



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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VIA ECF

The Honorable Lynn Adelman
362 United States District Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

Re: *Ruthelle Frank, et al. v. Scott Walker, et al.*,
Case No. 11-cv-1128

Dear Judge Adelman:

I am writing in response to the May 25, 2016 letter from Sean J. Young. I have no objection to the general objectives he describes, but I urge you to not enter his proposed order for the reasons below, and I suggest two solutions to this issue.

His letter concerns the defendants' production of confidential personal records of Wisconsin residents. The information includes name, date of birth, social security number, hair color, eye color, race, address, and driver license numbers for millions of Wisconsin residents. For some people, it includes even more information, such as place of birth and mother's maiden name. In short, it includes all of the information that would be required to open a credit card, obtain medical records, or otherwise steal the identity of the vast majority of people living in Wisconsin.

The defendants are obligated to keep that information confidential under both federal and state law. *See e.g.* 18 U.S.C. § 2721; Wis. Stat §§ 85.103, 343.235, 343.50(8). Improper disclosure of such information carries monetary and criminal penalties, including a liquidated damages penalty of \$2,000 *per person* whose information is improperly disclosed. 18 U.S.C. § 2724. Potential exposure for mis-disclosure of this particular data set reaches into the *billions* of dollars. Under the law, and as matter of protecting Wisconsin residents, the defendants take their confidentiality obligation seriously.

At the recent status conference, this Court required that the defendants disclose this confidential information to counsel for the plaintiffs, subject to a confidentiality stipulation. Mr. Young, on behalf of ACLU, and as counsel for the plaintiffs, signed such a stipulation. (Dkt. 268). It permits the information to be used for certain litigation purposes, and to be shared with ACLU's employees, their experts, and certain others who agree to be bound by the terms of the stipulated order. The Court entered an order approving the stipulation, and the defendants are now prepared to disclose the information to Mr. Young today. (Dkt. 269.)

Mr. Young has requested that the data be sent to a different attorney, at a different law firm. This other attorney is listed as co-counsel on the ECF information for this case. But, critically, that attorney is not a party to the confidentiality stipulation and order, and is not in any way bound to keep the information confidential. As a matter of the defendants' legal obligations to keep personal information private, and as a matter of the confidence of the people of Wisconsin, the defendants cannot give the confidential information to a person or entity who is not obligated by court order to not misuse the information.

The defendants have proposed that this other attorney simply add her signature to the stipulation. The defendants would then request an additional order of the Court binding that attorney, and then that person could receive the information. The plaintiffs have refused to do this.

My understanding of Mr. Young's letter is that he wants the defendants to be ordered to turn the confidential information order to any, or perhaps all, of the plaintiffs' several co-counsel. I do not believe that the proposed order accomplishes that objective, and it also creates a serious risk to the confidential personal information of Wisconsin citizens.

Mr. Young's proposed order says that confidential information shared with a party's counsel may also be shared with co-counsel. That does not solve the issue of whether the co-counsel is bound to protect the information. Under this proposal, the defendants would be authorized, but not obligated, to send this mass of extremely sensitive information to a party that is in no way bound to keep it confidential. But the recipient is then completely free to do anything with the information. The defendants cannot agree to this outcome, and I urge the Court to not enter the proposed order.

To be clear, the defendants do not oppose sharing confidential information with co-counsel representing the plaintiffs, as long as that co-counsel is bound to protect the information. I propose two possible solutions:

- Any co-counsel law firm or organization that needs the confidential information must have a representative sign the confidentiality stipulation, agreeing that their firm is bound to protect the information. That stipulation can then be ordered by the court, freeing the defendants to release the information under the protection of the Court's order; or
- The Court may enter an order containing all of the terms of the confidentiality stipulation and obligating co-counsel, by name, to obey the order.

Please note that the defendants' objection to Mr. Young's proposed order is not a dispute over Plaintiffs' access to the information. Indeed, the defendants are prepared to turn over the data to Mr. Young today. But the defendants cannot agree to turn over this extraordinarily sensitive data set to someone who is not bound to protect it.

Sincerely,

/s/ S. Michael Murphy
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Assistant Attorney General
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SMM:mlk