

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ILLUMINA, INC.,

No. C 14-01921 SI

Plaintiff,

**ORDER GRANTING DEFENDANT’S
MOTION TO SEAL**

v.

ARIOSA DIAGNOSTICS, INC.,

Defendant.

On June 11, 2014, defendant Ariosa Diagnostics, Inc. (“Ariosa”) filed a first amended answer and counterclaims. Docket No. 26-3. On June 11, 2014, Ariosa also filed a motion to seal portions of its first amended answer and counterclaims. Docket No. 26. On June 16, 2014, Illumina filed the declaration of Derek C. Walter in support of sealing portions of the first amended answer and counterclaims. Docket No. 28.

With the exception of a narrow range of documents that are “traditionally kept secret,” courts begin their sealing analysis with “a strong presumption in favor of access.” *Foltz v. State Farm Mut. Auto. Ins.*, 331 F.3d 1122, 1135 (9th Cir. 2003). When applying to file documents under seal in connection with a dispositive motion, the submitting party bears the burden of “articulating compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotations and citations omitted). However, when a party seeks to seal documents attached to a non-dispositive

1 motion, a showing of “good cause” under Federal Rule of Civil Procedure 26(c) is sufficient. *Id.* at
2 1179-80; *see also* Fed. R. Civ. P. 26(c). In addition, all requests to file under seal must be “narrowly
3 tailored,” such that only sealable information is sought to be redacted from public access. N.D. Cal.
4 Civil Local Rule 79-5(b).

5 “The Ninth Circuit has not explicitly stated the standard—good cause or compelling
6 reasons—that applies to the sealing of a complaint, but this Court and other courts have held that the
7 compelling reasons standard applies because a complaint is the foundation of a lawsuit.” *In re Google*
8 *Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2013 U.S. Dist. LEXIS 138910, at *10-11 (N.D. Cal. Sept.
9 25, 2013) (collecting cases). Therefore, Illumina bears the burden of “articulating compelling reasons
10 supported by specific factual findings that outweigh the general history of access and the public policies
11 favoring disclosure, such as the public interest in understanding the judicial process.” *Kamakana*, 447
12 F.3d at 1178-79.

13 In the supporting declaration, Illumina seeks to seal paragraph 19, lines 19-22, lines 24-27;
14 paragraph 20; paragraph 21, lines 12-16; paragraph 25, lines 19-22; paragraph 26; paragraph 27, lines
15 10-12; paragraph 35, lines 8-9; paragraph 49, lines 14-17; and paragraph 53, lines 24-25. Docket No.
16 28, Walter Decl. ¶¶ 5-7. Illumina explains that these portions of the first amended answer and
17 counterclaims relate to an agreement between Ariosa and Illumina and include specifics regarding the
18 terms of the agreement. *Id.* ¶ 1. The agreement contains a confidentiality provision stating that the
19 agreement, including its terms and conditions, is confidential. *Id.* ¶ 2; Docket No. 26-1, Gindler Decl.
20 ¶ 3. Illumina explains that portions of the first amended answer and counterclaims at issue disclose
21 information regarding (1) the details of the structure of the agreement; (2) intellectual property and
22 Ariosa’s obligations with regard to the intellectual property; and (3) the scope and dollar amount of
23 some of the purchases under the agreement. Docket No. 28, Walter Decl. ¶¶ 5-7. Illumina argues that
24 public disclosure of this information could cause it competitive harm because it could be misused by
25 potential customers and/or competitors in negotiations with Illumina or other suppliers. *Id.* After
26 reviewing the declaration and the portions of the first amended answer and counterclaims at issue, the
27 Court concludes that Illumina has sufficiently articulated compelling reasons for sealing the requested
28 portions.

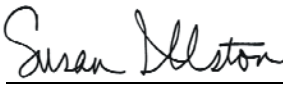
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In addition, Illumina’s request to seal these portions of the first amended answer and counterclaims is narrowly tailored because it seeks to redact only the sealable information from the pleading. Accordingly, the Court GRANTS defendant’s motion to seal. Docket No. 26.

The Court notes that the redacted version of the first amended answer and counterclaims that Ariosa publicly filed on June 11, 2014 contains different redactions from those sought by Illumina in its supporting declaration. Docket No. 26-4. Therefore, the Court STRIKES Docket No. 26-4 from the public docket and ORDERS Ariosa to file a new redacted version of its first amended answer and counterclaims, redacting the portions that have been designated as sealable in this order, within seven days from the date this order is filed.

IT IS SO ORDERED.

Dated: June 23, 2014



SUSAN ILLSTON
United States District Judge