

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 TWILIO, INC.,
8 Plaintiff,
9 v.
10 TELESIGN CORPORATION,
11 Defendant.

Case No.16-cv-06925-LHK (SVK)

ORDER RE PROTECTIVE ORDER

Re: Dkt. No. 60

12
13 The parties have a filed a Joint Discovery Brief for Entry of Protective Order (ECF 60). In
14 the Joint Brief, the parties explain that they have agreed on the terms of a proposed protective
15 order, except the procedure by which designated confidential information produced in this case
16 may be used in other litigation between the parties. Together with their Joint Brief, each party
17 submitted a proposed protective order. Having considered the papers submitted and determined
18 that no further briefing or hearing is necessary, and for the reasons set forth below, the Court
19 adopts defendant TeleSign Corp.'s ("TeleSign") proposed protective order as further amended by
20 the Court.

21 **I. BACKGROUND**

22 The parties are currently engaged in three separate lawsuits, including the current case.
23 The other two suits are in the Central District of California: *TeleSign Corp. v. Twilio Inc.*, No.
24 2:15-cv-03240-PSG-SS ("*Twilio I*") and *TeleSign Corp. v. Twilio Inc.*, No. 2:16-cv-02106-PSG-
25 SS ("*Twilio II*") (together, the "CDCA cases"). *Twilio I* has been stayed pending IPR review.
26 (ECF 60 at 2.) Currently pending in *Twilio II* is a motion to stay and consolidate the case with
27 *Twilio I*. Discovery is also stayed in *Twilio II*. (ECF 60 at 2.) A protective order has been entered
28 in *Twilio I* and the parties have proposed to enter the same protective order in *Twilio II* as in

1 *Twilio I.* (ECF 60 at 4.) The parties agree that sharing discovery across all three cases is
 2 appropriate. (ECF 60 at 1.) The parties disagree, however, on whether a producing party should
 3 be able to opt-out of cross-use of its designated materials or if, alternatively, the agreed upon
 4 safeguards in the draft protective orders are sufficient.

5 The parties' competing proposals are as follows, with the disputed language underlined:

Twilio's Proposal	TeleSign's Proposal
7 1.2 Designated Material may be used by a 8 Receiving Party only for purposes of litigating 9 or defending this Action, subject to the 10 following exception: such material may 11 additionally be used in any of the CDCA 12 Actions as though designated and produced in 13 such action, <u>unless a producing party (including</u> 14 <u>third parties) elects to limit the use of produced</u> 15 <u>material to a particular action</u> , and provided such use is for the purpose of litigating (including defending) such action and is otherwise in compliance with the order(s) entered in such action that apply to material bearing the same designation. (Ex. A at § 1.2)	7 1.2 Designated Material may be used by a 8 Receiving Party only for purposes of litigating 9 or defending this Action, subject to the 10 following exception: such material may 11 additionally be used in any of the CDCA 12 Actions as though designated and produced in 13 such action, provided such use is for the 14 purpose of litigating (including defending) such 15 action and is otherwise in compliance with the order(s) entered in such action that apply to material bearing the same designation. <u>Nothing</u> <u>in this provision 1.2 alters, in the CDCA cases,</u> <u>a Party's (or third party's) bases to challenge</u> <u>the admissibility or use of such Material in the</u> <u>CDCA cases.</u> (Ex. B at § 1.2)

16 II. DISCUSSION

17 Federal Rule of Civil Procedure 1 provides that the Rules of Civil Procedure "should be
 18 construed, administered, and employed by the court and the parties to secure the just, speedy, and
 19 inexpensive determination of every action and proceeding." Sharing discovery in substantially
 20 similar cases between the same parties advances the interests of judicial economy by avoiding the
 21 wasteful duplication of discovery. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,
 22 1131 (9th Cir. 2003). More specifically, under such circumstances, the parties should not have to
 23 request or produce the same information twice, duplicate subpoenas and notices to third parties, or
 24 maintain separate e-discovery databases.

25 Here, the cases involve the same parties and counsel, present substantially similar issues,
 26 and will likely concern the same third parties. (ECF 60 at 4.) Interests of third parties will be
 27 adequately protected under the Protective Order by the express language in TeleSign's proposal
 28

1 and by the Court’s amendments to sections 1.2 and 10.2.2. Third parties will receive notice of the
2 production and cross-use of Designated Material and will have sufficient opportunity to raise their
3 concerns with the Court if necessary. As a result, because of the similarities in the cases and
4 adequate safeguards for third parties, Rule 1 favors cross-use of discovery in this case and the
5 CDCA cases to allow for the “just, speedy, and inexpensive” resolution of the cases.

6 **III. CONCLUSION**

7 For the reasons discussed above, the Court will issue TeleSign’s proposed version of the
8 protective order, as amended by the Court.

9 **SO ORDERED.**

10 Dated: 4/5/2017

11
12 
13 SUSAN VAN KEULEN
14 United States Magistrate Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California