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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE BETTER MEAT CO.,
Plaintiff,

v.

EMERGY, Inc. d/b/a MEATI FOODS, PAUL
VRONSKY, AND BOND CAPITAL
MANAGEMENT LP,
Defendants.

Case No. 2:21-cv-02338-KJM-CKD
ORDER

Defendant Emergy asks the court to seal various documents related to its anti-SLAPP motion. As explained below, Emergy does not present its request clearly or otherwise meet the high standard necessary for this court to grant sealing, and as such, the court **denies the motion, with leave to amend if possible.**

I. BACKGROUND

This motion stems from plaintiff Better Meat’s case against defendants Emergy, Paul Vronsky and Bond Capital. This court has summarized the history behind this action in a previous order and incorporates that summary by reference here. *See* Prior Order (May 25, 2022), ECF No. 66.

1 In response to Better Meat’s lawsuit, Emery filed an anti-SLAPP motion seeking to
2 strike Better Meat’s state-law claims, arguing Emery’s communications are protected by
3 California’s litigation privilege as a matter of law. *See* Mot. Strike, ECF No. 31. Better Meat
4 requested discovery to oppose Emery’s anti-SLAPP motion, *see generally* Anti-SLAPP Disc.
5 Appl., ECF No. 47, which this court granted in a limited capacity, Prior Order. The assigned
6 magistrate judge oversaw the discovery and denied Better Meat’s motion to compel further
7 depositions and documents from Emery. ECF No. 80.

8 Both Emery and Better Meat filed documents with this court relating to the anti-SLAPP
9 motion and discovery motion practice, which this court struck as defective because they
10 contained unauthorized redactions and “sharefile links.” *See* Order to Strike, ECF No. 105.
11 Emery then filed a notice of request to seal, Notice Req. to Seal, ECF No. 110, and submitted its
12 consolidated request to seal 13 documents in camera, which Emery lists in a table of confidential
13 materials.¹ These documents are listed here:

- 14
- 15 • Highlighted portions of Better Meat’s supplemental brief in opposition to
- 16 Emery’s motion to strike, Doc. 71²;
- 17 • Highlighted portions of the declaration in support of Better Meat’s supplemental
- 18 brief in opposition to Emery’s motion to strike, Doc. 71-1;
- 19 • Highlighted portions of the deposition transcript of Emery CEO Dr. Tyler
- 20 Huggins, Doc. 71-2, Ex. 1 (Huggins Dep.);
- 21 • Emery’s first supplemental objections and responses to Better Meat’s
- 22 interrogatories, set one, in full, Doc. 71-3, Ex. 2;
- 23 • Board minutes and Emery employee internal communications in full, Doc. 71-5,
- 24 Ex. 4; Doc. 71-7, Ex. 6; Doc. 71-8, Ex. 7; Doc. 71-9, Ex. 8; Doc. 71-10, Ex. 9;
- 25 • Emery’s first supplemental privilege log for anti-SLAPP discovery in full, Doc.
- 26 71-11, Ex. 10;

¹ Emery’s renewed request to seal and the corresponding materials are not publicly available on the court’s docket, but it has sent the documents to the court for review as provided by Local Rule 141(b).

² The document numbers listed here are the identifying numbers Emery uses in its pending request. These numbers correspond to the original ECF numbers associated with the documents appearing on the court’s docket before the court struck the filings as defective. *See* Order to Strike.

- 1 • Highlighted portions of Emergy’s supplemental reply in support of its motion to
2 strike, Doc. 75;
- 3 • Emergy’s second supplemental objections and responses to Better Meat’s
4 interrogatories, set one, in full, Doc. 75-2, Ex. 53;
- 5 • Highlighted portions of Better Meat’s objections to order denying Better Meat’s
6 motion to compel, Doc. 84.

7 Req. to Seal Mot. (Mot.). Better Meat did not file an opposition.

8 **II. LEGAL STANDARD**

9 “[T]he courts of this country recognize a general right to inspect and copy public records
10 and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns*,
11 435 U.S. 589, 597 (1978) (footnotes omitted). Although that right is not absolute, “‘a strong
12 presumption in favor of access’ is the starting point.” *Kamakana v. City of Honolulu*, 447 F.3d
13 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135
14 (9th Cir. 2003)). Courts grant requests to seal records in civil cases in only limited circumstances,
15 such as to protect against “‘gratif[ication of] private spite or promot[ion of] public scandal’” or to
16 preclude court dockets from being “reservoirs of libelous statements” or “sources of business
17 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598 (citation
18 omitted).

19 The Ninth Circuit has distinguished the public's interest in accessing court records filed in
20 connection with nondispositive and dispositive motions. *See Phillips v. Gen. Motors Corp.*,
21 307 F.3d 1206, 1213 (9th Cir.2002); *Kamakana*, 447 F.3d at 1172. To seal documents filed in
22 connection with a dispositive motion, such as motions to strike under California’s anti-SLAPP
23 statute, parties must show there are “compelling reasons” for doing so. *Kamakana*, 447 F.3d at
24 1180, 1182 (“[T]he proponent of sealing bears the burden with respect to sealing.”); *Liberal v.*
25 *Estrada*, 632 F.3d 1064, 1087 (9th Cir. 2011) (Tashima, concurring) (anti-SLAPP motions to
26 strike are dispositive). To demonstrate compelling reasons, a party is “required to present
27 ‘articulable facts’ identifying the interests favoring continued secrecy and to show that these
28 specific interests overc[ome] the presumption of access by outweighing the public interest in
29 understanding the judicial process.” *Kamakana*, 447 F.3d at 1181 (internal citations, quotation

1 marks, and emphasis omitted). “When sealing documents attached to a dispositive pleading, a
2 district court must ‘base its decision on a compelling reason and articulate the factual basis for its
3 ruling, without relying on hypothesis or conjecture.’” *Id.* at 1182 (internal emphasis omitted)
4 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). “In general, ‘compelling
5 reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records
6 exist when such ‘court files might become a vehicle for improper purposes,’ such as the use of
7 records to gratify private spite, promote public scandal, circulate libelous statements, or release
8 trade secrets.” *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 589). “The ‘compelling reasons’ standard
9 is invoked even if the dispositive motion, or its attachments, were previously filed under seal or
10 protective order.” *Id.*

11 The Eastern District of California has adopted rules to clarify procedures for parties’
12 compliance with the law reviewed above. Local Rule 141 provides documents may be sealed
13 only by written order of the court after a particularized request to seal has been made. E.D. Cal.
14 L.R. 141(a). A mere request to seal is not enough to effect sealing under the local rules. Local
15 Rule 141(b) expressly requires “[t]he ‘Request to Seal Documents’ shall set forth the statutory or
16 other authority for sealing, the requested duration, the identity, by name or category, of persons to
17 be permitted access to the documents, and all relevant information.” Redaction may be sufficient
18 to protect “proprietary or trade secret information” with court approval. E.D. Cal. L.R. 140(b).
19 The court’s own Standing Order emphasizes the requirement that parties comply with the law and
20 the rules in making any sealing request, which they should do rarely if at all.

21 **III. ANALYSIS**

22 As noted, Energy asks the court to seal, in whole or in part, 13 documents related to
23 Energy’s anti-SLAPP motion against Better Meat. Notice Req. to Seal at 2–3. Because this is a
24 dispositive motion, the court applies the compelling reasons standard in making its determination.
25 *Kamakana*, 447 F.3d at 1180, 1182. Energy argues it has met the “compelling reasons” standard
26 for sealing because each of the documents it wishes to seal falls into the following three
27 categories: (1) “research, development, and technical information about Energy’s innovations”;
28 (2) “information relating to Energy’s investors and corporate structure”; and (3) “information

1 relating to Energy’s strategy and decision making” processes. Mot. at 4. However, Energy has
2 not articulated which documents fall into each category. Broadly, Energy argues public filing of
3 these documents would cause Energy competitive harm. *See generally id.* As described below,
4 Energy does not meet the high standard necessary to seal any of these documents or portions
5 thereof because it does not identify the correct portions of the documents to be sealed and
6 provides only generalized reasons for sealing each document.

7 **A. Research, Development, and Technical Information**

8 Energy asks the court to seal disclosures “describing the research that led to Energy’s
9 discoveries,” “innovative processes,” and specific ingredients used in its products. *Id.* at 5.
10 Energy claims public disclosure of this information would allow competitors to “develop their
11 own products and processes without having to expend time and resources,” thereby hurting
12 Energy’s competitive standing. *Id.*

13 A trial court may seal “a trade secret or other confidential research, development, or
14 commercial information.” Fed. R. Civ. P. 26(c)(1)(G). Other courts within the Ninth Circuit
15 have sealed truly confidential “product development plans,” which if published could be used by
16 “competitors seeking to replicate” products “and circumvent the time and resources necessary in
17 developing their own practices and strategies.” *Algarin v. Maybelline, LLC*, No. 12-3000, 2014
18 WL 690410, at *3 (S.D. Cal. Feb. 21, 2014).

19 While Energy’s request to seal research information might ultimately be reasonable,
20 Energy has not provided the court sufficiently clear information to grant its request. In its
21 general table of confidential materials, Energy specifies it wishes to seal the “highlighted
22 portions” of Dr. Huggins’ 370-page deposition transcript but does not appear to consistently
23 identify which are the highlighted portions. Mot. at 2. Energy itself clarifies its sealing request
24 generally is tied to the highlighted sections of documents, and so the court focuses on these
25 sections only, including in the Huggins deposition transcript, in considering Energy’s request.
26 *Id.* at 2 n.3. But the court notes that in pointing to the competitive harm it would suffer if its
27 research information were disclosed, Energy identifies 36 deposition pincites it says relate to
28 information on research and processes. *Id.* at 5. However, none of the 36 pincites is highlighted

1 in the transcript Emery has provided and thus are not covered by the request to seal as Emery
2 frames it.³ *See generally* Huggins Dep. Because Emery does not specify with clarity the
3 portions of documents it says contain confidential research, the court **denies this request, with**
4 **leave to amend if possible.** *See* E.D. Cal. L.R. 141(b).

5 **B. Investor and Corporate Structure Information**

6 Emery asks the court to seal “[m]aterials related to [i]nvestors and [c]orporate
7 [s]tructure.” Mot. at 6. Emery states disclosure of this information, including minutes from
8 confidential meetings of the Board of Directors, could “harm Emery’s ability to negotiate with
9 future, potential members of its board” and would hurt investor relationships, present and future.
10 Mot. at 6–7.

11 This request is deficient in two ways. First, here again, Emery is not consistent in
12 identifying the confidential information for which it seeks sealing. Emery identifies 28
13 deposition pincites it claims contain confidential investor information. Mot. at 6–7. However,
14 only 7 of the 28 pincites are highlighted on the corresponding deposition transcript. *See generally*
15 Huggins Dep. Emery does not explain why the highlighted information covered by its sealing
16 request rises to the level of qualifying for sealing. Mot. at 6–7. For example, in support of its
17 request, Emery identifies highlighted pincite 114:3–11 in Dr. Huggins’ deposition, where
18 Dr. Huggins discloses the name of an investor who provided him information on Better Meat’s
19 financing. In contrast, Emery also identifies pincite 116:7–9 in Dr. Huggins’ deposition, which
20 is not highlighted in the transcript provided; in the latter passage, Dr. Huggins discloses the name
21 of another investor who he says also gave Emery information on Better Meat. Mot. at 6;
22 Huggins Dep. Emery does not provide meaningful detail explaining how disclosure of the
23 information in the first passage would harm Emery’s business and investor relationships but
24 disclosure of the second passage would not. On this record, Emery has not shown compelling
25 reasons for the court to seal any investor or corporate material contained in the deposition
26 transcripts.

³ Throughout this order, the court uses the same pagination scheme as does Emery, referring to deposition transcript pincites by the page numbers of the deposition transcript itself.

1 Second, Emery relies merely on “hypothesis or conjecture” in its arguments for sealing
2 other investor and corporate information. *See Kamakana*, 447 F.3d at 1182. For instance,
3 Emery asks the court to seal Exhibits 2, 4 and 53 because they “contain confidential information
4 about Emery’s Board of Directors and minutes from a confidential meeting” and “if made
5 public, this information could harm Emery’s ability to negotiate with future, potential members
6 of its board.” Mot. at 6. Emery does not follow this conclusory statement with any specific
7 details explaining why it would be hurt by disclosure of this information. *See Stemmelin v.*
8 *Matterport, Inc.*, No. 20-04168, 2022 WL 1422567, at *1 (N.D. Cal. May 5, 2022) (denying
9 motion to seal board minutes because movant “failed to explain how [] general statements would
10 harm its competitive standing” and did not “clarify how disclosure” could harm the company).
11 Conclusory and boilerplate statements alone cannot meet the compelling standard necessary to
12 overcome the public’s interest in disclosure and justify sealing these documents.

13 **C. Strategy and Decision Making Information**

14 Emery requests to seal materials related to “[i]nternal [c]ommunications, [s]trategy, and
15 [d]ecision making.” Mot. at 7. As above, Emery is inconsistent in identifying with specificity
16 the information in this category it wishes to seal and has not provided compelling reasons to seal
17 anything in any event.

18 For example, Emery identifies 50 deposition pincites, which it claims contain
19 confidential decision-making information, but at least 40 of these cites are not highlighted in the
20 deposition transcript, and so the court understands it is only the remaining 10 excerpts covered by
21 this motion. Mot. at 8; *see generally* Huggins Dep. Emery’s inconsistencies in identifying
22 information it says qualifies for sealing undermines its request.

23 Additionally, Emery has not provided compelling reasons to seal other information on
24 decision and strategy. Courts in this circuit have granted requests to seal limited amounts of
25 business information when movants specifically explain how disclosure of that information would
26 hurt the movant. Documents can qualify for sealing if they contain “highly sensitive and
27 confidential information” including information “regarding sensitive financial figures . . . which,
28 when combined with other available information can be used to extrapolate information about . . .

1 capabilities and operation of [a party's] systems" or "provide[] a misleading picture of [the
2 party's] capabilities, which could damage [its] reputation." *See AdTrader, Inc. v. Google LLC*,
3 No. 1707082, 2020 WL 6387381, at *2 (N.D. Cal. Feb. 24, 2020).

4 Here, Emery cites to highlighted portions of documents 71, 71-1, 75 and 84, explaining
5 this information contains "confidential business communications and decisions," including "who
6 was present at [] meetings" and "what individual members thought about certain decisions" in
7 addition to "company strategy and marketing strategy." Mot. at 8. However, Emery does not
8 explain why public disclosure of this material would hurt its business except to say very generally
9 that disclosure would give "competitors insight into how decisions are made within Emery" and
10 other "competitors would stand to benefit" from information on investors and board meetings. *Id.*
11 at 8–9.

12 While Emery might "be a big target in this field," the court cannot seal documents based
13 solely on the possibility competitors might gain an advantage, without Emery's providing
14 information regarding how competitors could use each piece of information to harm Emery. *Id.*
15 at 9. Because Emery does not provide sufficient detail to support this request, the court denies
16 its motion in this respect, without prejudice to renewal if possible.

17 As detailed above, Emery's inconsistency in identifying sealing requests and lack of
18 specificity in describing compelling reasons preclude the court's granting its sealing request. It is
19 not the court's job to laboriously examine lengthy documents and pinpoint appropriate sections
20 for sealing. Nor is it the court's job to connect the dots and provide compelling reasons to
21 support insufficiently briefed requests to seal. *See Mimms v. CVS Pharmacy, Inc.*, No. 15-970,
22 2016 WL 11547243, at *3 (S.D. Ind. July 14, 2016) ("[I]t is not the Court's job to parse line-by-
23 line a transcript of that length to determine what is and what is not subject to seal."). Emery
24 itself must make clear, if it wishes, precisely which materials satisfy the compelling standard
25 needed to seal, and why.

26 The court **denies without prejudice** Emery's motion to seal.

1 **IV. CONCLUSION**

2 The court **denies** Emergy's request to seal. If Emergy continues to seek sealing or
3 redaction, it must do so again within fourteen days of the filed date of this order. Any further
4 requests to seal must include (1) clear identification of the name of the documents covered by the
5 request to seal; (2) the specific portion(s) of any document sought to be filed under seal,
6 preferably identified by pincites and highlighting both for maximum clarity; and (3) specific
7 reasons for seeking sealing of the material, along with citations to the relevant declarations and
8 supporting legal authority. As explained in this order, the reasons provided must be specific and
9 tailored to each portion(s) of the document sought to be sealed. Emergy also should address
10 whether redaction is sufficient, and if so explain what portions it believes should be redacted and
11 why.

12 If Emergy chooses not to renew its request to seal and wishes to rely on the documents
13 covered by its sealing request, those documents must be filed on the public docket.

14 This order resolves ECF No. 110.

15 IT IS SO ORDERED.

16 DATED: January 18, 2023.


CHIEF UNITED STATES DISTRICT JUDGE