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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAVE CONSULTING GROUP, INC.,
Plaintiff,
v.
OPTUMINSIGHT, INC.,
Defendant.

Case No. [15-cv-03424-JCS](#)

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

Re: Dkt. No. 230

The Court previously denied in large part Defendant OptumInsight, Inc.'s administrative motion to file under seal because the only stated basis for sealing most of the documents at issue was that Plaintiff Cave Consulting Group, Inc. ("CCGroup") had designated the documents as confidential, and CCGroup failed to file a timely responsive declaration justifying sealing as required by this Court's local rules. *See* Order (dkt. 229). CCGroup has now filed a new administrative motion to seal most of the documents at issue in which it states that its previous failure to respond was "[d]ue to an inadvertent docketing error." *See* Pl.'s Admin. Mot. (dkt. 230) at 2.

Generally, a party seeking to file documents under seal must "'articulate[] compelling reasons supported by specific factual findings'" to overcome the "'strong presumption in favor of [public] access'" to court documents. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)) (first alteration in original). The Ninth Circuit recognizes an exception to that rule for "'a sealed discovery document [attached] to a non-dispositive motion,'" which requires only a particularized showing of good cause to keep under seal. *Id.* at 1179–80 (quoting *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)) (alteration in original).

1 According to CCGroup’s attorney Zachary Howenstine, Exhibit 1 to the declaration of Ben
2 Kappelman, which consists of excerpts of the transcript of John Rootenberg’s deposition, is
3 subject to sealing “because it contains confidential and proprietary information regarding
4 CCGroup’s business strategies, including sales/marketing strategies and competitive strategies,
5 that CCGroup would not share with a third party if not for the protections of the Protective Order.”
6 Howenstine Decl. (dkt. 230-1) ¶ 4. Because that exhibit includes discussion of specific marketing
7 strategies directed to specific potential customers, there is good cause for sealing, and the motion
8 is GRANTED as to Exhibit 1.

9 According to Howenstine, Exhibit 2, which consists of excerpts of the transcript of Patsi
10 Sinnott’s deposition, is subject to sealing “because it contains confidential and proprietary
11 information regarding CCGroup’s business strategies, including competitive strategies, that
12 CCGroup would not share with a third party if not for the protections of the Protective Order.” *Id.*
13 ¶ 5. That exhibit includes only discussion of CCGroup’s president’s instruction that employees
14 should not use competitors’ names in writing, the fact of which is disclosed in an unredacted
15 portion of the CCGroup’s portion of the parties’ joint letter brief. No basis for sealing is apparent,
16 and the motion is DENIED as to Exhibit 2.

17 As for Exhibit 3, which consists of internal CCGroup emails, Howenstine asserts that it
18 “should be filed under seal because it contains confidential and proprietary information regarding
19 CCGroup’s business strategies, including sales/marketing strategies, competitive strategies, and
20 internal discussions of the methodologies of CCGroup’s products, that CCGroup would not share
21 with a third party if not for the protections of the Protective Order.” *Id.* ¶ 6. Good cause to seal
22 this exhibit is apparent, and the motion is GRANTED as to Exhibit 3.

23 Exhibit 4 consists of excerpts of the deposition of CCGroup’s president, Doug Cave.
24 Howenstine asserts that it is subject to sealing “because it concerns attorney-client privileged and
25 work product information.” *Id.* ¶ 7. The excerpt in this exhibit includes questions asked by
26 OptumInsight’s counsel Peter Lancaster, objections by CCGroup’s counsel Howenstine,
27 discussion between those two attorneys, and instructions by Howenstine that Cave not answer
28 questions. The excerpt does not include any answers or other comments by Cave. CCGroup’s

1 unexplained assertion that conversation between adversarial attorneys at a deposition is privileged
2 or protected by work product is frivolous. The motion is DENIED as to Exhibit 4.

3 CCGroup does not seek to seal Exhibit 5, *see id.* ¶ 8, and the Court’s previous order
4 denying OptumInsight’s motion to seal that exhibit stands unaltered.

5 Exhibit 6 is an email from Cave to CCGroup staff discussing efforts to market products to
6 particular customers. The motion is GRANTED as to Exhibit 6.

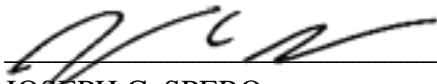
7 CCGroup also seeks to seal portions of the parties’ joint letter brief that quote or otherwise
8 refer to the exhibits discussed above. Howenstine asserts that the joint letter “should be filed
9 under seal because it contains confidential and proprietary information regarding CCGroup’s
10 business strategies, that CCGroup would not share with a third party if not for the protections of
11 the Protective Order.” *Id.* ¶ 3. The proposed redactions to the letter brief do not, for the most part,
12 include the sort of marketing strategies and particular customers that the Court finds good cause to
13 seal as discussed above. Instead, they generally relate to Cave’s instructions to CCGroup staff not
14 to include certain terms in written documents, apparently to prevent the disclosure of documents in
15 litigation. CCGroup has made no ““particularized showing”” of good cause to seal this material.
16 *See Kamakana*, 447 F.3d at 1180 (quoting *Foltz*, 331 F.3d at 1138). The motion is DENIED as to
17 the redacted portions of the joint letter brief.

18 For the reasons discussed above, Exhibits 1, 3, and 6 to the joint letter brief are hereby
19 SEALED, and OptumInsight is ORDERED not to file those documents in the public record. The
20 Court’s previous order otherwise stands. OptumInsight shall file unredacted public versions of
21 Exhibits 2, 4, and 5 as stated therein, and the Court will further address whether Exhibit 8 and any
22 portion of the joint letter brief itself are subject to sealing after a non-party has had an opportunity
23 to protect its potential interest in confidentiality.

24 **IT IS SO ORDERED.**

25 Dated: December 22, 2017

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JOSEPH C. SPERO
Chief Magistrate Judge