

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BESTWAY (USA), INC., et al.,
Plaintiffs,
v.
PIETRO PASQUALE-ANTONI SGROMO,
et al.,
Defendants.

Case No. [17-cv-00205-HSG](#)

**ORDER GRANTING
ADMINISTRATIVE MOTIONS TO
FILE UNDER SEAL; TERMINATING
AS MOOT MOTION FOR LEAVE TO
APPEAL IN FORMA PAUPERIS**

Re: Dkt. Nos. 85, 89, 92, 99, 126

Pending before the Court are four administrative motions to file under seal, see Dkt. Nos. 85, 89, 99, 126, and a motion for leave to appeal in forma pauperis, see Dkt. No. 92. The Court will consider each motion in turn.

I. LEGAL STANDARD

Courts generally apply a “compelling reasons” standard when considering motions to seal documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotation omitted). To overcome this strong presumption, the party seeking to seal a judicial record attached to a dispositive motion must “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotation omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have

1 become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
2 promote public scandal, circulate libelous statements, or release trade secrets.” Id. at 1179
3 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the
4 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
5 litigation will not, without more, compel the court to seal its records.” Id.

6 The Court must “balance[] the competing interests of the public and the party who seeks to
7 keep certain judicial records secret. After considering these interests, if the court decides to seal
8 certain judicial records, it must base its decision on a compelling reason and articulate the factual
9 basis for its ruling, without relying on hypothesis or conjecture.” Id. Civil Local Rule 79-5
10 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a
11 document or portions of it under seal must “establish[] that the document, or portions thereof, are
12 privileged, protectable as a trade secret or otherwise entitled to protection under the law . . . The
13 request must be narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b).

14 Records attached to nondispositive motions, however, are not subject to the strong
15 presumption of access. See *Kamakana*, 447 F.3d at 1179. Because such records “are often
16 unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal
17 must meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure.
18 Id. at 1179–80 (quotation omitted). This requires only a “particularized showing” that “specific
19 prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v.*
20 *Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002); see also Fed. R. Civ. P. 26(c).
21 “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning” will
22 not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quotation
23 omitted).

24 **II. DISCUSSION**

25 **A. Motion to Seal Portion of Plaintiffs’ Response to Order to Show Cause**

26 Plaintiffs moved on June 15, 2018 to file under seal portions of their response to the
27 Court’s order directing them to show cause why the Court should not grant what it construed as a
28 motion to compel arbitration. See Dkt. No. 85. Because these records are attached to a

1 nondispositive motion, the Court will apply the lower good cause standard. The Court **GRANTS**
2 the motion to seal in its entirety because the good cause standard is met, as these redacted portions
3 are subject to a confidentiality agreement and contain confidential business information, the
4 disclosure of which could cause harm to the parties in this action.

5 **B. Motion to Seal Portion of Sgromo’s Response to Order to Show Cause**

6 Plaintiffs moved on June 22, 2018 to file under seal portion of Sgromo’s response to the
7 Court’s order directing Plaintiffs, Scott, and Eureka to show cause why the Court should not grant
8 what it construed as a motion to compel arbitration. See Dkt. No. 89. Sgromo also responded to
9 the order to show cause, but because the Court did not request his input, the Court did not consider
10 it in ruling on the motion. See Dkt. No. 90 at 5 n.5. Plaintiffs assert that sealing is warranted
11 because Sgromo’s response “references the specific terms of six Options Agreements,” each of
12 which “contains a confidentiality clause preventing the parties from disclosing the terms and
13 conditions of the agreements.” See Dkt. No. 89-1 ¶ 4. Because these records are attached to a
14 nondispositive motion (Sgromo’s unsolicited response to an order to show cause not directed at
15 him), the Court applies the lower good cause standard. The Court has reviewed the records
16 individually and finds that the good cause standard is met because these documents were subject
17 to a confidentiality agreement and contain confidential business information and licensing terms;
18 therefore, the Court **GRANTS** the motion to file under seal.

19 **C. Sgromo’s Motion to Proceed in Forma Pauperis**

20 Because the Ninth Circuit has granted Sgromo’s motion to proceed in forma pauperis, see
21 Dkt. No. 136, his earlier motion for leave to appeal in forma pauperis, Dkt. No. 92, is now moot.
22 Accordingly, the Clerk is **DIRECTED TO TERMINATE** Dkt. No. 92 as moot.

23 **D. Motion to Seal Portions of Fees Motion**

24 In connection with their motion for attorney’s fees, Plaintiffs filed an administrative
25 motion to file portions of their fees motion and accompanying declarations under seal. See Dkt.
26 No. 99. Plaintiffs ask to seal what they contend is “confidential information relating to (1) the
27 amount of funds being held in escrow, (2) the billing rates and fees incurred by its counsel,
28 McDermott Will and Emery LLP; and (3) billing records attached as Exhibit A to the Fees

1 Declaration.” See *id.* at 1. According to Plaintiffs, “[e]ach of these categories comprises
2 confidential information relating to Bestway’s financial records, including its licensing and legal
3 practices and budgets.” See Dkt. No. 99-1 at 2.

4 Because these documents are attached to Plaintiffs’ fee request, which is a nondispositive
5 motion, the Court applies the lower good cause standard. But, as has been “explained by
6 numerous courts in this district, attorney rates and hours are generally not considered privileged
7 information that is sealable.” *Aylus Networks, Inc. v. Apple Inc.*, No. 13-CV-04700-EMC, 2016
8 WL 1252778, at *1 (N.D. Cal. Mar. 30, 2016). This rule has a principled basis: if an attorney’s
9 claimed rates and number of hours billed are sealed and thus unavailable to the public, “the final
10 fees award appears to be drawn from thin air.” *Linex Techs., Inc. v. Hewlett-Packard Co.*, No. C
11 13-159 CW, 2014 WL 6901744, at *1 (N.D. Cal. Dec. 8, 2014). That said, documents that may be
12 used “as sources of business information that might harm a litigant’s competitive standing” may
13 be sealable. See *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (internal quotation
14 omitted).

Dkt. No. Public/(Sealed)	Document	Portion(s) Sought to be Sealed	Ruling (basis)
99-3/(99-7)	Plaintiffs’ Motion for Recovery of Attorneys’ Fees Incurred	4:5	GRANTED (confidential business information related to value of licensing agreement)
		3:2, 4:8, 4:16–17, 4:19, 6:21, 6:24, 7:3, 7:17–18	DENIED (needed to explain attorney fee award, see <i>Aylus Networks</i> , 2016 WL 1252778, at *1)
99-4/(99-8)	Declaration of Krista Vink Venegas in Support of Plaintiffs’ Motion for Recovery of Attorneys’ Fees Incurred	2:2, 2:5, 2:8, 2:11, 2:14, 2:27, 3:1–2, 3:14	DENIED (needed to explain attorney fee award, see <i>Aylus Networks</i> , 2016 WL 1252778, at *1)
99-5/(99-9)	Exhibit A to the Declaration of Krista Vink Venegas in Support of Plaintiffs’ Motion for Recovery of Attorneys’ Fees Incurred	Entire Exhibit	DENIED (needed to explain attorney fee award, see <i>Aylus Networks</i> , 2016 WL 1252778, at *1)

1 **E. Motion to Seal Exhibit Related to Notice of Temporary Restraining Order**
2 **Violation**

3 Plaintiffs moved to file under seal Exhibit C to the Declaration of Krista Vink Venegas for
4 Plaintiffs’ Notice of Temporary Restraining Order Violation. See Dkt. No. 126 at 1. Bestway
5 represents that the redacted portion of Exhibit C “includes references to the terms of agreements
6 between Bestway and Sgromo that include confidentiality provisions preventing the disclosure of
7 business sensitive terms of the agreements, and it includes references to settlement agreements or
8 their business sensitive terms between Bestway and Sgromo.” See *id.* Because this exhibit is
9 attached to a nondispositive motion, the Court will apply the lower good cause standard. The
10 Court **GRANTS** the motion to seal in its entirety because the good cause standard is met, as these
11 redacted portions are subject to a confidentiality agreement and contain confidential business
12 information.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court:


- 14 A. **GRANTS** Plaintiffs’ motion to file under seal portions of Plaintiffs’ response to the
15 Court’s order directing Plaintiffs, Scott, and Eureka to show cause. See Dkt. No. 85.
- 16 B. **GRANTS** Plaintiffs’ motion to file under seal portion of Sgromo’s response to the
17 Court’s order directing Plaintiffs, Scott, and Eureka to show cause. See Dkt. No. 89.
- 18 C. **TERMINATES AS MOOT** Sgromo’s motion to proceed in forma pauperis. See Dkt.
19 No. 92.
- 20 D. **GRANTS IN PART AND DENIES IN PART** Plaintiffs’ administrative motion to
21 file portions of its fees motion and accompanying declarations under seal. See Dkt.
22 No. 99. The Court **DIRECTS** Plaintiffs to file public versions of all documents for
23 which the proposed sealing has been denied, as indicated in the chart above. Pursuant
24 to Civil Local Rule 79-5(f)(1), documents filed under seal as to which the
25 administrative motions are granted will remain under seal. The public will have access
26 only to the redacted versions accompanying the administrative motions.
- 27 E. **DEFERS** a ruling on Plaintiffs’ motion for attorney’s fees and costs, see Dkt. No. 99-
28 7, until after Plaintiffs respond to the Court’s order to show cause, see Dkt. No. 137.

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F. **GRANTS** Plaintiffs' administrative motion to file under seal Exhibit C to the Declaration of Krista Vink Venegas. See Dkt. No. 126.

IT IS SO ORDERED.

Dated: 3/28/2019


HAYWOOD S. GILLIAM, JR.
United States District Judge