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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ASETEK DANMARK A/S,
Plaintiff,
v.
CMI USA, INC.,
Defendant.

Case No. 13-cv-00457-JST

**ORDER GRANTING IN PART AND
DENYING IN PART
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

Re: ECF No. 289

On July 14, 2015, Defendant CMI USA, Inc. (“CMI”) moved to file under seal portions of: (1) its Opposition to Asetek Danmark A/S’s Motion for Supplemental Damages and Prejudgment (“Opposition to Supplemental Damages”), (2) the Declaration of James Pampinella in Support of CMI’s Opposition to Supplemental Damages (“Pampinella Declaration”), and (3) Exhibit 1 to the Declaration of Carrie J. Richey in Support of CMI’s Opposition to Supplemental Damages and CMI’s Opposition to Asetek’s Motion for Permanent Injunction (“Exhibit 1 to the Richey Declaration”). CMI also moves to file under seal Exhibits B, C, D, and F to the Pampinella Declaration. Plaintiff Asetek A/S (“Asetek”) has filed a declaration in support of sealing. ECF No. 293. The Court hereby GRANTS IN PART and DENIES IN PART CMI’s administrative motion to file under seal.

I. LEGAL STANDARD

A party seeking to seal a document filed with the court must (1) comply with Civil Local Rule 79-5; and (2) rebut the “a strong presumption in favor of access” that applies to all documents other than grand jury transcripts or pre-indictment warrant materials. Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation and internal quotations omitted).

United States District Court
Northern District of California

1 With respect to the first prong, Local Rule 79-5 requires, as a threshold matter, a request
2 that (1) “establishes that the document, or portions thereof, are privileged, protectable as a trade
3 secret or otherwise entitled to protection under the law”; and (2) is “narrowly tailored to seek
4 sealing only of sealable material.” Civil L.R. 79-5(b). An administrative motion to seal must also
5 fulfill the requirements of Civil Local Rule 79-5(d). “Reference to a stipulation or protective order
6 that allows a party to designate certain documents as confidential is not sufficient to establish that
7 a document, or portions thereof, are sealable.” Civil L.R. 79-5(d)(1)(A).

8 With respect to the second prong, the showing required for overcoming the strong
9 presumption of access depends on the type of motion to which the document is attached. When a
10 party seeks to file materials in connection with a dispositive motion, the presumption can be
11 overcome only if the party presents “compelling reasons supported by specific factual findings
12 that outweigh the general history of access and the public policies favoring disclosure.”
13 Kamakana, 447 F.3d at 1178-79 (internal citation omitted). “The mere fact that the production of
14 records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will
15 not, without more, compel the court to seal its records.” Id. at 1179.

16 On the other hand, when a party seeks to file previously sealed discovery materials in
17 connection with a non-dispositive motion, the sealing party need not meet the ‘compelling
18 reasons’ standard “because those documents are often unrelated, or only tangentially related, to the
19 underlying cause of action.” Id. (citation and internal quotations omitted). In that case, a party
20 need only make a “particularized showing under the good cause standard of Rule 26(c)” to justify
21 the sealing of the materials. Id. at 1180 (internal citation and internal quotation marks omitted).
22 A court may, for good cause, keep documents confidential “to protect a party or person from
23 annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c).

24 A district court must “articulate [the] . . . reasoning or findings underlying its decision to
25 seal.” Apple Inc. v. Psystar Corp., 658 F.3d 1150, 1162 (9th Cir. 2011), cert. denied, 132 S. Ct.
26 2374 (2012).

27 **II. DISCUSSION**

28 “[C]ompelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify

1 sealing court records exist when such ‘court files might have become a vehicle for improper
2 purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate
3 libelous statements, or release trade secrets.” Kamakana, 447 F.3d at 1179 (quoting Nixon v.
4 Warner Commc’ns, Inc., 435 U.S. 589, 598 (1978). The Nixon court also noted that the
5 “common-law right of inspection has bowed before the power of a court to insure that its records”
6 are not used as “sources of business information that might harm a litigant’s competitive
7 standing.” 435 U.S. at 598.

8 The Ninth Circuit, in an unpublished opinion, has identified a trade secret in this context as
9 “any formula, pattern, device or compilation of information which is used in one’s business, and
10 which gives him an opportunity to obtain an advantage over competitors who do not know or use
11 it.” In re Elec. Arts, Inc., 298 F. App’x 568, 569 (9th Cir. 2008) (quoting Restatement of Torts §
12 757, cmt. b). In that case, applying Kamakana and Nixon, the Ninth Circuit reversed a district
13 court for refusing to seal information that qualified under this standard. In re Elec. Arts, Inc., 298
14 Fed. App’x. at 569. The Federal Circuit has similarly concluded that under Ninth Circuit law,
15 detailed product-specific financial information, customer information, and internal reports are
16 appropriately sealable under the “compelling reasons” standard where that information could be
17 used to the company’s competitive disadvantage. Apple Inc. v. Samsung Elecs. Co., 727 F.3d
18 1214, 1226, 1228 (Fed. Cir. 2013).

19 CMI seeks to seal portions of its Opposition to Supplemental Damages, portions of the
20 Pampinella Declaration, and the entirety of Exhibits B, D, and E to the Pampinella Declaration.
21 CMI contends that the documents contain CMI’s “proprietary and highly confidential financial
22 information, which if revealed to the general public, would materially damage CMI’s business and
23 competitive position in the market.” ECF No. 289 at 3. CMI states that competitors would be
24 able to take advantage of the confidential financial and supply chain information that could cause
25 CMI competitive harm. Id. Portions of its Opposition for Supplemental Damages and the
26 Pampinella Declaration contain sales figures, profit margins, and royalty rates. Exhibits B and E
27 to the Pampinella Declaration contain calculations that are derived from CMI’s confidential
28 financial information, and Exhibit D contains supply chain information. The Court finds that CMI

1 has identified a compelling reason to justify sealing those portions of its Opposition and the
2 Pampinella Declaration and to seal Exhibit B, D, and E in their entirety.

3 In support of CMI's motion to seal portions of Exhibit 1 to the Richey Declaration, both
4 CMI and Asetek note that material at page 861, line 6, has been previously sealed by this Court.
5 See ECF No. 282. Asetek previously submitted a declaration explaining that this information,
6 which details certain profit margins, is confidential business information that has not otherwise
7 been made available to the public and that, if disclosed, would cause Asetek "commercial,
8 competitive, and irreparable harm." ECF No. 239-3. This Court found that this was a compelling
9 reason to justify sealing portions of the requested documents, because exposing this figure could
10 place Asetek at a competitive disadvantage. See ECF Nos. 240, 282. Asetek also supports
11 sealing Exhibit F to the Pampinella Declaration; Exhibit F was admitted at trial as Trial Exhibit
12 210. The Court previously sealed the trial exhibit, see ECF No. 240, because it concerns sales and
13 costs related to Asetek's liquid cooling systems and disclosure of that information could place
14 Asetek at a competitive disadvantage. ECF No. 240. The Court finds that good cause has been
15 established to seal portions of Exhibit 1 to the Richey Declaration and to seal Exhibit F to the
16 Pampinella Declaration.

17 Asetek does not, as CMI initially requested, seek to file under seal Exhibit C to the
18 Pampinella Declaration. See ECF No. 293 at 2.

19 The Court has viewed the documents and redacted information and finds that the parties
20 have met their burden to show that all of requested information and documents, except for Exhibit
21 C, should be sealed. The instant motion is narrowly tailored to seal only sealable information, as
22 Local Rule 79-5 requires. Asetek's declaration in support of sealing further narrowed the
23 documents subject to sealing and redaction, thereby demonstrating that it was seeking to seal only
24 information that was truly sealable.

25 CONCLUSION

26 Because the parties have identified "compelling reasons" for sealing the proposed
27 documents and because CMI's motion is narrowly tailored to seal only sealable material, the Court
28 hereby GRANTS CMI's motion to file under seal portions of its Opposition for Supplemental

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Damages, the Declaration James Pampinella, and Exhibit 1 to Richey Declaration and to seal Exhibits B, D, and F to the Pampinella Declaration. “[T]he document[s] filed under seal will remain under seal and the public will have access only to the redacted version[s], if any, accompanying the motion.” Civil L. R. 79-5(f)(1).

Because Asetek has not filed a declaration in support of sealing Exhibit C to the Pampinella Declaration, the Court hereby DENIES CMI’s motion to the extent it seeks to seal that document. The Court will not consider those portions of the document that are unsealable unless the filing party files the document in the public record in conformance with this Order, within seven days from the date of this Order.

The hearing date and briefing schedule on the underlying motion shall remain as originally set.

IT IS SO ORDERED.

Dated: July 23, 2015



JON S. TIGAR
United States District Judge