

Intuitive Surgical, Inc. ("Intuitive") moves to file under seal portions of its Opposition to Illinois Union Insurance Company's ("Illinois Union") and Navigators Specialty Insurance Company's ("Navigators") motions for summary judgment, as well as portions of the exhibits attached to Intuitive's opposition briefs. ECF No. 144. Intuitive and Ironshore Specialty Insurance Company ("Ironshore") have filed declarations in support of sealing. ECF Nos. 144-1, 149. The Court grants the motion in part and denies the motion in part.

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. <u>Kamakana v.</u> <u>City & Cnty. of Honolulu</u>, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation and internal quotations omitted).

With respect to the first prong, Local Rule 79-5 requires, as a threshold, a request that (1) "establishes that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law"; and (2) is "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b). An administrative motion to seal must also fulfill

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the requirements of Civil Local Rule 79-5(d). "Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable." Civil L.R. 79-5(d)(1)(A).

With respect to the second prong, the showing required for overcoming the strong presumption of access depends on the type of motion to which the document is attached. "[A] 'compelling reasons' standard applies to most judicial records.¹ This standard derives from the common law right 'to inspect and copy public records and documents, including judicial records and documents." <u>Pintos v. Pac. Creditors Ass'n</u>, 605 F.3d 665, 678 (9th Cir. 2010) (quoting <u>Nixon v. Warner Comme'ns, Inc.</u>, 435 U.S. 589, 597 n.7 (1978)). To overcome this strong presumption, the party seeking to seal a judicial record must "articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." <u>Kamakana</u>, 447 F.3d at 1178–79 (internal citations omitted).

After reviewing Intuitive's motion to file under seal, the parties' declarations in support of sealing, and the redacted and unredacted versions of the underlying exhibits, the Court concludes that only certain portions of the attached exhibits are properly sealable, as outlined in the table below. Regarding the portions that the Court has concluded are properly sealable, the Court finds that Intuitive's requests are "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b). The Court also finds that Intuitive and/or Ironshore have articulated "compelling reasons" for sealing these portions. See ECF Nos. 144-1, 149.

 ¹ On the other hand, records attached to motions that are only "tangentially related to the merits of a case" are not subject to the strong presumption of access. <u>Ctr. for Auto Safety v. Chrysler Grp.</u>,
 <u>LLC</u>, 809 F.3d 1092, 1101 (9th Cir. 2016). Instead, a party need only make a showing under the good cause standard of Rule 26(c) to justify the sealing of the materials. <u>Id.</u> at 1097. A court may, for good cause, keep documents confidential "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

DOCUMENT	PORTIONS SOUGHT TO BE SEALED	<u>GRANTED/DENIED</u>
Intuitive's Opposition to Illinois Union Motion	Lines 3:14-15; 7:10; 7:14-16; 8:17-18; 8:21-22; 8:27-28; 9:1- 2; 9:3-4; 9:6-7; 9:10-16; 10:1- 4; 10:16-18; 11:6-9; 11:12-15; 11:17-24; 11:26; 12:1; 13:15- 19; 14:22-23; 14:25-28; 25:9- 14	Denied: not supported by a declaration
	Lines 7:6	Denied: not supported by a declaration
	Lines 7:7-8	Denied: not supported by a declaration
Intuitive's Opposition to	Lines 4:17-19	Granted
Navigators Motion	Lines 11:3-5	Denied: not supported by a declaration
	Line 11:26	Granted
	Lines 17:27-28	Granted
	Lines 19:18-21	Granted
Declaration of Erika E.	Lines 4:12-17	Denied: not supported by a declaration
Schmidt In Support of Intuitive's Oppositions	Lines 6:1-2	Denied: not supported by a declaration
to Illinois Union's and Navigators' Motions	Lines 15:4-7, 15:9-12; 15:14- 16; 15:18-19; 15:21-23; 15:25- 27	Denied: not supported by a declaration
("Schmidt Declaration")	Lines 17:12-14	Denied: purported reasons for sealing do not apply
	Lines 19:17-19	Denied: not supported by a declaration
	Lines 32:7-8	Denied: not supported by a declaration
Ex. 4 to Schmidt Declaration	Pages 107 and 188 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
	Entire Exhibit	Granted

1 2	I	Declaration	Page 43 of excerpts from the certified deposition transcript of Sara Hua Forum	Granted
3 4		Ex. 8 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
5	I	Ex. 11 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition transcript of Mark Cheffo	Granted
7 8	I	Ex. 12 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
9 10		Ex. 13 to Schmidt	Entire Exhibit	Granted as to pages 14–21, 47– 48; denied as to the remainder as not supported by a declaration
11 12 13			Deposition Exhibit 27 (IRONSHORE-SBP0000909; IRONSHORE-SBP0000912- 929)	Granted as to IRONSHORE- SBP0000912-929; denied as to IRONSHORE-SBP0000909 as not supported by Intuitive's declaration
14	I	Ex. 14 to Schmidt	Excerpt at ISI-IRNSHR- 136610	Granted
15 16	I	Declaration	ISI-IRNSHR-136621 – ISI- IRNSHR-136632	Granted
17 18		Ex. 15 to Schmidt Declaration	All excerpts from the certified deposition transcript of Alicia Bromfield	Granted as to page 14–21, 42–43, 47–49; denied as to all other portions as not supported by Ironshore's declaration
19 20			Pages 48-49 of excerpts from the certified deposition transcript of Alicia Bromfield	Granted
21 22			Deposition Exhibit 56 (IRONSHORE0002638 – IRONSHORE0002654)	Denied: not supported by a declaration
23 24			IRONSHORE0004860 – IRONSHORE0002871	Granted
25 26		Ex. 16 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
27			Deposition Exhibit 323 (IUIC011660 – IUIC011661)	Granted
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Ex. 17 to Schmidt Declaration	WS-NAV00106 – WS- NAV00143	Granted
Ex. 18 to Schmidt Declaration	Pages 211 – 213, and 226 – 229 of excerpts from the certified deposition transcript of Regina Roque	Granted
Ex. 19 to Schmidt Declaration	Deposition Exhibit 125 (WS— ACE00111 – WS-ACE00151)	Granted
Ex. 20 to Schmidt	Redactions throughout entire exhibit	Granted
Ex. 21 to Schmidt	Deposition Exhibit 125 (WS— ACE00111 – WS-ACE00151)	Granted
Declaration	Redactions throughout Deposition Exhibit 101 (WS- ACE00857 – WS-ACE00872)	Granted
	Redactions throughout Deposition Exhibit 126 (IUIC 000634 – IUIC 000634 – A13)	Granted
	Deposition Exhibit 127 (IUIC 000625 – IUIC 000626)	Granted
	Deposition Exhibit 129 (IUIC 001597 – IUIC 001605)	Granted
	All excerpts from the certified deposition transcript of James Silas and Laura Sunderlin	Denied: not supported by a declaration
Ex. 22 to Schmidt	Deposition Exhibit 139 (IUIC 001750 – IUIC 001757)	Granted
Declaration	Redactions throughout Deposition Exhibit 101 (WS- ACE00857 – WS-ACE00872)	Granted
Ex. 23 to Schmidt Declaration	All excerpts from the certified deposition transcript of Robert Romeo; all excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
	Deposition Exhibit 19 (IRONSHORE-SBP0001081 – IRONSHORE-SBP0001120)	Granted as to Ironshore-SBP 1084; denied as to remainder as not supported by a declaration

Ex. 24 to Schmidt	Deposition Exhibit 125 (WS— ACE00111 – WS-ACE00151)	Granted
Declaration	All excerpts from the certified	Denied: not supported by a
Ex. 26 to Schmidt	deposition transcript of Andrew Barrengos	declaration
Declaration		
Ex. 27 to Schmidt	Entire Exhibit	Granted as to the insurance application; denied as to the
Declaration		deposition transcript as not supported by a declaration
Ex. 28 to Schmidt	Deposition Exhibit Silas 349 (IUCI007878 IUIC007955)	Denied: not supported by a declaration
Declaration		
Ex. 30 to Schmidt Declaration	Page 159 of excerpts from the certified deposition transcript of Brian Gawle	Granted
	WS-NAV00106 – WS- NAV00143	Granted
Ex. 33 to Schmidt	Pages 88 and 89 of excerpts from the certified deposition	Granted
Declaration	transcript of Mark Cheffo	
Ex. 36 to Schmidt	All excerpts from the certified deposition transcript of Sara	Granted
Declaration	Roitman	
Ex. 39 to Schmidt	Page 159 of excerpts from the certified deposition transcript	Granted
Declaration	of Brian Gawle	
Ex. 41 to Schmidt	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Declaration		Daniada not comparte 11
	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
Ex. 42 to Schmidt	All excerpts from the certified deposition transcript of James	Denied: not supported by a declaration
Declaration	Silas	
Ex. 44 to Schmidt	IRONSHORE-SBP0000203	Granted
Declaration	IRONSHORE0006895	Denied: not supported by a declaration

1 2	Ex. 45 to Schmidt	Entire Exhibit	Granted as to pages 7–8, 14–18, 167–168, and 234 of the Linda McLaughlin deposition transcript;
3	Declaration		denied as to the remainder of the exhibit as not supported by a declaration
4 5 6 7		Pages 167 from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8, 14–18, 167–168, and 234 of the Linda McLaughlin deposition transcript; denied as to the remainder of the exhibit as not supported by a declaration
8 9 10 11		Pages 168, 234 from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8, 14–18, 167–168, and 234 of Linda McLaughlin deposition transcript; denied as to the remainder of the exhibit as not supported by a declaration
12 13	Ex. 46 to Schmidt Declaration	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
14 15		IRONSHORE0006895	Denied: not supported by a declaration
16 17		IRONSHORE0007150	Granted
18		All excerpts from the certified deposition transcript of Linda McLaughlin	Granted as to pages 7–8 and 14– 18
19 20		Deposition Exhibit 18 (WS- NAV00631 – WS-NAV00632)	Granted
21 22	Ex. 47 to Schmidt Declaration	All excerpts from the certified deposition transcript of Andrew Barrengos	Denied: not supported by a declaration
23 24	Ex. 48 to Schmidt	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
24 25 26	Ex. 49 to Schmidt	All excerpts from the certified deposition transcript of Laura Sunderlin	Denied: not supported by a declaration
20 27 28		Redactions throughout Deposition Exhibit 126 (IUIC 000634 – IUIC 000634 – A13)	Granted
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	Deposition Exhibit 127 (IUIC 000625 – IUIC 000626)	Granted
	Deposition Exhibit 139 (IUIC 001750 – IUIC 001757)	Granted
Ex. 51 to Schmidt Declaration	Deposition Exhibit 110 (IUIC 000666 000666 A2)	Granted
Ex. 52 to Schmidt Declaration	Entire Exhibit	Denied for failure to narrowly tailor portions sought to be seal
Ex. 55 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
Ex. 56 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
	Pages 131-132 of excerpts from the certified transcript of Tristan Gabriel	Denied: not supported by a declaration
	WS-ACE00823 – WS- ACE00844	Granted
Ex. 57 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
	WS-ACE00823 – WS- ACE00844	Granted
Ex. 59 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 60 to Schmidt Declaration	Pages 131-132 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration
	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration

Ex. 61 to Schmidt Declaration	Pages 131-132 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration
	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 62 to Schmidt Declaration	Pages 50-53 of excerpts from the certified deposition transcript of Tristan Gabriel (30(b)(6) witness)	Denied: not supported by a declaration
	Deposition Exhibit 393 (IUIC020789 IUIC020798)	Granted
Ex. 63 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	Deposition Exhibit 321 (IUIC011077 – IUIC011083)	Granted
Ex. 64 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	Deposition Exhibit 323 (IUIC011660)	Granted
Ex. 65 to Schmidt	Pages 58-61 of excerpts from the certified deposition transcript of Steven DiLiberto	Denied: not supported by a declaration
Declaration	Deposition Exhibit 350 (IUIC014675 – 14678)	Denied: not supported by a declaration
	Deposition Exhibit 324 (IUIC012349 – 12353)	Denied: not supported by a declaration
	Deposition Exhibit 356	Denied: not supported by a declaration
	(IUIC014697 – 14701)	ucciaration
	(IUIC014697 – 14701) Deposition Exhibit 357 (IUIC014702 14707)	Denied: not supported by a declaration

	Deposition Exhibit 359 (IUIC014708 – 14711)	Denied: not supported by a declaration
	All excerpts from the certified deposition transcripts of James Silas and Robert Romeo	Denied: not supported by a declaration
Ex. 66 to Schmidt	Deposition Exhibit 326 (IUIC010958 – IUIC01096)	Granted
Declaration	Deposition Exhibit 361 (IUIC014519 – IUIC014521)	Granted
Ex. 67 to Schmidt Declaration	Pages 226 – 229 of excerpts from the certified deposition transcript of Regina Roque	Granted
Ex. 69 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 70 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 71 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 72 to Schmidt Declaration	All excerpts from the certified deposition transcript of James Silas	Denied: not supported by a declaration
Ex. 74 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 75 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 76 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration
Ex. 77 to Schmidt Declaration	Page 74 of excerpts from the certified deposition transcript of Laura Sunderlin	Granted
2	Pages 20-21 of excerpts from the certified deposition transcript of Tristan Gabriel	Denied: not supported by a declaration

All excerpts from the certified deposition transcript of James SilasPage 74 of excerpts from the certified deposition transcript of Laura SunderlinAll excerpts from the certified deposition transcript of James SilasAll excerpts from the certified deposition transcript of James SilasAll excerpts from the certified deposition transcript of James SilasPage 115 and 117 of excerpts from the certified deposition transcript of Laura SunderlinEntire ExhibitAll excerpts from the certified deposition transcript of Laura Sunderlin	Denied: not supported by a declaration Granted Denied: not supported by a declaration Denied: not supported by a declaration Granted Denied: not supported by a declaration
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Page 115 and 117 of excerpts from the certified deposition transcript of Laura Sunderlin Entire Exhibit	Denied: not supported by a
All excernts from the certified	
deposition transcript of James	Denied: not supported by a declaration
Entire Exhibit	Denied: not supported by a declaration
Entire Exhibit	Denied: not supported by a declaration
Entire Exhibit	Denied: not supported by a declaration
All excerpts from the certified deposition transcript of Tristan Gabriel and James Silas	Denied: not supported by a declaration
Entire Exhibit	Denied: not supported by a declaration
Entire Exhibit	Denied for failure to narrowly tailor portions sought to be sealed
	Silas Entire Exhibit Entire Exhibit Entire Exhibit All excerpts from the certified deposition transcript of Tristan Gabriel and James Silas Entire Exhibit

Ex. 92 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 94 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 95 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 96 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 97 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 98 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	HUG014740 HUG014755	
Ex. 99 to Schmidt	IUIC014742 – IUIC014755	Denied: not supported by a declaration
Declaration		
Ex. 100 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 102 to Schmidt	Pages 138-140 of excerpts from the certified deposition	Denied: not supported by a declaration
Declaration	transcript of Tristan Gabriel	
Ex. 103 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 105 to Schmidt	IUIC014717 – IUIC014741	Denied: not supported by a declaration
Declaration		
Ex. 109 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 110 to Schmidt	Page 88 of excerpts from the certified deposition transcript	Denied: not supported by a declaration
	of Steven DiLiberto	1

Ex. 118 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 119 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 121 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 122 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 123 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration		
Ex. 124 to Schmidt	Entire Exhibit	Denied for failure to narrowly tailor portions sought to be sealed
Declaration		
Ex. 125 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	Deposition Exhibit 402 (IUIC017666)	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 126 to Schmidt Declaration	All excerpts from the certified deposition transcript of Steven DiLiberto.	Denied: not supported by a declaration
	Deposition Exhibit 402 (IUIC017666)	Denied for failure to narrowly tailor portions sought to be sealed
Ex. 141 to Schmidt Declaration	Redactions throughout entire exhibit	Granted
Ex. 142 to Schmidt	Page 5:24-6:2; 6:16-23; 9:14; 10:2-5; 10:21-24	Granted
Declaration		
Ex. 143 to Schmidt	WS-NAV00028 – WS- NAV00068	Granted
Declaration		
Ex. 144 to Schmidt	Pages 105-107 of excerpts from the certified deposition	Denied: not supported by a declaration
Declaration	transcript of Jeff Mayes	

Ex. 145 to Schmidt	Entire Exhibit	Granted
Declaration		
Ex. 146 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	All excerpts from the certified	Denied: not supported by a
Ex. 149 to Schmidt Declaration	deposition transcripts of Regina Roque and Andrew Barrengos	declaration
	Pages 74-81 of excerpts from the certified deposition transcripts of Regina Roque.	Granted
Ex. 150 to Schmidt	Page 127 of excerpts from the certified deposition transcript of Nicky Espinosa Hayes	Granted
Ex. 152 to Schmidt	Redactions throughout Deposition Exhibit 101 (WS- ACE00857 – WS-ACE00872)	Granted
2	Page 78 of excerpts from the certified deposition transcript of Robert Romeo	Denied: not supported by a declaration
Ex. 157 to Schmidt Declaration	Pages 26-33 of excerpts from the certified deposition transcript of Regina Roque	Granted
Ex. 158 to Schmidt	Entire Exhibit	Denied: not supported by a declaration
Declaration	Deposition Exhibit 153 (WS- NAV00607 – WS-NAV00608)	Granted
	Deposition Exhibit 157 (WS- ACE00331 –WS-ACE00335)	Granted
	Page 139 of excerpts from the certified deposition transcript of Andrew Barrengos	Granted
	All excerpts from the certified deposition transcript of Regina Roque	Denied for failure to narrowly tailor portions sought to be seale
Ex. 159 to Schmidt Declaration	Entire Exhibit	Granted as to pages 7–8 and 14– 18 of the Linda McLaughlin deposition transcript; denied as t the remainder of the exhibit as n supported by a declaration

	Page 101 of excerpts from the certified deposition transcript of Linda McLaughlin	Granted
Ex. 160 to Schmidt Declaration	Entire Exhibit	Denied: not supported by a declaration

Regarding the documents for which the Court has granted Intuitive's motion to seal, "the document filed under seal will remain under seal and the public will have access only to the redacted version, if any, accompanying the motion." Civil L. R. 79-5(f)(1).

With respect to many of the documents above, Intuitive sought to file the document under seal because another party designated the material as confidential. Local Rule 79-5 requires that, within four days of the filing of the administrative motion to file under seal, the designating party file a declaration establishing that the designated material is sealable. Only Ironshore filed such a declaration. ECF No. 149. With respect to those exhibits for which no supporting declaration was filed, the Court has denied Intuitive's motion noting that the exhibit was "not supported by a declaration." Should any party other than Ironshore wish to file a supporting declaration, the Court will reconsider Intuitive's motion with respect to those exhibits identified in the newly filed declaration(s). If no such declaration is filed within seven days of the filing date of this Order, Intuitive may file the documents in the public record.

The Court will not consider those portions of the documents for which the Court has denied Intuitive's motion to seal unless Intuitive files the document in the public record without the redactions the Court has rejected, in conformance with this Order, within fourteen days from the date of this Order.

IT IS SO ORDERED.

Dated: April 21, 2016

JON S

JON S. TIGAR United States District Judge

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