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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 THE GILLETTE COMPANY,
8 Plaintiff,
9 v.
10 PACE SHAVE, INC.,
11 Defendant.

Case No. [17-mc-80045-JSC](#)

**ORDER RE MOTIONS TO FILE
UNDER SEAL**

Re: Dkt. Nos. 38, 39

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13 This dispute arises out of pending patent litigation in Delaware District Court brought by
14 The Gillette Company (“Gillette”) against Defendants Dorco Company, Ltd. (“Dorco”), Pace
15 Shave, Inc. (“Pace”) and Dollar Shave Club, Inc. (“DSC”) (collectively, “Defendants”). See The
16 Gillette Company v. Dollar Shave Club Inc., et al., Civil Action No. 1:15-cv-01158 (D. Del.) (the
17 “Delaware Action”). On June 2, 2017, the Court denied Gillette’s motion to transfer, stayed
18 Defendants’ motion to quash the third party subpoenas for 60 days, and ordered a further hearing
19 on the motion to quash. The Court also ordered the submission of a joint discovery letter and re-
20 submittal of the parties’ motions to file under seal. (Dkt. No. 35.) Pending before the Court are
21 the parties’ renewed motions to file under seal. (Dkt. Nos. 38 and 39.) Having considered the
22 parties’ submissions, the Court GRANTS both renewed motions to file under seal.

23 **BACKGROUND**

24 Non-parties Terry L. Witt (“Wit”) and Morgan W. Tovey (“Tovey”) (collectively,
25 “Movants”) moved to quash deposition subpoenas (the “Subpoenas”) served by Gillette in the
26 Delaware Action, or for a protective order barring any deposition of Movants. (Dtk. No. 10.)
27 Movants are trial co-counsel for Defendants in the Delaware Action. The Subpoenas seek facts
28 regarding two prior settlement agreements and related negotiations between Gillette, Dorco, and

1 Pace. Defendant Pace joined Movants’ motion to quash. (Dtk. No. 6.) Gillette moved to transfer
2 Movants’ motion to quash to Delaware. (Dtk. No. 24.) Movants, Pace, and Gillette all sought to
3 file certain documents under seal. (Dtk. Nos. 10, 16, 21, 27.)

4 On June 2, 2017, the Court denied Gillette’s motion to transfer, stayed Defendants’ motion
5 to quash for 60 days, ordered a further hearing on the motion to quash, a joint discovery letter, and
6 re-submittal of the parties’ motions to file under seal. (Dkt. No. 35.) The parties submitted their
7 renewed motions on June 7, 2017.

8 DISCUSSION

9 There is a presumption of public access to judicial records and documents. *Nixon v.*
10 *Warner Commc ’ns, Inc.*, 435 U.S. 589, 597 (1978). “It is well-established that the fruits of pre-
11 trial discovery are, in the absence of a court order to the contrary, presumptively public. [Federal
12 Rule of Civil Procedure] 26(c) authorizes a district court to override this presumption where ‘good
13 cause’ is shown.” *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir.
14 1999). Sealing is appropriate only where the requesting party “establishes that the document, or
15 portions thereof is privileged or protectable as a trade secret or otherwise entitled to protection
16 under the law.” N.D. Cal. Civ. L.R. 79-5(a). A party may meet this burden by showing that the
17 information sought to be withheld creates a risk of significant competitive injury and
18 particularized harm. See *Phillips v. Gen Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2006). A
19 party may also meet this burden by establishing that the information contains trade secrets that
20 create a risk of significant competitive injury and particularized harm, see *Apple, Inc. v. Psystar*
21 *Corp.*, 658 F.3d 1150, 1161-62 (9th Cir. 2011) (citation omitted), or where disclosure of the
22 information would violate a party’s legitimate privacy interest that similarly leads to such
23 risk, see, e.g., *Landmark Screens, LLC v. Morgan, Lewis & Bockius LLP*, No. C08-2581 JF
24 (HRL), 2010 WL 3221859, at *5 (N.D. Cal. Aug. 13, 2010). Whatever the grounds, a party must
25 “narrowly tailor” its request to sealable material only. *Id.*

26 Movants seek to seal portions of Movants’ motion to quash, the Eiseman declaration, the
27 Witt declaration, Exhibits 4, 5, 6, 7, 9, 15, 18, 19 to the Eiseman declaration, Pace’s joinder,
28 Movants’ reply brief and the Eiseman reply declaration. (Dkt. No. 38-1.) Movants also seek to

1 seal Exhibits 2, 3, 11, 12, 14, 20 to the Eiseman declaration in their entirety. (Id.) Movants
2 contend that the redacted information contains “specific terms found in confidential agreements
3 between the relevant parties and the negotiations thereto, and details of proceedings between the
4 relevant parties that are subject to confidentiality agreements.” (Id.) Exhibits 2 and 3 are
5 settlement agreements that Movants submit contain “sensitive business information and
6 confidential terms between the relevant parties.” (Id. at 3.) Movants state that the disclosure of
7 this competitively sensitive business information will harm Pace’s ability to conduct business. (Id.
8 at 8.)

9 Gillette seeks to seal portions of its opposition to Movants’ motion to quash, the DeJong
10 declaration, Exhibits 1, 3, 4, 5, 6, and 7 to the DeJong declaration, and its reply brief to the motion
11 to transfer. Gillette also seeks to file exhibit 2, A and B to exhibit 3, and exhibits 10-16 in their
12 entirety under seal, which include a witness statement, two confidential settlement agreements,
13 and confidential correspondence related to the settlement negotiations. Gillette argues that these
14 materials extensively discuss or reflect the confidential agreements between the relevant parties.
15 Gillette believes their disclosure would harm its ability to conduct business.

16 After careful review of Movants’ and Gillette’s submitted documentation, this Court
17 agrees that the revised redacted material concerns sensitive business information regarding
18 settlement negotiations and agreements between the parties. As such, the Court finds good cause
19 to seal this sensitive information. See San Jose Mercury News, 187 F.3d at 1103.

20 **CONCLUSION**

21 For the reasons explained above, the Court GRANTS Movants’ and Gillette’s motions to
22 file under seal. This order disposes of Docket Nos. 38 and 39.

23
24 **IT IS SO ORDERED.**

25 Dated: July 25, 2017

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28 JACQUELINE SCOTT CORLEY
United States Magistrate Judge