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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

B2B CFO PARTNERS, LLC, an Arizona limited liability company; B2B CFO, LLC, an Arizona limited liability company; JERRY MILLS and CHRISTINE MILLS, individuals

CV 09-2158-PHX-JAT

ORDER

Plaintiffs/Counterdefendants,

vs.

KENNETH A. KAUFMAN, an individual; KAUFMAN ENTERPRSE SOLUTIONS, LLC, a Utah limited liability company; CFO WISE, INC., a Utah corporation; THE CFO WISE PROMISE, LLC, a Utah limited liability company,

Defendants/Counterclaimants.

Pending before the Court is Plaintiffs/Counterdefendants motion to seal (Doc. #73) seeking to seal the motion for partial summary judgment, motion for preliminary injunction and motion for permanent injunction (Doc. #74) currently lodged under seal (the statement of facts and supporting affidavit are also lodged under seal (Docs. ##75 and 77)).

As this Court noted in the protective order (Doc. #30 at7) any motion to seal must meet the standard set out in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,

1 1179-80 (9th Cir. 2006). Specifically, for a dispositive motion, a party must show
2 compelling reasons to file under seal. *Id.* at 1179. Indeed, there is a presumption of access
3 to dispositive pleadings and attachments, and compelling reasons must be shown to rebut
4 this presumption. *Id.* at 1180. Finally, generalized statements supporting sealing are
5 inadequate; a party must articulate specific facts to justify sealing, and must do so with
6 respect to each item sought to be sealed. *Id.* at 1183-84.

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9 In this case, Plaintiffs' sole argument for sealing is, "Plaintiffs have attached certain
10 versions of and excerpts from training manuals of Plaintiffs and Defendants, which the
11 respective parties contend are confidential, proprietary, and should at this stage of the
12 litigation be withheld from the public record." Doc. #73 at 1. This justification falls far
13 below the compelling reasons required to justify sealing.
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15 First, the fact that the parties agree amongst themselves that they would prefer
16 something not be in the public record is not a compelling reason to seal. Second, Plaintiffs
17 make no effort to comply with *Kamakana* in that they do not explain item by item why an
18 exhibit or argument must be sealed. Indeed, they seek to seal the entire motion, which
19 clearly contains law and argument that should not be sealed. Third, in assessing the need
20 for confidentiality, the *Kamakana* court considered whether the same information was
21 otherwise publically available. 447 F.3d at 1184. In this case, Plaintiffs make no showing
22 that these training materials have not been distributed so widely that there is no lingering
23 need for confidentiality (for example, Plaintiffs make no argument that upon giving these
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1 materials to Defendant Kaufman prior to this litigation, Plaintiffs sought any confidentiality
2 agreement in return).

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4 Finally, Plaintiffs argue that these documents should be sealed “at this stage” of the
5 litigation. As the *Kamakana* court notes, however, a grant of summary judgment is a
6 resolution of the case, and, “the resolution of a dispute on the merits, whether by trial or
7 summary judgment, is at the heart of the interest in ensuring the public’s understanding of
8 the judicial process and of significant public events.” *Id.* at 1179 (internal quotations
9 omitted). Moreover, in this case, Plaintiffs seek both a preliminary injunction and a
10 permanent injunction from this Court covering the “confidential” materials. Generally, this
11 Court will not issue its reasoned opinions under seal. And the Court cannot conceive how it
12 could bind people or entities to an injunction issued under seal when the people and entities
13 have no access to either the Court’s opinion or the materials that are the subject of the
14 injunction.

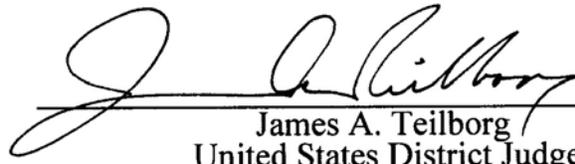
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16 As the *Kamakana* court noted, it is not this Court’s burden to justify unsealing a
17 document; it is the party’s burden to overcome the presumption of access to the courts. *Id.*
18 at 1181-82. Plaintiffs have failed to meet such burden in this case. As a result,

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21 IT IS ORDERED that the motion to seal (Doc. #73) is denied; the Clerk of the Court
22 shall unseal Docs. ## 74, 75, and 77.

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24 IT IS FURTHER ORDERED that Plaintiffs’ request for another Rule 16 conference
25 (Doc. #76) is denied, without prejudice to Plaintiffs filing either a motion or stipulation
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1 setting forth a schedule to accomplish their stated goal of, “establishing an efficient,
2 meaningful schedule for consideration” of Plaintiffs’ motions, including seeking an
3 expedited briefing schedule on the motion for partial summary judgment, preliminary
4 injunction and permanent injunction.
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6 Dated this 25th day of May, 2010.
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11 _____
12 James A. Teilborg
13 United States District Judge
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