

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

3  
 4 JUST FILM, INC.; RAINBOW BUSINESS  
 5 SOLUTIONS, doing business as  
 6 PRECISION TUNE AUTO CARE;  
 7 BURLINGAME MOTORS, INC.; DIETZ  
 8 TOWING, INC.; THE ROSE DRESS,  
 9 INC.; VOLKER VON GLASENAPP; JERRY  
 10 SU; VERENA BAUMGARTNER; TERRY  
 11 JORDAN; LEWIS BAE; and ERIN  
 12 CAMPBELL, on behalf of  
 13 themselves, the general public  
 14 and those similarly situated,

15 Plaintiffs,

16 v.

17 MERCHANT SERVICES, INC.; NATIONAL  
 18 PAYMENT PROCESSING; UNIVERSAL  
 19 MERCHANT SERVICES, LLC; UNIVERSAL  
 20 CARD, INC.; JASON MOORE; NATHAN  
 21 JURCZYK; ROBERT PARISI; ERIC  
 22 MADURA; FIONA WALSH; ALICYN ROY;  
 23 MBF LEASING, LLC; NORTHERN  
 24 FUNDING, LLC; NORTHERN LEASING  
 25 SYSTEMS, INC.; GOLDEN EAGLE  
 26 LEASING, LLC; LEASE SOURCE-LSI,  
 27 LLC; LEASE FINANCE GROUP, LLC;  
 28 JAY COHEN; LEONARD MEZEI; SARA  
 KRIEGER; BRIAN FITZGERALD; SAM  
 BUONO; MBF MERCHANT CAPITAL, LLC;  
 RBL CAPITAL GROUP, LLC; WILLIAM  
 HEALY; JOSEPH I. SUSSMAN; JOSEPH  
 I. SUSSMAN, P.C.; and SKS  
 ASSOCIATES, LLC,

Defendants.

No. C 10-1993 CW

ORDER GRANTING  
 LEASING DEFENDANTS  
 LEAVE TO FILE A  
 FURTHER  
 DECLARATION IN  
 SUPPORT OF  
 PLAINTIFFS' MOTION  
 TO SEAL AND  
 REQUIRING  
 PLAINTIFFS TO  
 EXPLAIN A  
 DISCREPANCY

23 \_\_\_\_\_/  
 24 On November 13, 2012, the Court directed Plaintiffs to file a  
 25 supplemental declaration in support of their motion to seal.

26 On November 14, 2012, Leasing Defendants filed a declaration  
 27 in support of Plaintiffs' motion for leave to file under seal, as  
 28 required by the Court in Docket Nos. 408 and 413. Docket No. 419.

1 In their filing, Leasing Defendants requested permission to submit  
2 a response to any declaration filed by Plaintiffs pursuant to the  
3 Court's November 13, 2012 order.

4 Later on November 14, 2012, Plaintiffs filed a supplemental  
5 declaration in support of their motion to seal. Docket No. 420.  
6 In the supplemental declaration, Plaintiffs corrected certain  
7 information that they had provided the Court previously  
8 identifying which party or nonparty had designated as confidential  
9 each portion of the documents that they sought to seal. Among  
10 other corrections, Plaintiffs stated for the first time that they  
11 sought to seal a portion of their motion for leave to amend  
12 because it contained facts and argument based on information that  
13 Leasing Defendants had designated as confidential.

14 Having reviewed the parties' filings, the Court finds good  
15 cause to grant Leasing Defendants leave to file a supplemental  
16 declaration in response to Plaintiffs' November 14, 2012 filing.  
17 Leasing Defendants shall do so by November 21, 2012.

18 The Court notes that, in the declaration filed by Leasing  
19 Defendants today, they make numerous conclusory statements that  
20 disclosure of certain information "will result in irreparable harm  
21 to Leasing Defendants if made publicly available to competitors."  
22 "[S]ources of business information that might harm a litigant's  
23 competitive standing' often warrant protection under seal.'" In  
24 re NCAA Student-Athlete Name & Likeness Licensing Litig., 2012  
25 U.S. Dist. LEXIS 140779, at \*15 (N.D. Cal. 2012) (quoting Nixon v.  
26 Warner Communications, 435 U.S. 589, 597 (1978)) (formatting in  
27 original). However, "a decision to seal such records must still  
28 be based on articulated reasons." Id. (citing Apple Inc. v.

1 Psystar Corp., 658 F.3d 1150, 1162 (9th Cir. 2011); Contratto v.  
2 Ethicon, Inc., 227 F.R.D. 304, 307 (N.D. Cal. 2005) (finding that  
3 an assertion of good cause based on harm to competitive and  
4 financial position requires a showing of "specific demonstrations  
5 of fact, supported where possible by affidavits and concrete  
6 examples"). Leasing Defendants may remedy these deficiencies in  
7 their supplemental declaration.<sup>1</sup> Failure to do so may result in a  
8 court order permitting these documents to be filed in the public  
9 record, subject to the privacy protections contained in Federal  
10 Rule of Civil Procedure 5.2(a).

11 In Docket Nos. 411 and 420, Plaintiffs identified Leasing  
12 Defendants as the only ones who designated Exhibit UUU as  
13 confidential. In Leasing Defendants' November 14, 2012  
14 declaration, they state that a third-party, FNBCT, had also  
15 produced this document and designated it as highly confidential.  
16 Within one Court day of the date of this Order, Plaintiffs shall  
17 explain this discrepancy to the Court. If FNBCT designated this  
18 document as confidential and later waived or withdrew its  
19 designation, Plaintiffs shall provide a copy of any such written  
20 waiver or, if the waiver was given in non-written form, a  
21 declaration attesting under penalty of perjury that such a waiver  
22 was given.

23 The Court warns the parties that, in the future, they will be  
24 expected to comply with the requirements of Civil Local Rule 79-5,  
25 General Order 62 and the Court's Orders, and to establish that

26 \_\_\_\_\_  
27 <sup>1</sup> Leasing Defendants should also review pages two and three  
28 of the Court's November 13, 2012 Order, which address the good  
cause and compelling reasons standards for sealing court records.

1 documents are sealable without repeated instructions from the  
2 Court. Further, absent good cause shown, the Court will not give  
3 parties extra opportunities to do so.

4 IT IS SO ORDERED.

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6 Dated: 11/15/2012

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9 CLAUDIA WILKEN  
10 United States District Judge  
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