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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

E. & J. GALLO WINERY, doing business
as SAN JOAQUIN VALLEY
CONCENTRATES; G3 ENTERPRISES,
INC., doing business as DELAWARE G3
ENTERPRISES, INC.; and MCD
TECHNOLOGIES, INC.,

Plaintiffs,

v.

INSTITUUT VOOR LANDBOUW-
ENVISSERIJONDERZOEK;
EIGENVERMOGEN VH INSTITUUT
VOORLANDBOUW-
ENVISSERIJONDERZOEK;
FLANDERS' FOOD; and DOES 1-10,

Defendants.

No. 1:17-cv-00808-DAD-EPG

ORDER REQUIRING FURTHER BRIEFING
REGARDING DEFENDANTS' REQUEST TO
SEAL

(Doc. No. 102)

On July 23, 2018, defendants moved to dismiss the first amended complaint. (Doc. No. 104.) In conjunction with that motion, defendants filed a notice of a request to seal documents pursuant to Local Rule 141. (Doc. No. 102.) Having considered defendants' submissions, the court finds that it requires further briefing prior to ruling on the request.

LEGAL STANDARD

All documents filed with the court are presumptively public. *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) ("It is well-established that the fruits

1 of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.”¹
2 “Historically, courts have recognized a ‘general right to inspect and copy public records and
3 documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*,
4 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
5 597 & n.7 (1978)).

6 Two standards generally govern requests to seal documents. *Pintos v. Pac. Creditors*
7 *Ass’n*, 605 F.3d 665, 677 (9th Cir. 2010).

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

13 *Kamakana*, 447 F.3d at 1180 (citations omitted). The reason for the two different standards is
14 that “[n]ondispositive motions are often unrelated, or only tangentially related, to the underlying
15 cause of action, and, as a result, the public’s interest in accessing dispositive materials does not
16 apply with equal force to non-dispositive materials.” *Pintos*, 605 F.3d at 678 (quotations
17 omitted).

18 Under the “compelling reasons” standard applicable to dispositive motions such as
19 defendant’s motion to dismiss:

20 [T]he court must conscientiously balance the competing interests of
21 the public and the party who seeks to keep certain judicial records
22 secret. After considering these interests, if the court decides to seal
23 certain judicial records, it must base its decision on
24 a compelling reason and articulate the factual basis for its ruling,
without relying on hypothesis or conjecture.

25 ////

26 ¹ Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, a court “may order that a filing
27 be made under seal without redaction.” However, even if a court permits such a filing, it may
28 “later unseal the filing or order the person who made the filing to file a redacted version for the
public record.” Fed. R. Civ. P. 5.2(d).

1 *Id.* at 1178–79 (internal quotation marks, omissions, and citations omitted). The party seeking to
2 seal a judicial record bears the burden of meeting the “compelling reasons” standard. *Id.* at 1178;
3 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

4 While the terms “dispositive” and “non-dispositive” motions are often used in this
5 context, the Ninth Circuit has clarified that the “compelling reasons” standard applies whenever
6 the motion at issue “is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety*
7 *v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). In some instances, the proposed
8 filing of documents under seal in connection with motions for preliminary injunction, for
9 sanctions, or in limine—though such motions are not dispositive—may be governed by the
10 “compelling reasons” test, predicated on the right of access and the need to “provide the public
11 with a more complete understanding of the judicial system and a better perception of its fairness.”
12 *Id.* at 1097–1101 (quoting *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d
13 Cir. 1993)). In keeping with this principle, requests to seal documents relating to motions for a
14 preliminary injunction have been found by the Ninth Circuit to “more than tangentially relate[] to
15 the merits” because success on the motion for a preliminary injunction would have resolved a
16 portion of the claims in the underlying complaint. *Ctr. for Auto Safety*, 809 F.3d at 1102.

17 “In general, ‘compelling reasons’ sufficient to ... justify sealing court records exist when
18 such ‘court files might ... become a vehicle for improper purposes,’ such as the use of records to
19 gratify private spite, promote public scandal, circulate libelous statements, or release trade
20 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). “The mere fact that the
21 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to
22 further litigation will not, without more, compel the court to seal its records.” *Id.* The
23 ‘compelling reasons’ standard is invoked even if the dispositive motion, or its attachments, were
24 previously filed under seal or protective order.” *Id.* at 1178–79.

25 DISCUSSION

26 This request to seal is governed by the “compelling reasons” standard, because a motion
27 to dismiss is undoubtedly a dispositive motion. *See In re Phenylpropanolamine (PPA) Prods.*
28 *Liab. Litig.*, 460 F.3d 1217, 1231 (9th Cir. 2006). Having examined all the information before it,

1 the court is presently unable to conclude that compelling reasons exist which would warrant the
2 redactions proposed by defendants. Certainly, protecting trade secrets and other confidential
3 business information can be a compelling reason to seal certain materials. *See Kamakana*, 447
4 F.3d at 1179. However, it is not obvious to the undersigned that the redacted passages of
5 defendant's motion to dismiss are confidential. Defendants themselves take no position on this
6 issue, and plaintiffs have filed no memoranda in support of the request, leaving the court with
7 only limited guidance. (*See* Doc. No. 102 at 2) (“[D]efendants have filed the Request to Seal at
8 the request of plaintiffs . . . who believe that grounds exist upon which the Court may properly
9 grant the Request to Seal Documents.”).

10 Accordingly, because the court is uncertain whether the proposed redactions are necessary
11 to protect plaintiffs' alleged trade secrets/confidential business information, the court will require
12 briefing from plaintiffs addressing this issue. As to each proposed redaction contained within
13 defendants' motion to dismiss, as well as Exhibit B attached thereto, plaintiffs are directed to
14 explain how the redacted material constitutes a trade secret, or else to state other compelling
15 reasons why the material should be shielded from public disclosure. Alternatively, plaintiffs may
16 conclude that they have no objection to publication of the materials at issue, in which case they
17 should so notify the court. Plaintiffs' briefing should not exceed ten pages in length, and may be
18 submitted *in camera* if necessary. Upon receipt of plaintiffs' filing, the court will issue an order
19 addressing defendants' request to seal.

20 IT IS SO ORDERED.

21 Dated: July 25, 2018

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24 UNITED STATES DISTRICT JUDGE
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