

United States District Court For the Northern District of California

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Although EA did not cite the decision to the district court, the Court has learned of *Pintos v. Pacific Creditors Ass'n*, 504 F.3d 792 (9th Cir. 2007). That decision seems to support a theory that the "compelling reasons" standard is applicable only after documents are "filed" with the Court (and even then, of course, only as to a dispositive proceeding). While a dispositive jury proceeding is certainly underway, the exhibit in question — TX 80 — has thus far only been lodged with the Clerk and marked, it has not been offered into evidence. Therefore, it will not become open to public view under any test until it is offered and/or admitted, which may or may not occur. In the meantime, it will remain private and not subject to public view.

This circumstance was not brought to the Court's attention by EA. The Court understood EA as trying to seal the agreement regardless of whether it was ever offered and possibly to seal other like documents already in evidence and to do so without regard to the compelling reason standard, which EA had totally omitted from its motion.

14 For the foregoing reasons, the motion to seal is probably not ripe. But if it is ripe, the 15 Court finds yet again after balancing the *Kamakana* factors, that the importance of the royalty 16 payment details have sufficient importance to the issues being decided by the jury that no 17 compelling reason has been advanced to seal it. TX 80 is at the heart of the damages period in 18 suit and plaintiffs are claiming that they were entitled to a share of the very funds paid pursuant 19 to the "Royalty Payment" section of TX 80. Nonetheless, for the reasons stated, TX 80 will not 20 be made available to the public until, at the soonest, it is offered into evidence, but if it is 21 received evidence, it will not be sealed.

IT IS SO ORDERED.

25 Dated: October 24, 2008.

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WILLIAM ALSUP UNITED STATES DISTRICT JUDGE