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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- EN
VISSERIJONDERZOEK; EIGEN
VERMOGEN VH INSTITUUT
VOORLANDBOUW- EN
VISSERIJONDERZOEK; FLANDERS'
FOOD; and DOES 1-10,

Defendants.

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

ORDER DENYING DEFENDANTS'
REQUEST TO SEAL AND STRIKING
DEFENDANTS' MOTION TO DISMISS

(Doc. Nos. 102, 104)

On July 23, 2018, defendants moved to dismiss the First Amended Complaint. (Doc. No. 104.) That same day, defendants filed a notice of a request to seal, requesting that portions of its motion to dismiss, as well as all of Exhibit B attached thereto, be filed under seal. (Doc. No. 102.) Defendants explained that they filed this notice at the request of plaintiffs, but did not themselves offer any basis upon which to seal the materials. (*Id.* at 2.) Consequently, the court directed plaintiffs to provide briefing as to whether compelling reasons exist that would support the request to seal. (Doc. No. 105.) On July 31, 2018, plaintiffs filed a response to the court's

1 order. (Doc. No. 106.) Having reviewed plaintiff’s submission, the court will deny the request to
2 seal.

3 LEGAL STANDARD

4 All documents filed with the court are presumptively public. *San Jose Mercury News,*
5 *Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) (“It is well-established that the fruits
6 of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.”).¹
7 “Historically, courts have recognized a ‘general right to inspect and copy public records and
8 documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*,
9 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
10 597 & n.7 (1978)).

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

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

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

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

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26 _____
27 ¹ Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, a court “may order that a filing
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 [T]he court must conscientiously balance the competing interests of
2 the public and the party who seeks to keep certain judicial records
3 secret. After considering these interests, if the court decides to seal
4 certain judicial records, it must base its decision on a compelling
5 reason and articulate the factual basis for its ruling, without relying
6 on hypothesis or conjecture.

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

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

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

1 **DISCUSSION**

2 As stated in the court’s prior order, this request to seal is governed by the “compelling
3 reasons” standard, because a motion to dismiss is undoubtedly a dispositive motion. *See In re*
4 *Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1231 (9th Cir. 2006). Having
5 examined plaintiffs’ memorandum submitted in response to the court’s order, the undersigned
6 concludes that plaintiffs have failed to come forward with “compelling reasons” that would
7 justify the filing of Exhibit B under seal. Plaintiffs are required to demonstrate compelling
8 reasons as to each redaction they seek. Here, by contrast, plaintiffs simply characterize the Asset
9 Purchase Agreement (the “Agreement”) as generally containing “confidential business
10 information” without attempting to delineate which portions of the Agreement might fall into that
11 category. (Doc. No. 106 at 4.) “Simply mentioning a general category of privilege, without any
12 further elaboration or any specific linkage with the documents, does not satisfy the burden.”
13 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006); *accord*
14 *Melendres v. County of Maricopa*, No. CV-07-02513-PHX-GMS, 2014 WL 12768903, at *6 (D.
15 Ariz. Nov. 20, 2014) (rejecting defendants’ request to seal because “they have not provided
16 similarly specific explanations to justify the redactions”). The undersigned is not yet persuaded
17 that compelling reasons exist to shield the entire Agreement from public view. The mere
18 existence of the Agreement is not itself a trade secret—plaintiffs themselves acknowledged its
19 existence in their First Amended Complaint. (Doc. No. 98 at ¶ 30.) To the extent discrete parts
20 of the Agreement do contain trade secrets, confidential business information, or other information
21 that would justify the request to seal, Local Rule 140 provides a mechanism by which plaintiffs
22 may seek appropriate redactions in the version appearing on the public docket. *See Mack v.*
23 *Dearborn Nat’l Life Ins.*, No. 2:14-cv-1665-KJM-DAD, 2014 WL 12572866, at *2 (E.D. Cal.
24 Aug. 26, 2014) (denying plaintiff’s request to seal because plaintiff “fails to explain why some or
25 all of the exhibits should not be redacted in accordance with Local Rule 140 rather than sealed”).

26 Plaintiffs’ conclusory assertion that disclosure of any portion of the Asset Purchase
27 Agreement “could lead to unfair harm to Plaintiffs’ business and customers” (Doc. No. 106-1 at
28 3) is likewise inadequate. *See Hodges v. Apple Inc.*, No. 13-cv-01128-WHO, 2013 WL 6070408,

1 at *2 (N.D. Cal. Nov. 18, 2013) (“An unsupported assertion of unfair advantage to competitors
2 without explaining how a competitor would use the information to obtain an unfair advantage is
3 insufficient.”); *Dunbar v. Google, Inc.*, No. 12–cv–003305–LHK, 2012 WL 6202719, at *7 (N.D.
4 Cal. Dec. 12, 2012) (denying defendants’ request to seal because “Google fails to explain how
5 disclosure of the information in Exhibit A would provide competitors with an ‘unfair advantage
6 in designing their own systems’”). If plaintiffs contend that public disclosure of the contents of
7 the Agreement will cause them harm, they are required to provide a factual basis for that
8 assertion.

9 Because plaintiffs have failed to come forward with compelling reasons that would justify
10 the requested sealing, defendants’ request to seal (Doc. No. 102) is denied. The currently
11 scheduled hearing on defendants’ motion to dismiss is hereby vacated to be rescheduled when
12 this issue of redaction is resolved. Within fourteen days from the date of service of this order,
13 plaintiffs are directed to submit to the court a proposed redacted version of the Asset Purchase
14 Agreement. As to each redaction sought, plaintiffs are required to explain the legal and factual
15 basis for the proposed redaction in keeping with the legal standards set forth above. Plaintiffs
16 submission must also conform to this court’s Local Rules. Following receipt of plaintiffs’
17 submission, the court will issue a ruling on the propriety of each proposed redaction, after which
18 defendants will be permitted to file an amended motion to dismiss with redactions in accordance
19 with the court’s order. If plaintiffs fail to timely respond to this order, defendants are authorized
20 to refile their motion to dismiss, and all attachments thereto, in unredacted form on the court’s
21 docket.²

22 IT IS SO ORDERED.

23 Dated: August 6, 2018

24 
UNITED STATES DISTRICT JUDGE

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26 _____
27 ² In addition, if the resulting delay from the determination of the proper scope of redactions in the
28 publicly filed documents, necessitates a modification to the court’s scheduling order (Doc. No.
82), defendant’s counsel may raise any such concern at the eventual hearing on the motion to
dismiss.