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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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STARBUCKS CORPORATION, a
corporation,

Plaintiff,

v.

AMCOR PACKAGING DISTRIBUTION,
a corporation; AMCOR
PACKAGING (USA), INC., a
corporation; and PALLETS
UNLIMITED, LLC, a limited
liability company,

Defendants,

v.

OZBURN-HESSEY LOGISTICS, a
corporation,

Third-Party Defendant.

Civ. No. 2:13-1754 WBS CKD

ORDER RE: REQUESTS TO SEAL
DOCUMENTS

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Plaintiff Starbucks Corporation ("Starbucks") brought
this action against defendants Amcor Packaging Distribution,
Amcor Packaging (USA), Inc., and Pallets Unlimited, LLC ("Pallets

1 Unlimited") after discovering mold on its unroasted green coffee
2 that was stored and shipped on wooden pallets provided by
3 defendants. (Docket No. 1.) Starbucks alleges that defendants
4 supplied it with defective pallets that caused the mold. (Id.)
5 Pallets Unlimited filed a third-party complaint against Ozburn-
6 Hessey Logistics ("OHL"), the owner and operator of a warehouse
7 located in Sparks, Nevada ("Sparks facility") where Starbucks'
8 unroasted green coffee and the wooden pallets were stored before
9 they were shipped to Starbucks' roasting plants. (First Am.
10 Third-Party Compl. ¶¶ 7-10 (Docket No. 46).)

11 On March 8, 2016, OHL moved for summary judgment on
12 Pallets Unlimited's sole claim for equitable indemnity. (Docket
13 No. 104.) In support of the motion, OHL included a redacted
14 version of the written contract between OHL and Starbucks
15 detailing OHL's duties regarding the storage of Starbucks' coffee
16 at its warehouses (the "Agreement"). (Johnson Decl. ¶¶ 4-6, Exs.
17 A-C ("Ag.") (Docket Nos. 107-1 to 107-4).)

18 The Agreement is comprised of the Master Warehouse-
19 Logistics Agreement, Nashville Distribution Center supplement
20 regarding OHL's facility in Nashville, Tennessee ("Nashville
21 Supplement"), Sparks Green Bean Warehouse supplement regarding
22 OHL's Sparks facility in Sparks, Nevada ("Sparks Supplement"),
23 and an amendment to the Sparks Supplement where OHL agrees to
24 store certain Starbucks finished goods at its Sparks facility in
25 addition to green coffee. To date, no protective order has
26 issued in this case concerning the Agreement.

27 A party seeking to seal a judicial record bears the
28 burden of overcoming a strong presumption in favor of public

1 access. Kamakana v. City & County of Honolulu, 447 F.3d 1172,
2 1178 (9th Cir. 2006). The party must “articulate compelling
3 reasons supported by specific factual findings that outweigh the
4 general history of access and the public policies favoring
5 disclosure, such as the public interest in understanding the
6 judicial process.” Id. at 1178-79 (citation omitted).

7 “[T]he strong presumption of access to judicial records
8 applies fully to dispositive pleadings, including motions for
9 summary judgment and related attachments . . . because the
10 resolution of a dispute on the merits, whether by trial or
11 summary judgment, is at the heart of the interest in ensuring the
12 ‘public’s understanding of the judicial process and of
13 significant public events.’” Id. at 1179 (citation omitted). In
14 ruling on a motion to seal, notwithstanding the other party’s
15 failure to object, the court must balance the competing interests
16 of the public and the party seeking to keep the records secret.
17 Id.

18 I. OHL’s Request to Seal or Redact the Agreement

19 OHL states it filed the redacted version of the
20 Agreement at Starbucks’ request because the document contains
21 sensitive business information that is subject to a
22 confidentiality agreement between OHL and Starbucks. (Docket No.
23 108 at 2; Shipley Decl. ¶ 4 (Docket No. 109).) There is no
24 explanation why the confidentiality agreement contained in the
25 Sparks Supplement has been fully redacted, but an exactly
26 identical confidentiality agreement in the Nashville Supplement
27 has been filed unredacted. (Compare Ag. Ex. A at OHL0028, with
28 id. Ex. B at OHL0045.) Both confidentiality agreements also

1 contain provisions titled "EXCEPTIONS TO CONFIDENTIAL
2 INFORMATION," which provide that information is not confidential
3 if it must be disclosed "pursuant to judicial order or other
4 compulsion of law." (E.g., id. Ex. A at OHL0028.)

5 This court has previously pointed out that a private
6 confidentiality agreement does not per se constitute a compelling
7 reason to seal or redact a record that outweighs the interests of
8 public disclosure and access. (E.g., Oct. 8, 2014 Order at 2
9 (Docket No. 33)); Sept. 3, 2015 Order at 3, Foster Poultry Farms,
10 Inc. v. Certain Underwriters at Lloyd's, London, Civ. No. 1:14-
11 953; Sept. 18, 2015 Order at 2, Rosales v. City of Chico, Civ.
12 No. 2:14-2152. OHL does not specifically identify the provisions
13 it asserts constitute sensitive business information or explain
14 why that information is sensitive and should be sealed or
15 redacted from the public record. Absent any guidance, the court
16 cannot find a compelling reason to seal the document.

17 II. Starbucks' Request to Seal or Redact the Agreement

18 Starbucks had filed a request to seal or redact the
19 Agreement in connection with OHL's motion to dismiss Pallet
20 Unlimited's original third-party complaint. (Docket No. 42; see
21 Docket Nos. 29-31, 33.) Starbucks argued that the Agreement
22 contained "trade secret and proprietary information" and attached
23 a redacted version it claimed "eliminate[d] the sensitive and
24 confidential information of concern." (Ferrell Decl. ¶ 5 (Docket
25 No. 42-1); Kirsch Decl. Ex. A (Docket Nos. 42-2 to 42-4).) The
26 court, however, declined to consider the Agreement altogether for
27 purposes of OHL's motion to dismiss. (See Nov. 5, 2014 Order at
28 7 (Docket No. 44).)

1 Starbucks' previously-filed version of the Agreement
2 had redacted the entirety of the Sparks Supplement based upon
3 Starbucks' assertions it contained trade secrets and sensitive
4 information that, if disclosed, presented a security risk and
5 commercial disadvantage to Starbucks. (See Kirsch Decl. Ex. A;
6 Ferrell Decl. ¶¶ 3-4.) But Starbucks approved the version filed
7 here in support of OHL's motion for summary judgment as having
8 "been redacted of such assertedly confidential or proprietary
9 information"; yet this version discloses the majority of the
10 Sparks Supplement. (Shipley Decl. ¶ 4; see Ag. Ex. B.) This
11 inconsistency suggests that Starbucks' assertions about the
12 sensitive nature of the information contained in the Agreement
13 were not entirely accurate.

14 Starbucks argued that disclosing intake procedures and
15 security services at its storage facilities "present[ed] very
16 real security risks for Starbucks facilities and products."
17 (Ferrell Decl. ¶ 3.) Yet the version Starbucks approved here
18 describes its intake procedures at length, (Ag. Ex. B at OHL0053-
19 57), and details the physical requirements of the storage
20 facility and surrounding grounds, (e.g., id. at OHL0049 (facility
21 floors must be "sealed concrete, minimum 6" thick" and exterior
22 doors "fitted with tight seals")). Starbucks also discloses the
23 security services OHL provided, (e.g., id. at OHL0054 ("assist
24 fully with cargo security investigations involving theft,
25 contraband, contamination, mismatched/missing seals")), and
26 provides the types of security credentials required at OHL's
27 facilities, (e.g., id. Ex. A § 3.4 (granting "Starbucks 24-hour
28 access, via a security password, to its computerized inventory

1 and distribution software system")). Starbucks had additionally
2 contended that the "mere disclosure of the location of such large
3 amounts of Starbucks green coffee presents a commercial risk to
4 Starbucks which cannot be quantified." (Ferrell Decl. ¶ 3.) The
5 version approved here, however, discloses the address of the
6 Sparks facility. (Ag. Ex. B at OHL0042.)

7 Starbucks also argued that information such as
8 temperature specifications and product handling requirements were
9 trade secrets because they took "years of experience to develop
10 and many hours to negotiate." (Ferrell Decl. ¶ 4.) It strains
11 reason to believe this information constitutes sensitive business
12 information given that the version Starbucks approved for public
13 view reveals its temperature specifications, (Ag. Ex. B at
14 OHL0050 ("storage temperature of 45-85 degrees Fahrenheit and a
15 relative humidity of 50-55%")), and describes its product
16 handling requirements in full detail, (e.g., id. at OHL0055-61
17 (requiring OHL to palletize bags of coffee on pre-weighed pallet
18 boards, weigh the full pallets, and receive into inventory; sew
19 torn bags of coffee on the spot using a large needle and twine;
20 record product item numbers, devanning dates, bag counts, lot
21 codes, and weights on all pallet tags; set aside stained bags of
22 coffee into a reconditioning area containing three clean burlap
23 sacks, "two dustpans, a utility knife, a sack sewing needle,
24 twine, and a tare scale"; cut stained bags in crisscross manner,
25 peel back, and use dustpans to isolate "moldy or adulterated
26 coffee from the good coffee by creating a barrier between the
27 two"; remove adulterated coffee and the outer layer of good
28 coffee, place good coffee into clean bags, and send samples from

1 bags to Starbucks; rotate all products first-in-first-out).)

2 Accordingly, because the above facts demonstrate that
3 Starbucks' assertions regarding the sensitive nature of the
4 information in the Agreement are not entirely accurate, the court
5 will deny Starbucks' request to seal or redact the Agreement.

6 III. Relevance of the Agreement to Motion for Summary Judgment

7 Once a matter is brought to the court for resolution,
8 it is a public matter. M.P. ex rel. Provins v. Lowe's Cos., Civ.
9 No. 2:11-1985 GEB CKD, 2012 WL 1574801, at *2 (E.D. Cal. May 3,
10 2012). OHL asserts that the redactions in the version it filed
11 "do not include any of the contractual terms cited or relied upon
12 in OHL's motion [for summary judgment]" and "have no apparent
13 bearing on the merits [of] OHL's motion or this action."

14 (Shipley Decl. ¶ 5.)

15 The court disagrees. OHL argues in its motion that "no
16 provision of the [Agreement] required OHL to physically inspect
17 incoming pallets." (Mot. at 5 (Docket No. 104).) A considerable
18 amount of information bearing on that issue is redacted from the
19 Agreement. (E.g., Ag. Ex. A at OHL0030-31, Ex. B at OHL0062-
20 65.) OHL also contends in its motion that its employees ensured
21 "coffee samples were shipped to Starbucks in a timely manner."

22 (Mot. at 14.) The provisions governing OHL's green coffee
23 sampling and outbound shipping procedures are also redacted here.

24 (E.g., Ag. Ex. A at OHL0030-31, Ex. B at OHL0058-60.) OHL

25 further argues that it "minimized the likelihood of a problem
26 arising with any of the Starbucks property stored in its
27 facility" by following standard operating procedures. (Mot. at
28 14.) Yet substantial portions of those standard operating

1 procedures are redacted from the Agreement. (E.g., Ag. Ex. A at
2 OHL0030-33, Ex. B at OHL0047-65.)

3 OHL's motion for summary judgment also puts into issue
4 Pallets Unlimited's contentions that OHL's failure to comply with
5 operating procedures and meet Starbucks' minimum performance
6 standards constitute evidence of OHL's breach of its duty to act
7 as a reasonable warehouse services provider. (Mot. at 12 n.6;
8 e.g., App. of Evid. in Supp. of OHL's Mot. ("App. Evid.") Ex. L
9 at 7 (indicating that OHL failed several Starbucks' compliance
10 sections) (Docket No. 107-14).) The methods by which Starbucks
11 measured OHL's performance and determined whether it met minimum
12 acceptable levels are also redacted. (E.g., Ag. Ex. A at
13 OHL0034-39, Ex. B at OHL0066-69.) Pallets Unlimited further
14 contends that Starbucks ultimately canceled the Agreement with
15 OHL because OHL had stored improper products near the green
16 coffee. (Mot. Ex. R at 7 (Docket No. 107-20).) An entire
17 section of the Sparks Supplement amendment regarding OHL's
18 storage of Starbucks' finished goods has been redacted. (Ag. Ex.
19 C at OHL0004.)

20 Furthermore, the court has previously indicated that
21 the Agreement is relevant to Pallets Unlimited's equitable
22 indemnity claim. (E.g., Tr. Hr'g at 5:15-17, Nov. 3, 2014
23 (Docket No. 45) ("[W]e don't know that [OHL's duty of care]
24 arises from the contract because we have to look to the contract
25 to see whether it does."), 21:5-7 ("I can't get away from the
26 fact that I think the contract has some relevant provisions that
27 would bear upon my decision on this motion."). It thus appears
28 that Starbucks, in bringing this action, and OHL, in bringing its

1 pending motion for summary judgment, have waived any privilege
2 that may have existed in the Agreement. Accordingly, the court
3 will deny their requests to seal or redact the Agreement.

4 IT IS THEREFORE ORDERED that plaintiff Starbucks
5 Corporation's and cross-defendant Ozburn-Hessey Logistics'
6 requests to seal or redact the Agreement, (Docket Nos. 42, 108),
7 be, and the same hereby, are DENIED.

8 IT IS FURTHER ORDERED that Exhibits A through C
9 submitted in support of Ozburn-Hessey Logistics' motion for
10 summary judgment, (Docket Nos. 107-2 to 107-4), and all other
11 written materials in this action shall not be filed under seal.

12 IT IS SO ORDERED.

13 Dated: March 18, 2016



14 **WILLIAM B. SHUBB**
15 **UNITED STATES DISTRICT JUDGE**
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