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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ADVANCED STEEL RECOVERY, LLC,

Plaintiff,

v.

X-BODY EQUIPMENT, INC., et al.,

Defendants.

No. 2:16-cv-00148-KJM-EFB

ORDER

Defendants X-Body Equipment, Inc. and Jewell Attachments, LLC (collectively, “defendants”) renew their request for an order sealing exhibits one, two and four to the declaration of Greg Bushong filed in connection with defendants’ motion to dismiss with prejudice or, in the alternative, for summary judgment, and for sanctions. Renewed Req. Seal, ECF No. 57-1. Defendants’ request is unopposed. As explained below, the court GRANTS defendants’ request to seal.

I. BACKGROUND

A. First Request to Seal

On September 9, 2016, defendants requested the court issue an order sealing exhibits one, two and four to the declaration of Greg Bushong. ECF No. 53-1 at 2. In support of their request, defendants provided little more than conclusory statements, contending the exhibits

1 were invoices that contained pricing, product, and customer information, all of which was highly  
2 confidential. *Id.*

3 The court denied defendants' request to seal without prejudice. ECF No. 55 at 1.  
4 In denying defendants' request, the court concluded defendants did not meet the high threshold  
5 showing of "compelling reasons" to support the requested secrecy. *Id.* at 3. In particular,  
6 defendants' request did not clarify "what information on the invoices [was] confidential, why it  
7 might harm defendants for that information to become public, or why defendants' interests could  
8 not be protected instead by redaction." *Id.* In the end, the court admonished the defendants,  
9 warning if they again filed another unsupported request to seal, they would be required to show  
10 cause why they should not be subject to monetary sanctions. *Id.*

11 B. Renewed Request to Seal

12 On September 20, 2016, defendants filed their renewed request to seal. Renewed  
13 Req. Seal at 2. In this request, defendants ask the court approve redaction of the "confidential  
14 pricing and cost information" contained in exhibits one, two and four and seal the unredacted  
15 versions of the exhibits. *Id.* Before making their request, however, defendants filed redacted  
16 versions of exhibits one, two and four on the docket. *See* ECF Nos. 56-1, 56-2, 56-4.

17 II. LEGAL STANDARD

18 "[T]he courts of this country recognize a general right to inspect and copy public  
19 records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns*,  
20 435 U.S. 589, 597 (1978). While "the right to inspect and copy judicial records is not absolute,"  
21 access in civil cases is properly denied for clearly justifiable reasons: to protect against  
22 "gratif[ication of] private spite or promot[ion of] public scandal" or to preclude court dockets  
23 from becoming "reservoirs of libelous statements" or "sources of business information that might  
24 harm a litigant's competitive standing." *Id.* at 598 (citations omitted). As the Ninth Circuit  
25 instructs, a "strong presumption in favor of access" to the record governs in a court of law unless  
26 the case or a part of it qualifies for one of the relatively few exceptions "traditionally kept secret,"  
27 with secrecy allowed for good reasons. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,  
28 1135 (9th Cir. 2003). "Those who seek to maintain the secrecy of documents attached to

1 dispositive motions must meet the high threshold of showing that ‘compelling reasons’ support  
2 secrecy.” *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing  
3 *Foltz*, 331 F.3d at 1136). The compelling-reasons standard applies even if contents of the  
4 dispositive motion or its attachments have previously been filed under seal or are covered by a  
5 generalized protective order, including a discovery phase protective order. *See Foltz*, 331 F.3d  
6 at 1136.

### 7 III. DISCUSSION

8 Here, the court finds defendants have met the “compelling reasons” standard. As  
9 recounted above, “the right to inspect and copy judicial records is not absolute,” and access in  
10 civil cases may be properly denied for clearly justifiable reasons, including the need to protect  
11 against revealing “sources of business information that might harm a litigant’s competitive  
12 standing.” *Nixon*, 435 U.S. at 598. Here, defendants have now articulated why the pricing  
13 information in exhibits one, two and four qualifies as confidential; they contend such  
14 information is not generally disseminated to the public, and they have taken steps to protect the  
15 information as trade secret; if competitors knew the specifics of defendants’ pricing, they could  
16 use the information to undercut defendants’ pricing and make sales at defendants’ expense.  
17 Renewed Req. Seal at 3. The court finds these reasons compelling. This court’s conclusion  
18 aligns with the Ninth Circuit’s unpublished but persuasive decision in *In re Elec. Arts, Inc.*, 298  
19 F. App’x 568, 570 (9th Cir. 2008). In that case, the court found compelling reasons to grant the  
20 petitioner company’s motion to seal pricing terms; it concluded if the information was released,  
21 the company “would be irreparably damaged in a way not correctable on appeal.” *Id.*<sup>1</sup> Moreover,  
22 defendants’ position that the pricing information itself is not material to the motion pending  
23 before the court appears sound, offsetting the need for this particular information to be made  
24 public.

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25 <sup>1</sup> The Ninth Circuit’s holding is not binding on this court. *See* Ninth Circuit Rule 36–3;  
26 *Johnson v. Nevada ex rel. Bd. of Prison Comm’rs*, No. 11–00487, 2013 WL 5428423, at \*7  
27 (D. Nev. Sept. 26, 2013) (under Ninth Circuit Rule 36–3, unpublished Ninth Circuit opinions  
28 have “only persuasive rather than authoritative or precedential value”); *see also Gray v. Astrue*,  
No. 11–294, 2012 WL 4097762, at \*9 (D. Idaho Sept. 17, 2012) (same).


1                   Accordingly, defendants’ request to seal the unredacted versions of exhibits one,  
2 two and four is GRANTED. The court notes that defendants filed redacted versions of the  
3 exhibits on the docket without first requesting court authorization, in violation of Local Rule  
4 140(b). *See* E.D. Cal. L.R. 140(b) (“No other redactions are permitted unless the Court has  
5 authorized the redaction.”). Because the court concludes compelling reasons exist to redact the  
6 exhibits, the court will not strike redacted exhibits one, two and four from the docket. Instead, the  
7 court admonishes defendants to comply with the Local Rules in the future or risk sanctions.

8 **IV. CONCLUSION**

9                   For the foregoing reasons, defendants’ motion to seal unredacted versions of  
10 exhibits one, two and four to the declaration of Greg Bushong, filed in connection with  
11 defendants’ motion to dismiss with prejudice or, in the alternative, for summary judgment, and  
12 for sanctions, is GRANTED.

13                   IT IS SO ORDERED.

14                   DATED: October 31, 2016.

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18 UNITED STATES DISTRICT JUDGE  
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