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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Philip A Marsteller, et al.,

10 Plaintiffs,

11 v.

12 MD Helicopter Inc.,

13 Defendant.  
14

No. CV-14-01788-PHX-DLR

**ORDER**

15  
16 Before the Court are Defendant MD Helicopter Incorporated's motions to seal  
17 (Docs. 439, 460, 467, 472), and Plaintiffs Philip and Ruth Marsteller's motions to seal  
18 (Docs. 444, 462, 470, 475). No responses were filed to either party's motions. For the  
19 following reasons, the motions are denied.

20 **I. Legal Standard**

21 Two standards generally govern requests to seal documents. "First, a 'compelling  
22 reasons' standard applies to most judicial records." *Pintos v. Pac. Creditors Ass'n*, 605  
23 F.3d 665, 678 (9th Cir. 2009) (citing *Kamakana v. City & Cty. of Honolulu*, 447 F.3d  
24 1172, 1178 (9th Cir. 2006)).

25 This standard derives from the common law right "to inspect  
26 and copy public records and documents, including judicial  
27 records and documents." To limit this common law right of  
28 access, a party seeking to seal judicial records must show that  
"compelling reasons supported by specific factual findings . .  
. outweigh the general history of access and the public  
policies favoring disclosure."

1 *Id.* (quoting *Kamakana*, 447 F.3d at 1178-79).

2 The second standard applies to discovery materials. “Private materials unearthed  
3 during discovery’ . . . are not part of the judicial record.” *Id.* (quoting *Kamakana*, 447  
4 F.3d at 1180). The “good cause” standard set forth in Federal Rule of Civil Procedure  
5 26(c) applies to this category of documents. *Id.* For good cause to exist under Rule  
6 26(c), “the party seeking protection bears the burden of showing specific prejudice or  
7 harm will result if no protective order is granted.” *Phillips v. G.M. Corp.*, 307 F.3d 1206,  
8 1210-11 (9th Cir. 2002). “Broad allegations of harm, unsubstantiated by specific  
9 examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Beckman Indus.,*  
10 *Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quotation and citation omitted).  
11 Instead, the party seeking protection must make a “particularized showing of good cause  
12 with respect to [each] individual document.” *San Jose Mercury News, Inc. v. U.S. Dist.*  
13 *Court – N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999).

14 The good cause standard also applies to documents attached to non-dispositive  
15 motions because those documents are often “unrelated, or only tangentially related, to  
16 the underlying cause of action.” *Phillips*, 307 F.3d at 1213 (citation omitted).  
17 Documents attached to dispositive motions, by contrast, are governed by the compelling  
18 reasons standard. *See Pintos*, 605 F.3d at 678-79. This higher standard applies because  
19 the resolution of a dispute on the merits “is at the heart of the interest in ensuring the  
20 ‘public’s understanding of the judicial process and of significant public events.’”  
21 *Kamakana*, 447 F.3d at 1179 (citation omitted).

## 22 **II. Amended Protective Order**

23 In addition to the legal standards governing motions to seal, the Court’s Amended  
24 Protective Order (Protective Order) outlines the requisite procedure for sealing  
25 information designated as confidential by the opposing party. Specifically, the Protective  
26 Order provides, in relevant part:

27 If a Party wishes to use any CONFIDENTIAL or  
28 ATTORNEYS EYES ONLY information designated by  
another Party in any papers filed in this Action, such Party  
shall provide the designating Party reasonable notice of such

1 intention and seek to obtain a stipulation to have  
2 CONFIDENTIAL or ATTORNEYS EYES ONLY  
3 information under seal. To the extent a stipulation cannot be  
4 reached, or should the Court deny a stipulated request to file a  
5 document or information under seal, the Party seeking to file  
6 the CONFIDENTIAL or ATTORNEYS EYES ONLY  
7 information must contact the designating Party, inquire into  
8 whether the designating Party intends to file its own motion  
9 to seal the CONFIDENTIAL or ATTORNEYS EYES ONLY  
10 information, give the designating Party the opportunity to file  
11 its own motion, and refrain from filing such documents or  
12 information on the public docket until the Court has ruled on  
13 the designating Party's motion.

14 (Doc. 158 at 6-7 ¶ 12.) Notably, the Protective Order appropriately aligns the burden of  
15 moving to seal with the party who initially designated the information as confidential.

### 16 **III. Plaintiffs' Motions to Seal**

17 Plaintiffs' motions to seal are denied for two reasons. First, Plaintiffs' motions do  
18 not comply with the Protective Order's procedure for sealing documents designated as  
19 confidential by the opposing party. Plaintiffs' motion to file their summary judgment  
20 memorandum, statement of facts, and exhibits under seal (Doc. 444) is based entirely on  
21 the fact that these items contain information designated confidential by Defendant.  
22 Likewise, Plaintiffs' remaining motions seek, in part, to seal filings that rely on material  
23 designated by Defendant. (*See e.g.*, Doc. 462 ("The exhibits to the instant motion are  
24 materials that Defendant . . . designated as protected"); Docs. 470, 475 ("The motions  
25 contain materials that Defendant . . . designated as protected").) For these materials, the  
26 Protective Order requires the parties to file a stipulation to seal, or for Defendant—as the  
27 party with the interest in keeping the materials confidential—to file a motion to seal.  
28 Neither has occurred here.

29 Second, Plaintiffs' requests to seal their own confidential designations in non-  
30 dispositive motions (Docs. 462, 470, 475) are not supported by good cause. Plaintiffs  
31 argue, vaguely, that the documents should be sealed because they contain information  
32 Plaintiffs' designated as confidential pursuant to the Protective Order. Ordinarily,  
33 however, a party's designation of a document as confidential is not *per se* good cause.  
34 *See San Jose Mercury News, Inc*, 187 F.3d at 1103. Rather, the party must make a

1 specific showing of good cause. *See Beckman Indus., Inc.*, 966 F.2d at 476. Plaintiffs  
2 have not done so here. Additionally, Plaintiffs seek relief that is overbroad. Plaintiffs  
3 make blanket requests to seal a large volume of documents, without offering good cause  
4 for each document or explaining why entire documents, rather than discrete portions of  
5 them, must be sealed. Plaintiffs’ motions therefore are denied.

#### 6 **IV. Defendant’s Motions to Seal**

7 Preliminarily, Defendant’s motion to exclude expert Robert Equals and its reply in  
8 support thereof (Motion and Reply), and its request to seal exhibits 2, 3, 5, 7, and 12  
9 offered in support of its Opposition to Plaintiff’s Motion to exclude expert testimony  
10 (Opposition Motion) are denied because they fail to comply with the Protective Order’s  
11 procedure for sealing information designated as confidential by the opposing party.  
12 (Docs. 460, 472, 467 at 2-3 ¶¶ 2, 4, 5.) In these motions, Defendant notes that Plaintiffs  
13 designated the deposition of Equals as confidential. Defendant also notes that its Motion  
14 and Reply make frequent reference to, and directly quote from, Equal’s deposition. For  
15 these reasons, Defendant argues, the Motion and Reply should be filed under seal to  
16 protect Plaintiffs’ confidentiality interests. If such is the case, however, then Plaintiffs  
17 are the proper parties to move to seal these documents.

18 Defendant’s motions also fail to demonstrate either compelling reasons or good  
19 cause for sealing the requested documents. The Court addresses the motions in turn.

#### 20 **A. Motion for Summary Judgment and Accompanying Documents (Doc. 439)**

21 Defendant seeks to seal its Motion for summary judgment, memorandum of points  
22 and authorities, statement of facts, and select exhibits and declarations offered in support.  
23 Because these documents are attached to a dispositive motion, the compelling reasons  
24 standard applies.

25 Defendant’s argument is twofold. First, Defendant asserts that the documents  
26 “contain sensitive investigatory activity.” (¶ 4.) Second, Defendant broadly contends  
27 that the documents contain information regarding its “financial and internal operations,  
28 including pricing strategy and personnel matters, that is non-public in nature and which,

1 if disclosed, could be used by competitors or other third parties.” (Doc. 439 at 2-3 ¶¶ 3,  
2 5.) Defendant’s first reason is conclusory, vague, and fails to provide useful information  
3 for the Court to issue an order to seal. *See Kamakana*, 447 F.3d at 1182 (noting that  
4 “conclusory offerings do not rise to the level of ‘compelling reasons’ sufficiently specific  
5 to bar the public access to the documents”).

6 Although Defendant’s second reason is not conclusory and there is some  
7 plausibility to its concerns, the Court has doubts as to the concreteness of the harm  
8 Defendant claims would result from public disclosure of the documents at issue. *Id.*  
9 (noting that, to find a compelling reason for sealing a document, a court must “articulate  
10 a factual basis for its, ruling without relying on hypothesis or conjecture”). In close cases  
11 involving some degree of conjecture, courts may still grant a motion to seal provided that  
12 sealing the document will not interfere with the public’s interest in understanding the  
13 judicial process. *See e.g., Aviva USA Corp. v. Vazirani*, 902 F. Supp. 2d 1246, 1273-74  
14 (D. Ariz. 2012) (finding that sealing document did not interfere with understanding of the  
15 judicial process because the dispositive motion did not address information found in that  
16 document). Here, however, Defendant’s request also is ailed by its overbreadth. In total,  
17 this request seeks to seal nearly 1,000 pages of documents. Yet, Defendant fails to isolate  
18 the discrete portions that could be used by its competitors to its disadvantage. Without  
19 clarity and specificity as to which portions of these documents need to be sealed to  
20 protect Defendant’s business interests, the Court is unable to decide whether sealing will  
21 interfere with the public’s interest in understanding the judicial process.

22 **B. Motion and Reply, and Accompanying Documents (Docs. 460, 472)**

23 As discussed, Defendant’s motions seeking to seal its Motion and Reply are  
24 denied to the extent they violate the Protective Order. These motions also request that  
25 select exhibits be sealed, including Equals’ original report, his rebuttal report, and select  
26 passages from his deposition, because they rely on material Defendant designated as  
27 confidential. Because these exhibits are attached to non-dispositive motions, the good  
28 cause standard applies.

1 In support, Defendant argues its own business confidentiality constitutes good  
2 cause. Specifically, Defendant argues that good cause exists because Equals’ reports  
3 “incorporate[] information from [Defendant’s] confidential materials that could be useful  
4 to [its] competitors or otherwise adverse to its competitive standing.” (Doc. 460.) The  
5 confidential material referenced by Defendant includes “pricing, commission payments,  
6 and employment duration of [Defendant’s] helicopter salespersons.” (*Id.*)

7 As discussed, although the Court finds this explanation is specific and somewhat  
8 plausible, the Court also finds that Defendant’s concerns are somewhat conjectural.  
9 Moreover, Defendant’s requests are fatally overbroad. *See San Jose Mercury News*, 187  
10 F.3d 1096 at 1103. For example, in arguing that Equals’ original report should be sealed,  
11 Defendant offers that “Schedule 4 from [Equals’ report] contains ‘Calculations from  
12 Confidential Bates[-numbered]’ documents and lists commission information from  
13 certain [of Defendant’s] helicopter models.” (*Id.*) The Court has reviewed the lodged  
14 exhibit and notes that commission rates appear in only a few lines of the 25-page  
15 document. Even if the Court were to agree that good cause exists as to those few lines,  
16 the entire document need not be sealed.

17 Similarly, Defendant requests all 194 pages of Equals’ rebuttal report be sealed  
18 because it contains Defendant’s valuable business information. (Doc. 460 at 3 ¶ 4.) But  
19 the document largely consists of publicly available information, like U.S. Labor Bureau  
20 statistics and statutory provisions. Because Defendant’s motions involve some  
21 conjecture and seek relief that is overbroad, the Court is unable to determine whether  
22 sealing discrete portions would interfere with the public’s ability to understand the  
23 judicial process.

### 24 **C. Opposition Motion and Accompanying Documents (Doc. 467)**

25 Finally, Defendant seeks to file under seal its Opposition Motion and select  
26 exhibits in support. Above, the Court denied Defendant’s request as to exhibits 2, 3, 5, 7,  
27 and 12. Therefore, only the Opposition Motion and exhibit 1 are discussed here.  
28 Because these documents are attached to non-dispositive motions, the good cause

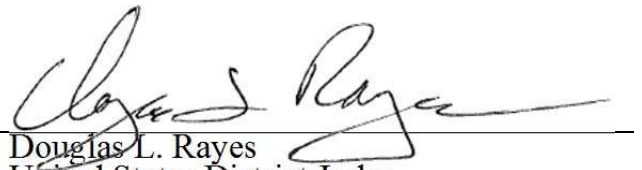
1 standard applies.

2 Exhibit 1 is the Report of Defendant’s expert, Karen Engstrom. Defendant notes  
3 that Engstrom’s opinion includes “names and personnel information of third parties” and  
4 “sales, salary, and commission information” that “could be useful to [Defendant’s]  
5 competitors.” (Doc. 467 at 2, 3 ¶¶ 3, 4.) Defendant argues, vaguely, that the personnel  
6 information should be sealed because of third party privacy interests. This conclusory  
7 statement lacks specificity and fails to provide information necessary for the Court to  
8 justify sealing the document.

9 Next, Defendant argues that publication of its confidential business information  
10 “could be useful” to its competitors. (*Id.* at 3 ¶ 4.) Defendant’s argument fails for the  
11 same reasons discussed above—namely that the combination of a degree of conjecture  
12 and an overbroad request renders the Court unable to determine whether sealing the  
13 document impedes the public’s ability to understand this proceeding. To the extent that  
14 Defendant’s Opposition Motion “contains direct quotations” from the above documents,  
15 the Court denies for the same reasons. Accordingly,

16 **IT IS ORDERED** that the parties’ motions to seal (Docs. 439, 444, 460, 462, 467,  
17 470, 472, 475) are **DENIED**. The parties may renew their requests in a manner that  
18 complies with the Protective Order if they believe that justification for sealing certain  
19 materials exists. The parties are advised, however, that motions to seal need to offer  
20 good cause, or in the case of dispositive motions, compelling reasons, for each document  
21 sought to be filed under seal. If the proffered reasons pertain only to a discrete portion of  
22 a document, then the party’s request should be proportionally limited.

23 Dated this 14th day of November, 2017.

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26   
27 Douglas L. Rayes  
28 United States District Judge