

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JANE DOE,
Plaintiff,
v.
APPLE INC. HEALTH AND WELFARE
BENEFIT PLAN,
Defendant.

Case No. 22-cv-02566-EJD

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
AND DEFENDANT'S
ADMINISTRATIVE MOTIONS TO
SEAL**

Re: ECF Nos. 16, 21, 23

In connection with Defendant Apple Inc. Health and Welfare Benefit Plan's ("Defendant") motion to dismiss Plaintiff Jane Doe's ("Plaintiff") complaint, both Plaintiff and Defendant seek to file portions of their briefs and supporting papers under seal. ECF Nos. 16 ("Mot. Seal MTD"), 21 ("Mot. Seal Opp."), 23 ("Mot. Seal Reply"). For the following reasons, the Court GRANTS IN PART and DENIES IN PART the parties' motions to seal.

I. LEGAL STANDARD

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, "a strong presumption in favor of access is the starting point." *Kamakana*, 447 F.3d at 1178 (internal quotation marks omitted); *see also Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (in considering whether documents should be sealed, courts "start with a strong presumption in favor of access to court records."). Parties seeking to seal judicial records relating

1 to motions that are “more than tangentially related to the underlying cause of action,” *Ctr. for Auto*
 2 *Safety v. Chrysler Grp.*, LLC, 809 F.3d 1092, 1099 (9th Cir. 2016), bear the burden of overcoming
 3 the presumption with “compelling reasons supported by specific factual findings that outweigh the
 4 general history of access and the public policies favoring disclosure.” *Kamakana*, 447 F.3d at
 5 1178–79 (internal quotation marks and citation omitted). Further, the Local Rules of this Court
 6 require that all requests to file under seal be “narrowly tailored to seek sealing only of sealable
 7 material.” Civ. L.R. 79-5(a).

8 In determining whether there are compelling reasons to seal, “courts should consider all
 9 relevant factors, including: ‘the public interest in understanding the judicial process and whether
 10 disclosure of the material could result in improper use of the material for scandalous or libelous
 11 purposes or infringement upon trade secrets.’” *Foltz*, 331 F.3d at 1135 (quoting *Hagestad v.*
 12 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). Courts must “‘conscientiously balance[] the
 13 competing interests’ of the public and the party who seeks to keep certain judicial records secret.”
 14 *Kamakana*, 447 F.3d at 1179 (quoting *Foltz*, 331 F.3d at 1135). After considering these interests,
 15 if the court decides to seal certain judicial records, it must “base its decision on a compelling
 16 reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.”
 17 *Hagestad*, 49 F.3d at 1434 (citing *Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nevada*, 798
 18 F.2d 1289, 1295 (9th Cir. 1986)). Compelling reasons may exist to seal “trade secrets, marketing
 19 strategies, product development plans, detailed product-specific financial information, customer
 20 information, internal reports and other such materials that could harm a party’s competitive
 21 standing . . . [but] courts should exercise caution not [to] allow these exceptions [to] swallow the
 22 strong presumption in favor of disclosure.” *In re Apple Inc. Device Performance Litig.*, No. 5:18-
 23 MD-02827-EJD, 2019 WL 1767158, at *2 (N.D. Cal. Apr. 22, 2019).

24 **II. DISCUSSION**

25 The parties ask to seal material that is more than tangentially related to the underlying
 26 cause of action—they seek to seal a significant portion of the amended complaint and dispositive
 27 motion briefing. Accordingly, the parties must provide compelling reasons, based on specific

1 facts, to maintain this information under seal. *Kamakana*, 447 F.3d at 1178–79. The Court
 2 addresses first Defendant’s motions to seal (ECF Nos. 16, 23) before turning to Plaintiff’s motion
 3 to seal (ECF No. 21).

4 **A. Defendant’s Motions to Seal**

5 The Court finds there are compelling reasons to seal some, but not all, of the information
 6 sought to be sealed.

7 Defendant seeks to seal the parties’ Confidential Settlement Agreement and Release dated
 8 December 21, 2021 (“Settlement Agreement”), attached as Exhibit A to the Declaration of
 9 Michael Bernstein in support of Defendant’s Motion to Dismiss Plaintiff’s Complaint. Mot. Seal
 10 MTD 1. “Numerous courts in this district have recognized the importance of protecting
 11 confidential settlement communications and materials ‘in order to promote settlement’ and have
 12 concluded that this general policy satisfies the more . . . ‘compelling reasons’ standard
 13 to seal judicial records.” *Milliner v. Mutual Secs., Inc.*, No. 15-cv-03354-DMR, 2021 WL
 14 2645794, at *5 (collecting cases). Given the sensitive personal and medical history underlying
 15 this matter, Plaintiff’s status as a minor at the time of the events, and Plaintiff’s choice to file suit
 16 as a Jane Doe plaintiff, the Court also finds the protection of Plaintiff’s identity to be an additional
 17 compelling reason to seal the Settlement Agreement. *See Meyers v. Kaiser Foundation Health*
 18 *Plan Inc.*, No. 17-CV-04946-LHK, 2019 WL 120657, at *3 (N.D. Cal. Jan. 6, 2019) (finding
 19 compelling reasons to seal minor’s personal and medical information “because of the strong
 20 interest in ‘preserv[ing] privacy in a matter of sensitive and highly personal nature’”) (citing *Jane*
 21 *Roes 1-2 v. SFBSC Mgmt LLC*, 77 F. Supp. 3d 990, 993 (N.D. Cal. 2015)). Any interest the public
 22 may have in the Settlement Agreement does not outweigh these reasons for sealing. *See Milliner*,
 23 2021 WL 2645794, at *6 (determining public interest did not outweigh sealing interest without
 24 indication of “public’s interest in a settlement agreement between private parties”) (citing
 25 *Facebook, Inc. v. ConnectU, Inc.*, No. C 07-01389 JW, 2008 WL 11357787, at *3–4 (N.D. Cal.
 26 July 2, 2008) (finding that “the terms of the [parties’] settlement and the negotiations preceding it”
 27 are “records . . . of the kind ‘traditionally kept secret’” and not subject to disclosure)). The Court

1 therefore GRANTS Defendant’s motion to seal the Settlement Agreement.

2 Defendant’s remaining requests to seal relate to excerpts of its opening brief, supporting
3 declaration, and reply brief in support of its motion to dismiss that reference the Settlement
4 Agreement or the negotiations leading up to it. Mot. Seal MTD 1; Mot. Seal Reply 1. For the
5 same compelling reasons described above, the Court finds it appropriate to seal those portions of
6 Defendant’s papers that quote from the Settlement Agreement or refer to the contents of either the
7 Settlement Agreement or negotiation communications so directly that the reference in essence
8 unseals the Settlement Agreement. *See Arebalo v. Apple Inc.*, No. 19-cv-03034, 2022 WL
9 580865, at *3 (N.D. Cal. Feb. 25, 2022) (rejecting party’s efforts to “seal broad swaths of text”
10 and sealing “only the proposed settlement terms and actual negotiations concerning those terms”)
11 (citing *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 2672 CRB
12 (JSC), 2020 WL 2425792, at *4 (N.D. Cal. May 12, 2020)). Defendant’s proposed redactions to
13 the Declaration of Michael Bernstein in support of Defendant’s Motion to Dismiss Plaintiff’s
14 Complaint, *see* Mot. Seal MTD 1, and the Reply Brief in Support of Motion to Dismiss Plaintiff’s
15 Complaint, *see* Mot. Seal Reply 1, are narrowly tailored—as required by Civil Local Rule 79-5—
16 to seal only language directly referencing the terms of the Settlement Agreement or describing the
17 negotiations prior to the execution of the Settlement Agreement.

18 However, the Court finds that the specific redactions proposed by Defendant are not
19 narrowly tailored and that Defendant does not provide a sufficient particularized justification for
20 sealing all the portions requested. For example, Defendant seeks to seal information that it has
21 revealed in publicly filed documents. *Compare, e.g.*, ECF No. 17 (“MTD”) i:7–8, i:22–23, i:24–
22 25 (revealing phrase “in the Utah Case” in publicly filed motion to dismiss) *and id.* at 3:11
23 (arguing “Plaintiff’s release in the Settlement” bars all claims in this action), *with* ECF No. 16-3
24 i:9–10 (seeking to seal “in the Utah Case”) *and id.* at 3:4 (seeking to seal reference to Plaintiff
25 “releas[ing] all claims”). Additionally, the proposed redactions to Section V(A) of the
26 Defendant’s opening brief in support of its motion to dismiss would seal the entirety of the section
27 except for the legal standard. *See* MTD 13–16. An effort to seal “broad swaths of text” already

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1 suggests a lack of narrow tailoring, *see Arebalo*, 2022 WL 580865, at *3, and the Court observes
 2 that the proposed redactions include phrases that are left public in the discussion of the legal
 3 standard. *Compare* MTD 13 (“the Court should review the plain language of the Settlement”),
 4 *with* ECF No. 16-3 15:12 (seeking to seal nearly identical language). Accordingly, the Court
 5 GRANTS IN PART and DENIES IN PART Defendant’s motions to seal as described below.

6 **B. Plaintiff’s Motion to Seal**

7 Plaintiff moves to seal excerpts of her opposition to Defendant’s motion to dismiss and the
 8 supporting declaration. Mot. Seal Opp. 1. However, Plaintiff’s motion, while attaching an
 9 unredacted version of the relevant documents, does not “highlight the portions for which sealing is
 10 sought.” Civ. L.R. 79-5(d)(2). Additionally, the proposed order should list in table format the
 11 portions of the document that are sought to be sealed. *Id.* 79-5(c)(3). The Court therefore
 12 DENIES without prejudice Plaintiff’s motion to seal.

13 **III. CONCLUSION**

14 For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART
 15 Defendant’s motions to seal and DENIES Plaintiff’s motion to seal as follows:

Document	Portions Sought to be Sealed	Ruling
Defendant’s Motion to Dismiss Plaintiff’s Complaint (ECF No. 17)	Pages i:7–10, i:22–25, 3:4–10, 3:12–14, 3:20–21, 3:23, 4:1, 4:6–9, 7:8–20, 8:1–9:7, 11:4, 11:25, 13:13–17, 14:9–16:12, 16:26–17:1, 17:11–12, 17:18–19, 17:23–24, 18:12, 18:19–21, 18:27, 19:1, 19:3, 19:17, 20:3, 20:5–11, 20:13.	Denied as to pages: i:10 (last four sealed words); 3:4 (first four sealed words); 3:6 (words 6–9); 3:7 (words 4–7); 3:8 (last six words); 3:9 (words 1, 3–12); 7:8 (first sealed word and footnote marker); 7:10 (last nine words); 7:11 (first five words); 7:13 (first nine words following end of citation); 7:18 (last five words); 8:11 (first nine words following end of citation); 14:9 (first 11 words); 14:10 (last six words);

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		<p>14:11 (first six words); 14:15 (last two words); 14:16 (first two words, first eight words following end of citation); 14:17 (words 12–17); 14:18 (last three words); 14:19 (first word); 14:20 (words 7–16); 14:23 (last word); 14:24 (first two words); 15:1 (words 2–9); 15:10 (first four words following end of citation); 15:12–14 (sentence beginning after end of citation through first 12 words of 15:14); 15:15 (last four words); 15:16 (entire line); 15:17 (first word); 15:26 (last four words); 15:27 (first 16 words); 20:5 (last two words); 20:6 (first word, last nine words); 20:7 (first four words).</p> <p>Otherwise granted.</p>
Declaration of Michael Bernstein in Support of Defendant’s Motion to Dismiss (ECF No. 17-1)	Pages 1:14–19, 1:26–2:1.	Granted
Confidential Settlement Agreement and Release, dated December 21, 2021, attached as Exhibit A to the Declaration of Michael Bernstein in Support of Defendant’s Motion to Dismiss (ECF No. 17-2)	Entire document.	Granted
Defendant’s Reply in Support of Motion to Dismiss Plaintiff’s Complaint (ECF No. 24)	Pages i:7–9, i:12, i:15, 1:25–2:1, 2:11–12, 2:16, 2:22–2:26, 3:12–13, 3:15–19, 4:13–14, 4:16, 4:18–19, 4:26–5:3, 5:5–8, 7:6–7, 7:10, 7:14–15, 7:23–8:1, 8:6–12, 8:20–27, 9:3–10, 9:12–14, 9:16, 10:21.	Granted

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Plaintiffs’ Opposition to Defendant’s Motion to Dismiss (ECF No. 22)	Pages i:14–16, i:18–19, 5:21–28, 6:1–10, 6:12–14, 6:18–21, 7:11, 7:17–23, 8:3–9, 8:22, 9:1, 9:5–7, 9:10–22, 10:8–9, 11:9–11, 11:13–14.	Denied
Declaration of Brian S. King in Support of Plaintiff’s Opposition to Defendant’s Motion to Dismiss (ECF No. 22-1)	Page 2:6-17.	Denied

Defendant shall submit a revised redacted version of its opening brief that reflects the above rulings by **February 28, 2023**.

Plaintiff may renew her sealing request by filing submissions that comply with Civil Local Rule 79-5 by **February 28, 2023**.

If the parties elect not to resubmit revised redactions by February 28, 2023, the Court shall unseal the documents in their entirety, with the exception of direct quotations from the Settlement Agreement.

IT IS SO ORDERED.

Dated: February 15, 2023



EDWARD J. DAVILA
United States District Judge