

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 PLAINTIFFS'  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL**

Re: Dkt. No. 2

Pending before the Court is an administrative motion filed by Plaintiffs Bestway (USA), Inc.; Bestway (Hong Kong) International Ltd.; and Bestway Inflatable and Material Corporation (“Plaintiffs”). Dkt. No. 2. The unopposed motion seeks to file under seal portions of its Complaint, as well as the exhibits to the Complaint. Id. at 1; see also Dkt. No. 1 (Complaint). The Court **GRANTS** Plaintiffs’ administrative motion.

**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, 677-78 (9th Cir. 2010). “This standard derives from the common law right ‘to inspect and copy public records and documents, including judicial records and documents.’” Id. (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “[A] strong presumption in favor of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (citation and internal quotation marks omitted). To overcome this strong presumption, the moving party 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.” Id. at 1178-79 (citations, internal quotation marks, and alterations omitted). “In general, compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist

1 when such court files might have become a vehicle for improper purposes, such as the use of  
2 records to gratify private spite, promote public scandal, circulate libelous statements, or release  
3 trade secrets.” *Id.* at 1179 (citation and internal quotation marks omitted). The Court must

4 balance the competing interests of the public and the party who  
5 seeks to keep certain judicial records secret. After considering these  
6 interests, if the Court decides to seal certain judicial records, it must  
7 base its decision on a compelling reason and articulate the factual  
8 basis for its ruling, without relying on hypothesis or conjecture.

9 *Id.* (citations, brackets, and internal quotation marks omitted).

10 Civil Local Rule 79-5 supplements the “compelling reasons” standard. The party seeking  
11 to file under seal must “establish[] that the document, or portions thereof, are privileged,  
12 protectable as a trade secret or otherwise entitled to protection under the law . . . The request must  
13 be narrowly tailored to seek sealing only of sealable material . . . .” Civil L.R. 79-5(b). Courts  
14 also “regularly find that litigants may file under seal contracts with third parties that contain  
15 proprietary and confidential business information.” *Finisar Corp. v. Nistica, Inc.*, No. 13-cv-  
16 03345-BLF (JSC), 2015 WL 3988132, at \*5 (N.D. Cal. June 30, 2015) (granting motion to seal  
17 contracts containing “confidentiality clauses, along with lists of the parties’ obligations and terms  
18 of payment”).

19 Finally, records attached to motions that are only “tangentially related to the merits of a  
20 case” are not subject to the strong presumption of access. *Ctr. for Auto Safety v. Chrysler Grp.*,  
21 LLC, 809 F.3d 1092, 1101 (9th Cir. 2016). Accordingly, parties moving to seal such records need  
22 only meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure.  
23 *Id.* at 1097. The “good cause” standard requires a “particularized showing” that “specific  
24 prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v.*  
25 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (citation and internal quotation marks  
26 omitted); see also Fed. R. Civ. P. 26(c).

## 27 **II. DISCUSSION**

28 Plaintiffs seek to seal “portions of its Complaint that cite to [two] settlement agreements  
that include confidentiality provisions preventing the disclosure of the terms of the agreements.”  
Dkt. No. 2 at 1. Plaintiffs also request to seal the two settlement agreements—Exhibits A and B to

1 the Complaint—in their entirety. *Id.*; see also Dkt. No. 2-1 ¶¶ 5-6 (Declaration of Nitin Gambhir)  
 2 (“Gambhir Decl.”). Finally, Plaintiffs seek to seal portions of Exhibit C to the Complaint, a  
 3 Canadian Statement of Claim, which “include[s] reference to the terms of the settlement  
 4 agreements.” *Id.*; see also Gambhir Decl. ¶ 7.

5 In considering whether to seal Plaintiffs’ Complaint and the accompanying exhibits, the  
 6 Court applies the “compelling reasons” standard. Although the Ninth Circuit appears not to have  
 7 explicitly stated what standard applies to the sealing of a complaint, many courts in this district  
 8 and elsewhere have found that the compelling reasons standard applies. See *Sjostrom v. Kraatz*,  
 9 No. 16-cv-01381-DMR, 2016 WL 3940886, at \*2 (N.D. Cal. July 21, 2016); *In re Google Inc.*  
 10 *Gmail Litig.*, No. 13-MD-02430-LHK, 2013 WL 5366963, at \*2 (N.D. Cal. Sept. 25, 2013); *Nucal*  
 11 *Foods, Inc. v. Quality Egg LLC*, No. CIV S-10-3105 KJM-CKD, 2012 WL 260078, at \*2 (E.D.  
 12 Cal. Jan. 27, 2012); *TriQuint Semiconductor, Inc. v. Avago Techs. Ltd.*, No. CV 09-1531-PHX-  
 13 *JAT*, 2010 WL 2474387, at \*1 (D. Ariz. June 11, 2010); *Dunbar v. Google, Inc.*, No. 12-cv-  
 14 *03305*, 2013 WL 4428853, at \*2 (N.D. Cal. Aug. 14, 2013); *In re NVIDIA Corp. Derivative Litig.*,  
 15 No. C 06-06110 SBA, 2008 WL 1859067, at \*3-4 (N.D. Cal. Apr. 23, 2008). This makes sense  
 16 because the Complaint is more than “tangentially related to the merits of the case.” See *Ctr. for*  
 17 *Auto Safety*, 809 F.3d at 1101; see also *Sjostrom*, 2016 WL 3940886, at \*2 (“Because the  
 18 complaint is more than tangentially related to the merits of the case, the compelling reasons  
 19 standard governs the sealing request.”).

20 The Court finds that Plaintiffs’ request to file the entirety of Exhibits A and B under seal  
 21 satisfies the compelling reasons standard because those exhibits contain “proprietary and  
 22 confidential business information.” See *Finisar*, 2015 WL 3988132, at \*5. Moreover, the Court  
 23 finds Plaintiffs’ requested redactions to the Complaint and to Exhibit C, given their references to  
 24 the terms of the settlement agreements, sufficiently “narrowly tailored” to protect both Plaintiffs’  
 25 interests and the public interest in access.

26 **III. CONCLUSION**


27 For the foregoing reasons, the Court **GRANTS** Plaintiffs’ motion to seal Exhibits A and B  
 28 to the Complaint, and to seal portions of the Complaint and Exhibit C. Pursuant to Civil Local

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Rule 79-5(f)(1), the unredacted versions of the Complaint and exhibits filed under seal will remain under seal, see Dkt. No. 2, and the public will have access only to the redacted versions originally filed by Plaintiffs, see Dkt. No. 1.

**IT IS SO ORDERED.**

Dated: 9/28/2017

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge