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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MITCH DAVENPORT, as an individual  
12 and on behalf of all others similarly  
situated,

13 Plaintiff,

14 v.

15 THE WENDY'S COMPANY, a foreign  
16 corporation, WENDY'S RESTAURANTS  
17 LLC, a foreign limited liability company,  
18 WENDY'S INTERNATIONAL, INC. (dba  
THE WENDY'S RESTAURANT  
SYSTEMS IN THE UNITED STATES), a  
foreign corporation,

19 Defendants.  
20

No. 2:14-cv-0931 JAM DAD

ORDER

21 On July 31, 2015, this matter came before the undersigned for hearing of defendants'  
22 unopposed request to seal and motion confirming confidential status of documents.<sup>1</sup> Attorney  
23 Charles Jones appeared telephonically on behalf of the plaintiff and attorneys Ashley Farrell and  
24 Mark Kemple appeared telephonically on behalf of the defendants.

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27 <sup>1</sup> In an August 7, 2015 email to the court, the defendants narrowed the number of documents  
28 sought to be sealed pursuant to the parties' agreement. In this regard, defendants are now seeking  
to file under seal only the documents identified in item 1 and item 3 of defendants' notice of  
request to seal filed on May 29, 2015. (Dkt. No. 48.) This order concerns only those two items.

1           There is a presumption in favor of public access to court records. See Phillips v. Gen.  
2 Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002). “[A]ccess to judicial records is not absolute.”  
3 Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). The Ninth Circuit  
4 has distinguished between the public’s interest in accessing court records filed in connection with  
5 nondispositive and dispositive motions. See In re Midland Nat’l Life Ins. Co., 686 F.3d 1115  
6 (9th Cir. 2012); Kamakana, 447 F.3d at 1172; Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d  
7 1122 (9th Cir. 2003); Phillips, 307 F.3d 1206. To seal documents filed in connection with a  
8 dispositive motion, parties must show there are “compelling reasons” for doing so. Kamakana,  
9 447 F.3d at 1180, 1182 (“[T]he proponent of sealing bears the burden with respect to sealing.”).  
10 To demonstrate compelling reasons justifying sealing of such documents, a party is “required to  
11 present articulable facts identifying the interests favoring continued secrecy and to show that  
12 these specific interests [overcome] the presumption of access by outweighing the public interest  
13 in understanding the judicial process.” Id. at 1181 (internal citations, quotation marks, and  
14 emphasis omitted). “When sealing documents attached to a dispositive pleading, a district court  
15 must base its decision on a compelling reason and articulate the factual basis for its ruling,  
16 without relying on hypothesis or conjecture.” Id. at 1182 (internal citation, quotation marks, and  
17 emphasis omitted). See also Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 679 (9th Cir. 2010),  
18 cert. denied Sub nom. Experian Info. Solutions, Inc. v. Pintos, 562 U.S. 1134 (2011) (vacating  
19 and remanding district court’s denial of a sealing request where the court applied merely a good  
20 cause standard in addressing documents filed in connection with summary judgment motions).  
21 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and  
22 justify sealing court records exist when such ‘court files might become a vehicle for improper  
23 purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate  
24 libelous statements, or release trade secrets.” Kamakana, 447 F.3d at 1179 (quoting Nixon v.  
25 Warner Communs., Inc., 435 U.S. 589, 589 (1978)). “The ‘compelling reasons’ standard is  
26 invoked even if the dispositive motion, or its attachments, were previously filed under seal or  
27 protective order.” Id.

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1           On the other hand, parties seeking to file documents under seal in connection with a  
2 nondispositive motion must show only “good cause” for the requested sealing. Kamakana, 447  
3 F.3d at 1180; In re Midland, 686 F.3d at 1119 (“[A] particularized showing of ‘good cause’ under  
4 Federal Rule of Civil Procedure 26(c) is sufficient to preserve the secrecy of sealed discovery  
5 documents attached to non-dispositive motions.” (citing Foltz, 331 F.3d at 1138)). The  
6 presumption of public access is rebutted by a showing of good cause because “of the weaker  
7 public interest in nondispositive materials,” Pintos, 605 F.3d at 678, and “[a]pplying a strong  
8 presumption of access to documents a court has already decided should be shielded from the  
9 public [by issuing a protective order] would surely undermine, and possibly eviscerate, the broad  
10 power of the district court to fashion protective orders.” Phillips, 307 F.3d at 1213 (addressing an  
11 intervenor’s request to access confidential settlement information produced during discovery  
12 under a protective order). See also Foltz, 331 F.3d at 1135; Pintos, 605 F.3d at 678 (discussing  
13 the parties’ interest in keeping discovery documents under seal in light of the public’s lesser  
14 interest in nondispositive motions); Kamakana, 447 F.3d at 1180. “For good cause to exist, the  
15 party seeking protection bears the burden of showing specific prejudice or harm will result . . . .  
16 If a court finds particularized harm will result from disclosure of information to the public, then it  
17 balances the public and private interests to decide whether a protective order is necessary.”  
18 Phillips, 307 F.3d at 1210-11 (citations omitted).

19           Here, the undersigned finds that even under the compelling reason standard the documents  
20 sought to be sealed contain the type of trade secrets that courts have typically and appropriately  
21 allowed to be filed under seal and that the release of these documents could cause defendants  
22 competitive harm. See Nixon, 435 U.S. at 598 (“courts have refused to permit their files to serve  
23 as . . . sources of business information that might harm a litigant’s competitive standing); Apple  
24 Inc. v. Samsung Electronics Co., Ltd., 727 F.3d 1214, 1221 (Fed. Cir. 2013) (“One factor that  
25 weighs in favor of sealing documents is when the release of the documents will cause competitive  
26 harm to a business.”); In re Electronic Arts, Inc., 298 Fed. Appx. 568, 569 (9th Cir. 2008) (“A  
27 trade secret may consist of any formula, pattern, device or compilation of information which is

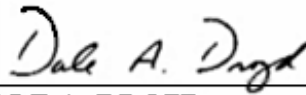
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1 used in one's business, and which gives him an opportunity to obtain an advantage over  
2 competitors who do not know or use it.”).<sup>2</sup>

3 Accordingly, upon consideration of the arguments on file and at the hearing, and for the  
4 reasons set forth on the record at the hearing, IT IS HEREBY ORDERED that:

- 5 1. Defendants' request to seal (Dkt. No. 48), as modified, is granted<sup>3</sup>;
- 6 2. Defendants shall contact the Clerk of the Court to submit the documents to be  
7 filed under seal; and
- 8 3. Defendants' motion for an order confirming confidential status (Dkt. No. 49) is  
9 granted.

10 Dated: August 17, 2015

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12 DALE A. DROZD  
13 UNITED STATES MAGISTRATE JUDGE

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26 <sup>2</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule  
36-3(b).

27 <sup>3</sup> As explained at the July 31, 2015 hearing on the motion, this order is without prejudice to any  
28 ruling by the assigned District Judge.