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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CALIFORNIA EXPANDED
11 METAL PRODUCTS COMPANY,
12 et al.,

13 Plaintiffs,

14 v.

15 JAMES A. KLEIN, et al.,

16 Defendants.

CASE NO. C18-0659JLR

ORDER ON MOTION TO
UNSEAL

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I. INTRODUCTION

Before the court is Plaintiffs California Expanded Metal Products Company and Clarkwestern Dietrich Building Systems' (collectively, "Plaintiffs") motion to unseal. (Mot. (Dkt. # 168); Reply (Dkt. # 182).) Defendants James A. Klein, Safti-Seal, Inc., and BlazeFrame Industries Ltd. (collectively, "Defendants") oppose the motion. (*See Resp.* (Dkt. # 176).) The court has reviewed the motion, the relevant portions of the record, and

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1 the applicable law. Being fully advised, the court GRANTS in part and DENIES in part
2 the motion to unseal.¹

3 II. BACKGROUND

4 On December 8, 2019, the parties settled Plaintiffs' underlying patent
5 infringement lawsuit and agreed to entry of a consent judgment and a permanent
6 injunction as part of their settlement agreement. (*See* 12/16/19 Bageant Decl. (Dkt.
7 # 158-1) ¶¶ 2-5; Consent J. (Dkt. # 164) (sealed); Trojan Decl. ISO Mot. to Seal (Dkt.
8 # 173) ¶ 7, Ex. D.1 ("Settlement Agmt.") (sealed).) Defendants filed an unopposed
9 motion to seal the consent judgment and injunction, which the court granted. (*See* Mot.
10 to Seal (Dkt. # 158); 1/3/20 Order on Mot. to Seal at 1 (Dkt. # 162) (noting that the
11 motion to seal the consent judgment and injunction was unopposed).)

12 On June 22, 2020, Plaintiffs moved to reopen this case and initiate contempt
13 proceedings against Defendants. (*See* Mot. to Reopen (Dkt. # 166).) In support of that
14 motion, Plaintiffs filed the parties' confidential settlement agreement provisionally under
15 seal. (*See* 6/22/20 Mot. to Seal (Dkt. # 172); Settlement Agmt.) Plaintiffs moved to seal
16 the settlement agreement in order to comply with the confidentiality provisions in the
17 agreement. (*See* 6/22/20 Mot. to Seal at 2.) The court granted that motion to seal, which
18 was unopposed. (*See* 10/1/20 Order (Dkt. # 186).)

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21 ¹ Plaintiffs request oral argument (*see* Mot. at 1), but the court concludes that oral
22 argument would not be helpful to its disposition of the motion, *see* Local Rules W.D. Wash.
LCR 7(b)(4).

1 In the current motion, Plaintiffs move to unseal the consent judgment and
2 injunction and to “lift the confidentiality of the [p]arties’ [s]ettlement [a]greement” so
3 that Defendants may publicly disclose it. (*See Mot.* at 1.)

4 III. ANALYSIS

5 A. Legal Standard

6 Local Civil Rule 5 allows a party to file a motion to unseal documents.² Local
7 Rules W.D. Wash. LCR 5(g)(8). The standard for unsealing previously sealed documents
8 mirrors the standard for sealing the documents in the first instance. *See Perez v. Lantern*
9 *Light Corp.*, No. C12-1406RSM, 2017 WL 2172012, at *2 (W.D. Wash. May 17, 2017).

10 When deciding a motion to seal or unseal, courts “start with a strong presumption in
11 favor of access to court records.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,
12 1135 (9th Cir. 2003) (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

13 This presumption, however, “is not absolute and can be overridden given sufficiently
14 compelling reasons for doing so.” *Id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist.*

15 *Ct. N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999)). The Ninth Circuit has

16 recently clarified that the standard for determining whether to seal a record turns on

17 whether the records are “more than tangentially related to the merits of a case.” *See Ctr.*

18 *for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1098-1102 (9th Cir. 2016). If the

19 records at issue are more than tangentially related to the merits of the case, the court must

21 ² Because Local Rule 5(g)(8) specifically allows parties to file motions to unseal records,
22 the court rejects Defendants’ argument that this motion should be construed as a motion for
reconsideration. (*See Resp.* at 3-4.)

1 apply the “compelling reasons” standard to the motion to seal or unseal. *See id.* If the
2 records are only tangentially related to the merits, the party seeking to seal the records
3 need only show “good cause” to seal those records. *See id.*

4 **B. Consent Judgment**

5 Although the court has previously concluded that the compelling reasons standard
6 applied to Defendants’ request to seal the consent judgment and injunction and that
7 Defendants had satisfied that standard (*see* 1/3/20 Order on Mot. to Seal at 3-5),
8 compelling reasons must continue to exist to keep judicial records sealed, *see Perez*, 2017
9 WL 2172012, at *2 (citing *Foltz*, 331 F.3d at 1136). In sealing the consent judgment, the
10 court concluded that compelling reasons to seal the judgment existed primarily because
11 (1) public interest in the consent judgment and injunction appeared to be relatively low,
12 (2) competitive harm could result from disclosure of the consent judgment and
13 injunction, and (3) publicly filing the consent judgment and injunction could discourage
14 out-of-court resolution of litigation. (*See* 1/3/20 Order on Mot. to Seal at 4-5.)

15 The new factual information brought to light by Plaintiffs shows that these reasons
16 for sealing the consent judgment and injunction are no longer compelling. Plaintiffs have
17 identified public interest in the consent judgment and injunction and it appears as though
18 competitive harm has resulted from sealing that filing. Mr. Klein has informed customers
19 that he has agreed not to sell products “under the ‘[S]afti-[F]rame’ or ‘[S]afti-[S]trip’
20 identifiers” in order to “comply with legal agreements,” and has referred to the new brand
21 of Fire Rated Gasket (“FRG”) products as the “same product,” with the same
22 “performance, support, and certifications.” (*See* Pilz. Decl. (Dkt. # 170) ¶ 4, Ex. 1a.) Mr.

1 Klein also refers to the new FRG product line as merely a “rebrand from Safti-Strip.”
2 (*See id.*) As Defendants are well-aware, however, the consent judgment states that
3 Defendants’ Safti-Frame and Safti-Strip products infringed Plaintiffs’ patents, and the
4 injunction enjoins Defendants from continuing to infringe the patents. (*See* Consent J. at
5 2-3.) Thus, to the extent that Defendants allege that the FRG products are merely a
6 “rebrand,” Defendants’ customers are entitled to know that the old brand of products
7 infringed Plaintiffs’ patents.³

8 Additionally, Plaintiffs indicate that they attempted to protest the grant of new
9 Underwriter’s Laboratory (“UL”) certifications for the FRG products, but UL informed
10 Plaintiffs that it would not take action unless Plaintiffs provided a copy of the sealed
11 consent judgment and injunction. (*See id.* ¶ 98.) Thus, the fact that the consent judgment
12 and injunction is sealed prevents UL from accessing the materials it needs to make an
13 informed decision on Plaintiffs’ objections to the UL certifications for the FRQ products.
14 Accordingly, although the court sealed the consent judgment and injunction on the basis
15 that the public had minimal interest in that filing and in hopes that sealing the filing
16 would prevent competitive harm, it appears that there is public interest in that filing and
17 sealing the filing has resulted in competitive harm to Plaintiffs. Thus, those grounds for
18 sealing the consent judgment and injunction are no longer compelling and, as such,
19 cannot serve as a basis for sealing those documents. *See Perez*, 2017 WL 2172012, at *2

21 ³ The court takes no position in this order on whether the FRG products are a mere
22 “rebrand” that continues to infringe Plaintiffs’ patents. For purposes of this order, the only
relevant fact is that Mr. Klein has made such claims and Plaintiffs are prevented from fully
responding to that claim due to the fact that the consent judgment and injunction is sealed.

1 (noting that compelling reasons must continue to exist in order to maintain documents
2 under seal).

3 The court’s final reason for initially sealing the consent judgment and injunction—
4 encouraging out-of-court resolution of litigation—is also no longer compelling under
5 these facts. Although Plaintiffs did not object to sealing the consent judgment and
6 injunction initially, Plaintiffs now move to reopen this case and hold Defendants in
7 contempt for violating the consent judgment and injunction. (*See generally* Mot. to
8 Reopen.) Regardless of the merits of Plaintiffs’ motion to reopen, it is now apparent that
9 the court’s decision to seal the consent judgment and injunction has partially contributed
10 to strife amongst the parties. (*See id.* at 11-12 (arguing that Defendants “are using the
11 sealed injunction to mislead customers”).) Thus, rather than facilitating resolution of this
12 case, sealing the consent judgment and injunction ultimately helped erode the parties’
13 out-of-court resolution of this litigation. As such, the court concludes that it cannot
14 justify sealing the consent judgment and injunction in furtherance of encouraging out-of-
15 court resolution of litigation.

16 Defendants offer no additional compelling reasons why the consent judgment and
17 injunction should remain under seal. (*See Resp.* at 3-5.) As such, the court concludes
18 that there are no compelling reasons to maintain the seal on the consent judgment and
19 injunction. Accordingly, the court GRANTS Plaintiffs’ motion to unseal that filing.

20 **C. Settlement Agreement**

21 Unlike the consent judgment and injunction—which is a court order that resolved
22 this case—the settlement agreement is a private contractual agreement between Plaintiffs

1 and Defendants that does not involve the court. (*See generally* Settlement Agmt.) The
2 settlement agreement was not filed on the docket in this case until Plaintiffs filed it in
3 support of their motion to reopen. (*See generally* Dkt.; Settlement Agmt.) Thus, the
4 court concludes that the parties’ private settlement agreement is not “more than
5 tangentially related to the merits of this case,” meaning there must only be good cause to
6 keep the settlement agreement under seal. *See Ctr. for Auto Safety*, 809 F.3d at
7 1098-1102.

8 Here, the parties’ freedom of contract creates good cause to keep the settlement
9 agreement confidential and under seal. Plaintiffs privately agreed to keep the terms of
10 the settlement agreement confidential. (Settlement Agmt. at 4.) The court will not
11 release Plaintiffs from that contractual term and essentially rewrite the settlement
12 agreement simply because Plaintiffs now wish they had struck a different deal—
13 especially since the parties’ settlement bears so little relationship to the merits of the
14 underlying infringement claims. Further, to the extent that Plaintiffs argue that the court
15 should excise the confidentiality provision from the settlement agreement because
16 Defendants have breached the settlement agreement, that is a breach of contract argument
17 that is not properly before the court in this patent infringement action.

18 Thus, the court DENIES Plaintiffs’ motion to “lift the confidentiality” of the
19 settlement agreement. (*See* Mot. at 1.) The settlement agreement shall remain under
20 seal.

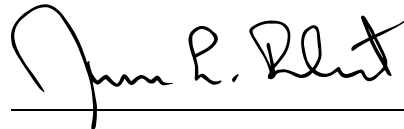
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1 **IV. CONCLUSION**

2 For the reasons set forth above, the court GRANTS in part and DENIES in part
3 Plaintiffs' motion to unseal (Dkt. # 168). Specifically, the court GRANTS Plaintiffs'
4 motion to unseal the consent judgment and injunction and DIRECTS the Clerk to remove
5 the seal on the consent judgment and injunction (Dkt. # 164), and DENIES Plaintiffs'
6 motion to lift the confidentiality of the settlement agreement.

7 Dated this 5th day of October, 2020.

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10 JAMES L. ROBERT
11 United States District Judge
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