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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 WAYMO LLC,  
8 Plaintiff,

9 v.

10 UBER TECHNOLOGIES, INC., et al.,  
11 Defendants.

Case No. [17-cv-00939-WHA](#) (JSC)

**ORDER GRANTING IN PART AND  
DENYING IN PART  
ADMINISTRATIVE MOTIONS TO  
FILE UNDER SEAL ACQUISITION  
DOCUMENTS**

Re: Dkt. No. 515, 526, 529

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13 This Order addresses the parties' motions filed in connection with Defendant Uber's  
14 motion to file under seal acquisition documents pursuant to the Court's May 25, 2017 oral order.  
15 (Dkt. No. 515.) After carefully considering the parties' submissions, the motions are GRANTED  
16 in part and DENIED in part for the reasons set forth below.

17 **DISCUSSION**

18 There is a presumption of public access to judicial records and documents. *Nixon v.*  
19 *Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). "It is well-established that the fruits of pre-  
20 trial discovery are, in the absence of a court order to the contrary, presumptively public. [Federal  
21 Rule of Civil Procedure] 26(c) authorizes a district court to override this presumption where 'good  
22 cause' is shown." *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir.  
23 1999). Sealing is appropriate only where the requesting party "establishes that the document, or  
24 portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection  
25 under the law." N.D. Cal. Civ. L.R. 79-5(a). A party must "narrowly tailor" its request to  
26 sealable material only. *Id.*

United States District Court  
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1 Uber seeks to seal, in their entirety, twelve documents connected to its acquisition of  
2 Ottomotto:

- 3 1. Agreement and Plan of Merger (Ottomotto) (Dkt. No. 515-3)
- 4 2. Exhibits to Agreement and Plan of Merger (Ottomotto) (Dkt. No. 515-4)
- 5 3. Indemnification Agreement (Dkt. No. 515-5)
- 6 4. Exhibit A to Indemnification Agreements (Dkt. No. 515-6)
- 7 5. Exhibit B to Indemnification Agreements (Dkt. No. 515-7)
- 8 6. Agreement and Plan of Merger (Otto Trucking) (Dkt. No. 515-8)
- 9 7. Exhibits to Agreement and Plan of Merger (Otto Trucking) (Dkt. No. 515-9)
- 10 8. Company Disclosure Schedules (Otto Trucking) (Dkt. No. 515-10)
- 11 9. Company Disclosure Schedules (Ottomotto) (Dkt. No. 515-11)
- 12 10. Agreement and Plan of Merger (Ottomotto) (Dkt. No. 515-12)
- 13 11. Agreement and Plan of Merger (Otto Trucking) (Dkt. No. 515-13)
- 14 12. Draft Term Sheet (Dkt. No. 515-14)

15 Uber argues that the documents listed above contain “highly confidential business information”  
16 that “could be used by competitors to Uber’s detriment, including in the context of negotiating  
17 business deals.” (Dkt. No. 515 at 2.<sup>1</sup>) In addition, Uber argues that its “competitive standing  
18 could be significantly harmed” if the Court made the Draft Term Sheet public, because the  
19 document discusses market strategy information and proprietary designs for Uber’s custom  
20 LiDAR system. (*Id.* at 3.)

21 Plaintiff Waymo opposes Uber’s motion, arguing Uber’s “contention in their Motion that  
22 the Acquisition Documents should be sealed in their entirety is not consistent with the manner in  
23 which [Uber] designated these same documents in their production to Waymo.” (Dkt. No. 526-3.)  
24 Waymo seeks to file under seal portions of its Opposition because Uber has designated such  
25 portions as confidential. (Dkt. No. 526.) Uber filed a Declaration in Support of Waymo’s motion  
26 to seal its Opposition, arguing that portions of the Opposition contain “highly confidential  
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28 <sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 sensitive business information” that could be used by Uber’s competitors to its detriment, as well  
 2 as proprietary designs and market strategy information. (Dkt. No. 555 at 2-3.)

3 Uber also filed a Motion to Strike Waymo’s Opposition, arguing that Waymo’s Opposition  
 4 violates procedural rules in the Protective Order in effect for this case. (Dkt. No. 529 at 2.)

5 **1. Uber’s Acquisition Documents**

6 **A. The Draft Term Sheet (Dkt. No. 515-14)**

7 As explained in the Court’s order granting in part and denying in part the parties’ previous  
 8 motions to seal (Dkt. No. 550), at a minimum, the Court will not seal the portions of the Draft  
 9 Term Sheet that Uber did not seek to seal in connection with Waymo’s Reply Brief. (Dkt. No.  
 10 488-1.) To the extent Uber seeks to seal these portions in its Draft Term Sheet, the motion is  
 11 DENIED. In addition, Exhibit C to the Draft Term Sheet is squarely relevant to the issues  
 12 presently before the Court and Uber has not demonstrated good cause to seal the Exhibit. This  
 13 information does not reveal Uber’s confidential corporate structure, is not marketing strategy, and  
 14 is not technical.

15 Accordingly, the Court:

- 16 i. DENIES sealing of any portion of the Draft Term Sheet which Uber previously publicly  
 17 filed (Dkt. No. 488-1);  
 18 ii. DENIES sealing of the paragraph starting with “The exercise of the Put . . .” in the  
 19 “Put/Call Closing Conditions” section. (Dkt. No. 515-14 at 4);  
 20 iii. DENIES sealing of Exhibit C to the Term Sheet and its Attachments except for the  
 21 following which may be sealed: (1) the indented paragraph beginning with “If the Closing  
 22 occurs . . . .” (*Id.* at 51); (2) the timing referenced in the last paragraph on the same page;  
 23 iv. GRANTS sealing of the remainder of the Draft Term Sheet.

24 **B. The Indemnification Agreement (Dkt. Nos. 515-5, 515-6, 515-7)**

25 In accordance with the Court’s previous orders (Dkt. Nos. 550 and 653), the Court  
 26 DENIES sealing of the indemnification agreement and its exhibits, except for the following, which  
 27 may be sealed:

- 28 i. The timing terms in section 2.3(a) (Dkt. No. 515-5 at 9);

- 1 ii. The financial terms in section 2.5(a)-(b) (*Id.* at 9-10);
- 2 iii. Mr. Levandowski’s personal contact information (*Id.* at 13);
- 3 iv. Mr. Ron’s personal contact information (*Id.* at 14.)

4 **C. Other Acquisition Documents**

5 The Court GRANTS Uber’s motion to seal the remainder of the acquisition documents,  
6 with the following exceptions:

- 7 i. The Uber/Otto Merger Agreement (Dkt. No. 515-3): Uber may file under seal the  
8 portions highlighted in Exhibit B to the declaration of Jeff Nardinelli in support of  
9 Waymo’s Opposition to Defendants’ Administrative Motion to File Documents under Seal  
10 (Dkt. No. 526-7), except for the portions challenged by Waymo’s Opposition. (Dkt. No.  
11 526-3 at 3.)
- 12 ii. Exhibits to the Merger Agreement (Dkt. No. 515-4): Uber may file under seal the  
13 portions highlighted in Exhibit C to the declaration of Jeff Nardinelli in support of  
14 Waymo’s Opposition to Defendants’ Administrative Motions to File under Seal (Dkt. No.  
15 526-8), except for the portions challenged by Waymo’s Opposition. (Dkt. No. 526-3 at 3.)

16 **2. Waymo’s Motion to Seal its Opposition**

17 The Court DENIES Waymo’s motion to seal the highlighted portions of its Opposition  
18 (Dkt. No. 526-3 at 2-3). The Court GRANTS Waymo’s motion to seal Exhibits A-C to the  
19 Nardinelli Declaration in Support of the Opposition (Dkt. Nos. 526-6, 526-7, 526-8), except for  
20 the portions challenged by Waymo’s Opposition. (As explained in Dkt. No. 526-3 at 2-3.)

21 **3. Uber’s Motion to Strike**

22 Uber argues that Waymo’s Opposition violates the Patent Local Rule 2-2 Interim Model  
23 Protective Order in effect in this case (“Protective Order”) (Dkt. No. 60), which requires Waymo  
24 to “provide written notice of each designation it is challenging” and “attempt to resolve each  
25 challenge in good faith.” However, parties have just four days to oppose an administrative motion  
26 to file under seal. Civil L.R. 7-11(b). A party cannot seek judicial intervention regarding a  
27 Protective Order challenge until 14 days after the meet-and-confer process has stalled; Uber’s  
28 position would negate the local rule.

1 Accordingly, the Court DENIES Uber’s Motion to Strike Waymo’s Opposition to  
2 Defendants’ Administrative Motion to File under Seal Acquisition Documents. (Dkt. No. 529.)

3 **CONCLUSION**

4 For the reasons stated above, the parties’ administrative motions to file under seal are  
5 GRANTED in part and DENIED in part. The parties shall file public versions of their briefs and  
6 exhibits consistent with this Order by no later than June 30th, 2017. See N.D. Cal. Civ. L.R. 79-  
7 5(f)(3).

8 This Order disposes of Docket Nos. 515, 526 and 529.

9 **IT IS SO ORDERED.**

10 Dated: June 23, 2017



JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

United States District Court  
Northern District of California

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