Conn. 2014)). Respondent also claims the protective order would “prevent[] document-by-document disputes before this Court regarding confidentiality designations.” *Id.* at 5 (citing *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 357 (11th Cir. 1987)). Moreover, the Court infers from the filing that the parties characterize the litigation as “complex,” and is thus mindful of the manner in which protective orders can facilitate more expeditious discovery. *See McCaffrey*, 6 OCAHO no. 883, at 664 (“Blanket protective orders have been widely approved in complex or multi-district litigation in the interests of expediting the judicial process.”).

On balance, the gravity of release of the proprietary business information and personally identifiable information of third party individuals combined with the gains in efficiency provided by use of protective orders ultimately outweighs the public interest in these proceedings at this stage in the litigation, *see McCaffrey*, 6 OCAHO no. 883, at 665.

Therefore, Respondent’s Motion for Entry of Joint Stipulated Protective Order is GRANTED. The Court approves the parties’ proposed stipulated protective order in its entirety.

SO ORDERED.

ENTERED:

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge

DATE: August 9, 2021