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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 **IN RE APPLICATION OF FORBES**
17 **MEDIA LLC AND THOMAS**
18 **BREWSTER TO UNSEAL COURT**
19 **RECORDS**
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Misc. Case No. 21-80017

Related to CR1690391 MISC EDL

**APPLICATION OF FORBES MEDIA
LLC AND THOMAS BREWSTER TO
UNSEAL COURT RECORDS**

1 a subject of Applicants' reporting. *See, e.g.*, Thomas Brewster, *The FBI Is Secretly*
2 *Using a \$2 Billion Travel Company as a Global Surveillance Tool*, Forbes (July 16,
3 2020), <https://perma.cc/R96R-AXL9>.

5 5. The public and the press have a particularly strong interest in access to
6 court records that would shed light on the government's collection of location
7 records, which "hold for many Americans the privacies of life." *Carpenter v. United*
8 *States*, 138 S. Ct. 2206, 2217 (2018) (quoting *Riley v. California*, 573 U.S. 373, 403
9 (2014)). The disclosure of such information to the government implicates a range of
10 weighty constitutional and policy interests, including reporter-source confidentiality.
11 As a result, the public and press have a keen interest in understanding the
12 government's basis for seeking an AWA order directing Sabre to provide it with
13 contemporaneous travel information about a targeted individual, as well as the district
14 court's basis for issuing such an order.

18 JURISDICTION

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20 6. "Every court has supervisory power over its own records and files."
21 *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). As a result, this Court
22 has "jurisdiction in the first instance to adjudicate a claim of right" to inspect those
23 records. *In re Motion for Release of Court Records*, 526 F. Supp. 2d 484, 487 (FISA
24 Ct. 2007).

1 **INTRADISTRICT ASSIGNMENT**

2 7. The acts or omissions giving rise to this action occurred in the division
3 of this District where the Sabre Materials were originally sealed. As a result,
4 pursuant to Local Civil Rule 3-2(c), assignment of this action to that division would
5 be proper.
6

7 **BACKGROUND FACTS**

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9 8. Originally adopted in connection with the Judiciary Act of 1789, *see*
10 Judiciary Act of 1789, ch. 20, §§ 13–14, 1 Stat. 73, 80–82, the All Writs Act in its
11 current form authorizes federal courts to “issue all writs necessary or appropriate in
12 aid of their respective jurisdictions and agreeable to the usages principles of law,” 28
13 U.S.C. § 1651.
14

15
16 9. Although the All Writs Act may be used to issue orders for a range of
17 procedural purposes, All Writs Act orders requiring private technology firms to
18 provide the United States government with “technical assistance” are of particular
19 public interest. *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 171 (1977).
20

21 10. In perhaps the highest-profile example, the government in 2016 sought
22 an order under the Act that would have required Apple to provide a means of
23 bypassing security measures on an iPhone that belonged to one of the shooters in the
24 San Bernardino terrorist attack. *See In the Matter of the Search of an Apple iPhone*
25 *Seized During the Execution of a Search Warrant on a Black Lexus IS300, California*
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1 *License Plate 35KGD203*, No. ED 15-0451M, 2016 WL 618401, at *1 (C.D. Cal.
2 Feb. 16, 2016).

3
4 11. Before it was mooted, that litigation sparked a wide-ranging public
5 debate on the wisdom and legality of such technical assistance orders. *See, e.g.,*
6 *Amicus Briefs in Support of Apple*, Apple (Mar. 2, 2016), [https://perma.cc/PL6K-](https://perma.cc/PL6K-S6WZ)
7 [S6WZ](https://perma.cc/PL6K-S6WZ) (collecting court filings and public statements opposing the requested order).
8

9 And the national conversation about the appropriate scope of such compelled
10 assistance orders has continued unabated. *Compare, e.g.,* Alan Z. Rozenshtein,
11 *Surveillance Intermediaries*, 70 *Stan L. Rev.* 99, 176–177 (2018) (arguing that
12 private firms’ resistance to technical-assistance orders undermines self-government),
13 with Note, *Cooperation or Resistance?: The Role of Tech Companies in Government*
14 *Surveillance*, 131 *Harv. L. Rev.* 1722, 1724 (2018) (arguing that the picture is “more
15 complicated” and that firms play an important role in checking the government).
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18 12. As Applicants’ have reported, circumventing encryption is not the only
19 context in which the All Writs Act has been invoked to compel private companies to
20 assist federal government surveillance efforts. *See* Brewster, *supra*. According to
21 records unsealed in the Southern District of California in February 2020, the
22 government has used the Act to require Sabre, a leading travel technology company,
23 to engage in “real-time” monitoring of travelers who are the subject of an active
24 arrest warrant for the government. *See* Ex. 1 at 4.
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1 13. Sabre is one of the three largest players in its market, responsible for
2 more than one-third of global air travel bookings. See Brewster, *supra*. As a result, it
3 has a staggering volume and diversity of records, including “itineraries, fares,
4 reservations, connecting flights and ticket costs,” as well as “crew schedules and
5 other logistical information.” *Id.*
6

7
8 14. Pursuant to the All Writs Act, the government has sought orders
9 requiring Sabre “to provide representatives of the FBI complete and
10 contemporaneous ‘real time’ account activity information” on targeted travelers, what
11 the government has described as a “hot watch.” Ex. 1 at 2, 4.
12

13 15. In support of its application in the Southern District of California, the
14 government identified several other instances in which it had asked for—and
15 obtained—orders under the All Writs Act that imposed similar surveillance
16 obligations on Sabre. See Ex. 1 at 4. One of them, identified in the application as
17 AWA order CR1690391 MISC EDL, was issued by the Northern District of
18 California in 2016. *Id.* The government’s application adverted that that matter was
19 still under seal at the time. *Id.* Applicants are informed and believe that the matter is
20 still under seal.
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24 **REQUEST FOR RELIEF**

25 16. Applicants seek an order unsealing the AWA Materials.

26 17. Applicants seek any further relief that the Court deems just and proper.
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1 Dated: January 25, 2021

/s/ Katie Townsend

2 Katie Townsend

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, the foregoing document was served at my direction by Certified Mail on the United States Attorney for the Northern District of California at:

United States Attorney’s Office
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: January 25, 2021

/s/ Katie Townsend

Katie Townsend

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