

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES LATHROP, et al.,  
Plaintiffs,  
v.  
UBER TECHNOLOGIES, INC.,  
Defendant.

Case No. 14-cv-05678-JST

**ORDER REGARDING DEFENDANT'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Re: ECF No. 149

Defendant Uber Technologies, Inc. moves to file under seal portions of Exhibits A, D, E, and F to the Declaration of Sarah J Crooks in Support of Uber’s Motion for Summary Judgment (“Crooks Declaration”); the entirety of Exhibits G, I, and J to the Crooks Declaration; and portions of the Declaration of Kevin Roth (“Roth Declaration”). ECF No. 149. The Court previously granted Uber’s motion as to Exhibits A, I, and J to the Crooks Declaration and portions of the Roth Declaration. ECF No. 154. Plaintiffs have now filed a declaration in support of sealing. See ECF No. 155. The Court will grant in part and deny in part the motion as to Exhibits D–G to the Crooks Declaration.

**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) (internal citation and 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

1 only of sealable material.” Civil L.R. 79-5(b). An administrative motion to seal must also fulfill  
2 the requirements of Civil Local Rule 79-5(d). “Reference to a stipulation or protective order that  
3 allows a party to designate certain documents as confidential is not sufficient to establish that a  
4 document, or portions thereof, are sealable.” Civil L.R. 79-5(d)(1)(A).

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

14 “[C]ompelling reasons’ sufficient to outweigh the public’s interest in disclosure and  
15 justify sealing court records exist when such ‘court files might have become a vehicle for  
16 improper purposes,’ such as the use of records to gratify private spite, promote public scandal,  
17 circulate libelous statements, or release trade secrets.” Kamakana, 447 F.3d at 1179 (quoting  
18 Nixon, 435 U.S. at 598. The Nixon court also noted that the “common-law right of inspection has  
19 bowed before the power of a court to insure that its records” are not used as “sources of business  
20 information that might harm a litigant's competitive standing.” 435 U.S. at 598.

21 The Ninth Circuit, in an unpublished opinion, has identified a trade secret in this context as  
22 “any formula, pattern, device or compilation of information which is used in one’s business, and  
23 which gives him an opportunity to obtain an advantage over competitors who do not know or use  
24 it.” In re Elec. Arts, Inc., 298 F. App’x 568, 569 (9th Cir. 2008) (quoting Restatement of Torts §

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26 <sup>1</sup> Records attached to motions that are only “tangentially related to the merits of a case” are not  
27 subject to the strong presumption of access. Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d  
28 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. Id. 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).

1 757, cmt. b). In that case, applying Kamakana and Nixon, the Ninth Circuit reversed a district  
 2 court for refusing to seal information that qualified under this standard. In re Elec. Arts, Inc., 298  
 3 Fed. App’x. at 569. The Federal Circuit has similarly concluded that under Ninth Circuit law,  
 4 detailed product-specific financial information, customer information, and internal reports are  
 5 appropriately sealable under the “compelling reasons” standard where that information could be  
 6 used to the company’s competitive disadvantage. Apple Inc. v. Samsung Elecs. Co., 727 F.3d  
 7 1214, 1226, 1228 (Fed. Cir. 2013).

8 A district court must “articulate [the] . . . reasoning or findings underlying its decision to  
 9 seal.” Apple Inc. v. Psystar Corp., 658 F.3d 1150, 1162 (9th Cir. 2011).

10 **II. DISCUSSION**

11 The present motion to file under seal concerns documents associated with Defendant  
 12 Uber’s Motion for Summary Judgment. Under the test most recently articulated by Center for  
 13 Auto Safety v. Chrysler Group, 809 F.3d 1092 (9th Cir. 2016), a motion for summary judgment  
 14 involves issues that are more than “tangentially related to the merits of the case,” thereby requiring  
 15 the Court to apply the compelling reasons standard.

16 Uber seeks to seal portions of Exhibits D–G as Plaintiffs have designated the transcripts as  
 17 confidential. See ECF No. 149.

Document Name	Description and Requested Redaction	Court’s Ruling
Crooks Decl., Ex. D	Excerpts of the deposition of Plaintiff Jennifer Reilly: Tr. at 10:1-11:25, 32:1-25	Denied.
Crooks Decl., Ex. E	Excerpts of the deposition of Plaintiff James Lathrop: Tr. at 76:1-77:25	Granted.
Crooks Decl., Ex. F	Excerpts of the deposition of Plaintiff Jonathan Grindell: Tr. at 66:1-25	Granted.
Crooks Decl., Ex. G	Excerpts of the deposition of Plaintiff Justin Bartolet: Entire document	Granted as to Tr. 112:1–25.

27 Exhibit D to the Crooks Declaration contains excerpts of the deposition transcript of  
 28 Plaintiff Jennifer Reilly. Plaintiffs contend that this portion of Exhibit D need not be sealed. ECF

1 No. 155, Silver Decl. ¶ 3. The Court accordingly denies the motion to file under seal as to Exhibit  
2 D.

3 Exhibit E to the Crooks Declaration contains excerpts of the deposition transcript of  
4 Plaintiff James Lathrop. The transcript at 76:1–77:25 contain sensitive information belonging to  
5 Mr. Lathrop, including his license plate number and driver’s license number. Plaintiffs argue that  
6 “[i]f revealed, this information could be used for improper purposes.” Silver Decl. ¶ 4.  
7 Compelling reasons exist to seal this portion of Exhibit E. The requested sealing is also narrowly  
8 tailored.

9 Exhibit F to the Crooks Declaration contains excerpts of the deposition transcript of  
10 Plaintiff Jonathan Grindell. The transcript at 66:1–25 contains sensitive information belonging to  
11 Mr. Grindell, including his driver’s license number and a portion of his social security number.  
12 Plaintiffs argue that “[i]f revealed, this information could be used for improper purposes.” Silver  
13 Decl. ¶ 5. Compelling reasons exist to seal this portion of Exhibit F. The requested sealing is also  
14 narrowly tailored.

15 Exhibit G to the Crooks Declaration contains excerpts of the deposition transcript of  
16 Plaintiff Justin Bartolet. Uber filed Exhibit G under seal in its entirety, but Plaintiffs have since  
17 designated only page 112 of the transcript as “Confidential.” Silver Decl. ¶ 6. The transcript at  
18 112:1–25 contains sensitive, private information belonging to Mr. Bartolet, such as his driver’s  
19 license number. Plaintiffs argue that “[i]f revealed, this information could be used for improper  
20 purposes.” Id. Compelling reasons exist to seal page 112. As Plaintiffs do not seek to seal the  
21 remainder of the transcript, the request is also narrowly tailored.

22 The Court has viewed the documents and redacted information and finds that Plaintiffs  
23 have identified compelling reasons to justify sealing portions of Exhibits E, F, and G to the Crooks  
24 Declaration. Plaintiffs also narrowly tailored to seal only sealable information, as Local Rule 79-5  
25 requires.

26 **III. CONCLUSION**

27 The Court grants in part and denies in part the administrative motions to file under seal at  
28 ECF No. 149. “[T]he document[s] filed under seal will remain under seal and the public will have

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access only to the redacted version, if any, accompanying the motion.” Civil L. R. 79-5(f)(1).  
The Court will not consider those portions of the documents that are unsealable unless the filing party files the document in the public record without the redactions the Court has rejected, in conformance with this Order, within seven days from the date of this Order.

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

IT IS SO ORDERED.

Dated: May 6, 2016

  
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JON S. TIGAR  
United States District Judge