

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 who seek to maintain the secrecy of documents attached to
10 dispositive motions must meet the high threshold of showing that
11 “compelling reasons” support secrecy. A “good cause” showing
12 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]on-dispositive 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 plaintiff’s motion for preliminary injunction which is at issue here:

20 [T]he court must conscientiously balance the competing interests
21 of the public and the party who seeks to keep certain judicial
22 records secret. After considering these interests, if the court
23 decides to seal 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 *Id.* at 1178–79 (internal quotation marks, omissions, and citations omitted). The party seeking to

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 seal a judicial record bears the burden of meeting the “compelling reasons” standard. *Id.* at 1178;
2 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

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

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

24 **DISCUSSION**

25 As fully discussed in this court’s prior order granting plaintiff’s request to seal documents
26 (Doc. No. 8), this request to seal will be evaluated under the “compelling reason” standard
27 because the motion for the TRO and/or preliminary injunction is dispositive in the sense that it is
28 “more than tangentially related to the merits of a case.” *Center for Auto Safety, LLC*, 809 F.3d at

1 1102. Plaintiff's reliance on the "good cause" standard (Pl.'s Second Req. to Seal Doc.) is
2 rejected, and the parties are directed that in any future sealing requests submitted in connection
3 with the anticipated motion for a preliminary injunction they shall make a showing of compelling
4 reason, rather than simply good cause, as to why the request for sealing should be granted.

5 Nonetheless, the court concludes that plaintiff's pending request to seal should be
6 granted.² GEA seeks to file a redacted version of the second declaration of Anthony Avila, which
7 is an exhibit to plaintiff's reply in support of its motion for TRO and/or preliminary injunction.
8 The document reveals the identity and specific equipment needs of three GEA customers, who
9 were allegedly solicited by defendant. Without redaction, disclosing these documents could
10 result in the loss of trade secrets for plaintiff, which is the exact outcome that plaintiff seeks to
11 prevent by filing this action. Therefore, the court concludes that a compelling reason exists to
12 seal the document as requested by plaintiff.

13 CONCLUSION

14 For the reasons set forth above, the court grants plaintiff's motion (Doc. No. 22) to seal.
15 The redacted version of the second declaration of Anthony Avila submitted with plaintiff's reply
16 in support of its motion for a temporary restraining order will remain on the court's docket.

17 IT IS SO ORDERED.

18 Dated: June 13, 2018

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21 UNITED STATES DISTRICT JUDGE

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25 ² The court also notes that in requesting to seal, plaintiff did not comply with Local Rule 141.
26 Without first obtaining leave from the court, plaintiff filed a redacted version of the document on
27 the public docket. (Doc. No. 19-3.) Plaintiff is reminded that "[d]ocuments may be sealed only
28 by written order of the Court, upon the showing required by applicable law." L.R. 141(a). All
parties are reminded that "all Requests [to seal], proposed orders, and submitted documents shall
be served on all parties on or before the day they are submitted to the Court." L.R. 141(b).
Failure to adhere to the local rules may result in the request to seal being stricken.