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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OVONIC BATTERY COMPANY, INC.,  
Plaintiff,  
v.  
SANYO ELECTRIC CO., LTD,  
Defendant.

Case No. 14-cv-01637-JD

**ORDER GRANTING PETITION TO  
APPROVE ARBITRATION AWARD  
AND GRANTING RENEWED  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Re: Dkt. No. 17

**INTRODUCTION**

On April 9, 2014, Petitioner Ovonic Battery Company, Inc. (“OBC”) filed a Petition to Confirm Arbitration Award and Enter Judgment Against Respondent Sanyo Electric Co., Ltd. Dkt No. 1. On April 11, 2014, OBC filed an Amended Petition and an Administrative Motion to File Under Seal the Amended Petition and its exhibits. Dkt. No. 8. On June 16, 2014, the Court granted in part and denied in part the Administrative Motion to Seal. Dkt. No. 16. On June 23, 2014, OBC filed a Renewed Administrative Motion to Seal. Dkt. No. 17. On July 9, 2014, SANYO filed a response to OBC’s Amended Petition. Dkt. No. 21. The Court grants OBC’s petition.

**BACKGROUND**

OBC owns patents on commercial nickel-metal hydride (“NiMH”) battery technologies, which have a number of applications ranging from portable batteries (*e.g.*, AA, AAA, etc.) to hybrid electric vehicles (“HEVs”). Dkt. No. 17, Ex. 3. OBC has licensed its patents to many producers of NiMH batteries, including SANYO. *Id.* OBC claims that SANYO manufactures and sells HEV batteries under a royalty bearing license from OBC (the “OBC-SANYO Agreement”), and that on May 16, 2012, SANYO repudiated its obligations to pay royalties under the OBC-

1 SANYO Agreement. *Id.* After the parties were unable to resolve the dispute informally, they  
2 agreed to arbitration under the OBC-SANYO Agreement. *Id.* After five days of hearings and pre-  
3 and post-hearing briefing, the arbitration panel (“Panel”) issued interim and final awards in favor  
4 of OBC. *Id.*

5 OBC petitions the Court, pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 9, to  
6 confirm the arbitration awards, enter judgment on the final award, and award attorneys’ fees  
7 associated with this filing. *Id.* The Panel’s interim award, (Exhibit C), states that:

8 [SANYO] is obligated to pay [OBC] the royalties set forth in  
9 Articles 4 and 5 of the HEVB License Agreement from November  
10 30, 2011, for the life of that Agreement. [SANYO] is specifically  
11 ordered to provide an accounting to [OBC] of the royalties due from  
November 30, 2011, to the present, plus the interest of 10% on each  
payment from the due date of each to the date that the payment is  
made, and is ordered to make those payments.

12 Dkt No. 17, Ex. 3 at 58. The Panel’s final award, (Exhibit B), incorporates the provisions of the  
13 interim award and also requires SANYO to pay sums of \$1,598,049.03 for fees, costs, expenses  
14 and \$162,307.48 for compensation and expenses of the arbitrators. *Id.* at 39.

15 OBC also requests that certain portions of its OBC-SANYO Agreement, portions of the  
16 final award and portions of the interim award be filed under seal. *Id.* at 8. On April 11, 2014,  
17 OBC filed an initial administrative motion to seal. Dkt. No. 8. The Court granted in part and  
18 denied in part the motion to seal on the grounds that the proposed redactions were not narrowly  
19 tailored to only include sealable material under Civil Local Rule 79-5. Dkt. No. 16. On June 23,  
20 2014, OBC submitted a renewed administrative motion to file under seal with revised redactions.  
21 Dkt. No. 17.

## 22 DISCUSSION

### 23 I. Petition to Confirm Arbitration Award

24 The Court has jurisdiction to confirm the petition under 9 U.S.C. § 9. A court’s review of  
25 an arbitration award under the FAA is “both limited and highly deferential.” *Coutee v.*  
26 *Barrington Capital Group, L.P.*, 336 F.3d 1128, 1132 (9th Cir. 2003) (citing *Sheet Metal Workers’*  
27 *Int’l Ass’n v. Madison Indus., Inc.*, 84 F.3d 1186, 1190 (9th Cir.1996)). A court must confirm an  
28 arbitration panel’s award unless one of the following four exceptions applies:

- 1 (1) where the award was procured by corruption, fraud, or undue  
means;
- 2 (2) where there was evident partiality or corruption in the arbitrators,  
or either of them;
- 3 (3) where the arbitrators were guilty of misconduct in refusing to  
postpone the hearing, upon sufficient cause shown, or in refusing to  
4 hear evidence pertinent and material to the controversy; or of any  
5 other misbehavior by which the rights of any party have been  
prejudiced; or
- 6 (4) where the arbitrators exceeded their powers, or so imperfectly  
executed them that a mutual, final, and definite award upon the  
7 subject matter submitted was not made.

8 9 U.S.C. § 10(a).

9 Neither party suggests that any of the above exceptions apply. Moreover, SANYO does  
10 not oppose the Court's entry of an order confirming the panel's final award and judgment against  
11 it in conformity with that award. *See* Dkt. No. 21. In light of SANYO's non-opposition to the  
12 petition, and because none of the exceptions to enforcing the arbitration panel's award applies, the  
13 Court grants OBC's Amended Petition to Confirm the Arbitration Award.

14 OBC also requests that the Court "award [] its attorneys' fees and costs in seeking this  
15 relief as well as for any post-judgment enforcement proceedings." Dkt. No. 17, Ex. 3 at 8.  
16 Generally, "absent contractual or statutory authorization, a prevailing litigant ordinarily may not  
17 collect attorneys' fees." *Int'l Union of Petroleum & Indus. Workers v. W. Indus. Maint., Inc.*, 707  
18 F.2d 425, 428 (9th Cir. 1983) (citing *Miller-Wohl Co., Inc. v. Comm'r of Labor and Indus.*, 694  
19 F.2d 203, 204 (9th Cir. 1982)). A court may assess attorneys' fees, however, "when the losing  
20 party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* (citing *Alyeska*  
21 *Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59, 95 S.Ct. 1612, 44 L.Ed.2d 141  
22 (1975)).

23 OBC has not provided any authority to support its request for an award of attorneys' fees  
24 or alleged that SANYO acted in bad faith, vexatiously, wantonly, or for oppressive reasons.  
25 Because the Court has not been provided any ground to justify an award of attorneys' fees, the  
26 Court denies OBC's request.

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1       **II.     Administrative Motion to File Under Seal**

2             In our circuit, in evaluating a motion to seal, two different standards apply depending on  
3 whether the request is being made in connection with a dispositive motion or a non-dispositive  
4 motion.

5             For dispositive motions, the historic “strong presumption of access to judicial records”  
6 fully applies, and a party seeking sealing must establish “compelling reasons” to overcome that  
7 presumption. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir. 2006)  
8 (quoting *Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003)). This  
9 standard presents a “high threshold,” and “a ‘good cause’ showing will not, without more, satisfy”  
10 it. *Id.* at 1180 (citations omitted). When ordering sealing in this context, the district court must  
11 also “articulate the rationale underlying its decision to seal.” *Apple Inc. v. Psystar Corp.*, 658 F.3d  
12 1150, 1162 (9th Cir. 2011).

13             The non-dispositive motion context is different. There, “the usual presumption of the  
14 public’s right of access is rebutted,” the “public has less of a need for access to court records  
15 attached only to non-dispositive motions,” and the “public policies that support the right of access  
16 to dispositive motions, and related materials, do not apply with equal force to non-dispositive  
17 materials.” *Kamakana*, 447 F.3d at 1179-80 (citations omitted). In that context, materials may be  
18 sealed where the party seeking sealing makes a “particularized showing” under the “good cause”  
19 standard of Federal Rule of Civil Procedure 26(c). *Id.* at 1180 (quoting *Foltz*, 331 F.3d at 1138).

20             In our district, in addition to meeting the applicable standard under *Kamakana*, all parties  
21 requesting sealing must comply with Civil Local Rule 79-5, including that rule’s requirement that  
22 the request must “establish[] that the document, or portions thereof, are privileged, protectable as a  
23 trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-  
24 5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable  
25 material.” *Id.*

26             The Court’s previous order concluded that a petition to confirm an arbitration award is  
27 dispositive. *See* Dkt. No. 16. In its Renewed Administrative Motion to File Under Seal, OBC re-  
28 submitted exhibits to its Amended Petition that are redacted. OBC contends that compelling

1 reasons exist to seal the narrowly tailored redactions in those documents, which seal only  
2 confidential terms of license agreements and payment terms under those license agreements. Dkt.  
3 No. 17 at 1-2. The Court finds that OBC has demonstrated that compelling reasons exist to grant  
4 the narrowly tailored redactions in Exhibits A, B, and C to the Amended Petition, which only  
5 redact sealable information under Civil Local Rule 79-5. Accordingly, the Court grants  
6 Petitioner’s Administrative Motion to File under Seal:

| Document                        | Portion(s) To Be Filed Under Seal          |
|---------------------------------|--|
| Exhibit A (OBC-SANYO Agreement) | Portions of Articles 2, 3, 4, 5, 6, and 15 |
| Exhibit B (final award)         | Portions of pages 4 and 6                  |
| Exhibit C (interim award)       | Portions of pages 3, 5, and 6              |

11 **CONCLUSION**

12 The Court confirms the Panel’s final award, which incorporates the interim award, and  
13 enters judgment against SANYO in conformity with the final award. SANYO is ordered to  
14 comply with the final award.

15 **IT IS SO ORDERED.**

16 Dated: July 24, 2014



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18 JAMES DONATO  
19 United States District Judge