

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

PREMISE HEALTH HOLDING  
CORP.,

Plaintiff,

v.

Case No: 6:21-cv-2166-WWB-LHP

ERICA L. THOMAS,

Defendant

---

**ORDER**

This cause came on for consideration without oral argument on the following motions filed herein:

**MOTION: PREMISE HEALTH HOLDING CORP.'S SHORT-  
FORM MOTION TO COMPEL (Doc. No. 65)**

**FILED: January 6, 2023**

---

**THEREON it is ORDERED that the motion is GRANTED.**

**MOTION: PREMISE HEALTH HOLDING CORP.'S MOTION  
FOR EXTENSION OF TIME TO DISCLOSE  
REBUTTAL EXPERT (Doc. No. 66)**

**FILED: January 9, 2023**

---

**THEREON it is ORDERED that the motion is GRANTED.**

## I. INTRODUCTION

Plaintiff Premise Health Holding Corp. (“Premise Health”) initiated this action against Defendant Erica L. Thomas (“Thomas”) on December 28, 2021, alleging that Thomas, a former employee of Premise Health, misappropriated Premise Health’s trade secrets. Doc. No. 1. In the amended complaint, the operative pleading in this case, Premise Health asserts the following claims against Thomas: violation of the federal Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836 et seq. (Count I), violation of the Florida Uniform Trade Secrets Act (“FUTSA”), Fla. Stat. § 688.001 et seq. (Count II), and breach of duty of loyalty (Count III). Doc. No. 13, at 12-17. Thomas answered the amended complaint on February 7, 2022, asserting a counterclaim of tortious interference. Doc. No. 18.<sup>1</sup>

Pursuant to the Case Management and Scheduling Order (“CMSO”), the deadline for Premise Health to disclose its expert reports was November 28, 2022, and the deadline for Thomas to disclose her expert reports was December 28, 2022. Doc. No. 43, at 1. And pursuant to Federal Rule of Civil Procedure 26(a)(2)(D)(ii), Premise Health’s deadline to disclose any rebuttal expert reports is 30 days after the

---

<sup>1</sup> Thomas originally also asserted a claim for defamation, but that claim was dismissed without prejudice and Thomas did not replead. Doc. No. 60. *See also* Doc. No. 64.

disclosure of Thomas' expert reports. Discovery closes on June 30, 2023. Doc. No. 43, at 1.

On December 12, 2022, Thomas timely-disclosed an expert, Richard D. Connor, Jr. Doc. No. 65-1. Connor was engaged for the limited purpose of analyzing Thomas' personal laptop to identify the following: (1) the date and time that Thomas sent and received two emails with attached spreadsheets; (2) how long the spreadsheets were attached to the emails; (3) whether Thomas did anything to access, review, and/or extract information from the spreadsheets; (4) whether Thomas transferred the spreadsheets to any third parties; (5) whether Thomas deleted the spreadsheets; and (6) whether Thomas still has access to the spreadsheets. Doc. No. 67, at 1-2. In order to prepare his expert report, Connor performed the following examination and analysis: (a) "Forensically imaged laptop hard drive," and (b) "Examined and analyzed hard drive forensic image to determine if there is any data related to the two emails." Doc. No. 65-1, at 4.

When Thomas disclosed the expert report, she did not provide Premise Health with a copy of the hard drive forensic image that Connor examined and analyzed. Doc. No. 65, at 1. Premise Health requested a copy of the forensic image so that it could prepare a rebuttal expert report. *See generally* Doc. No. 65-2. However, after engaging in extensive conferral efforts - several of which are memorialized in attached emails - the parties have been unable to reach agreement

on whether the hard drive forensic image will be provided to Premise Health. *See id.* As a result, Premise Health has filed the present motions seeking to compel production of the hard drive forensic image pursuant to Federal Rule of Civil Procedure 26(a)(2) (Doc. No. 65), and to extend by 30 days the deadline for submitting its rebuttal expert report (Doc. No. 66). Thomas opposes both motions. Doc. Nos. 67-68.

Upon review of the parties' filings and the relevant legal authority, the Court will grant both of Premise Health's motions in their entirety.

## II. THE MOTION TO COMPEL

Under Federal Rule of Civil Procedure 26(a)(2), a party is required to disclose to the opposing party the identity of any expert witness it may use at trial to present evidence and "[u]nless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness." Fed. R. Civ. P. 26(a)(2)(B). Relevant to the motions before the Court, the expert's written report must contain: (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data *considered* by the witness in forming them;<sup>2</sup> and (iii) any exhibits that will be used to summarize or

---

<sup>2</sup> Prior to 2010, Rule 26(a)(2)(B) required disclosure of "the data or other information considered" by the expert witness. However, in 2010, the Rule was amended to only require disclosure of "the facts or data considered." According to the Advisory

support them. Fed. R. Civ. P. 26(a)(2)(B)(i)-(iii) (emphasis added). *See also* Doc. No. 43, at 4 (directing the parties to “fully comply with Federal Rule of Civil Procedure 26(a)(2) and 26(e).”). “The purpose of Rule 26(a)(2) is to provide the opposing party a reasonable opportunity to prepare effective cross-examination and decide whether to arrange the party’s own expert testimony.” *Vercher v. Omni Hotels Mgmt. Corp.*, No. 3:20-cv-1388-MMH-PDB, 2022 WL 1555518, at \*3 (M.D. Fla. May 17, 2022) (citing *OFS Fitel, LLC v. Epstein, Becker & Green, P.C.*, 549 F.3d 1344, 1361–62 (11th Cir. 2008)). *See also* *Cook v. Rockwell Int’l Corp.*, 580 F. Supp. 2d 1071,

---

Committee Notes:

Rule 26(a)(2)(B)(ii) is amended to provide that disclosure include all “facts or data considered by the witness in forming” the opinions to be offered, rather than the “data or other information” disclosure prescribed in 1993. This amendment is intended to alter the outcome in cases that have relied on the 1993 formulation in requiring disclosure of all attorney-expert communications and draft reports. The amendments to Rule 26(b)(4) make this change explicit by providing work-product protection against discovery regarding draft reports and disclosures or attorney-expert communications.

The refocus of disclosure on “facts or data” is meant to limit disclosure to material of a factual nature by excluding theories or mental impressions of counsel. At the same time, the intention is that “facts or data” be interpreted broadly to require disclosure of any material considered by the expert, from whatever source, that contains factual ingredients. The disclosure obligation extends to any facts or data “considered” by the expert in forming the opinions to be expressed, not only those relied upon by the expert.

Fed R. Civ. P. 26 advisory committee notes, 2010 amendments.

Here, neither side has suggested that any of the material sought involves attorney-expert communications, draft expert reports, or attorney work-product, therefore the Court does not find that the amendment changes the analysis in this case.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.