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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 **H.W.J. DESIGNS FOR AGRIBUSINESS,**
9 **INC. AND SAMUEL STRAPPING**
10 **SYSTEMS, INC.,**

11 **Plaintiffs**

12 **v.**

13 **RETHCEIF ENTERPRISES, LLC A/K/A**
14 **RETHCEIF PACKAGING, AND L.P.**
15 **BROWN COMPANY, INC. D/B/A**
16 **INTERNATIONAL FIBER**
17 **PACKAGING,**

18 **Defendants**

CASE NO. 1:17-CV-0272 AWI SKO

ORDER RE: REQUEST TO FILE
DOCUMENTS UNDER SEAL

(Doc. 143)

19 Defendants have made a request to file certain documents that support a motion to dismiss
20 under seal. Doc. 143. All documents filed with the court are presumptively public. San Jose
21 Mercury News, Inc. v. U.S. Dist. Court, 187 F.3d 1096, 1103 (9th Cir. 1999). This is because “the
22 courts of this country recognize a general right to inspect and copy public records and documents,
23 including judicial records and documents.” Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d
24 1092, 1096 (9th Cir. 2016), citations omitted. Accordingly, a party seeking to seal a judicial
25 record bears the burden of overcoming the strong public access presumption. Id.

26 Two standards generally govern requests to seal documents: “compelling reasons” and
27 “good cause.”

28 [J]udicial records attached to dispositive motions [are treated] differently from
records attached to non-dispositive motions. Those who seek to maintain the
secrecy of documents attached to dispositive motions must meet the high threshold
of showing that “compelling reasons” support secrecy. A “good cause” showing
under Rule 26(c) will suffice to keep sealed records attached to non-dispositive
motions.

1 Kamakana v. City & Cty. of Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006), citations omitted.

2 Defendants assert that the request to seal should be governed by the “good cause” standard of
3 Federal Rule of Civil Procedure 26(c). However, the documents are being filed in support of a
4 motion to dismiss. A request to seal records in relation to a motion to dismiss under Federal Rule
5 of Civil Procedure 12(b)(1) or 12(b)(6) is evaluated under the “compelling reasons” standard. See
6 Schneider v. Sutter Amador Hosp., 621 F. App'x 480, 481 (9th Cir. 2015).

7 In this case, the parties proposed, and Magistrate Judge Sheila Oberto signed, a stipulated
8 protective order. Doc. 59. In briefing, the main thrust of Defendants’ argument is that the
9 materials are “marked ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY’ under the
10 protective order.” The relevant parts of the protective order states:

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
12 generated, stored or maintained) or tangible things that qualify for protection under
13 Federal Rule of Civil Procedure 26(c), such as confidential personal information,
14 medical or psychiatric information, trade secrets, personnel records, or such other
15 sensitive commercial information that is not publicly available.

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17 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
18 Items: extremely sensitive “Confidential Information or Items,” disclosure of which
19 to another Party or Non-Party would create a substantial risk of serious harm that
20 could not be avoided by less restrictive means, such as current or future business or
21 technical trade secrets and plans more sensitive or strategic than information
22 designated CONFIDENTIAL as defined in Section 2.2, the disclosure of which is
23 likely to significantly harm that party’s competitive position, or the disclosure of
24 which would contravene an obligation of confidentiality to a third party or to a
25 court.

26 Doc. 59, 1:21-24 and 2:12-18. The designations of “confidential” and “highly confidential”
27 appear to be explicitly tied to the “good cause” standard rather than the “compelling reasons”
28 standard. Additionally, reference to a general protective order alone is insufficient to meet even
the “good cause” standard in a request to seal. See Foltz v. State Farm Mut. Auto. Ins. Co., 331
F.3d 1122, 1133 (9th Cir. 2003) (“a party seeking the protection of the court via a blanket
protective order typically does not make the ‘good cause’ showing required by Rule 26(c) with
respect to any particular document”).

The request to file under seal is DENIED without prejudice. The submitted documents are
not to be filed in the docket. Any renewed request to file under seal should be more explicit in

1 how each document meets the “compelling reasons” standard and satisfy the requirements of
2 Local Rule 141.

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4 IT IS SO ORDERED.

5 Dated: October 11, 2019


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SENIOR DISTRICT JUDGE