

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAVIGATORS SPECIALTY
INSURANCE COMPANY,

Plaintiff,

v.

DEPOMED, INC.,

Defendant.

Case No. [19-cv-00255-HSG](#)

ORDER GRANTING MOTIONS TO SEAL

Re: Dkt. Nos. 57, 85, 90

Pending before the Court are the parties’ administrative motions to file under seal documents filed in connection with Plaintiff Navigator Specialty Insurance Company’s opposition to Defendant Depomed, Inc.’s motion for partial judgment on the pleadings, as well as the parties’ respective motions for summary judgment. Dkt. Nos. 57, 85, 90. For the reasons detailed below, the Court **GRANTS** the administrative motions to seal.

I. LEGAL STANDARD

Courts generally apply a “compelling reasons” standard when considering motions to seal with documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cty. 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 (quotations 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.”

1 Id. at 1178–79 (quotations omitted). “In general, ‘compelling reasons’ sufficient to outweigh the
2 public’s interest in disclosure and justify sealing court records exist when such ‘court files might
3 have become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
4 promote public scandal, circulate libelous statements, or release trade secrets.” Id. at 1179
5 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the
6 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
7 litigation will not, without more, compel the court to seal its records.” Id.

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

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

24 **II. DISCUSSION**

25 Because the parties seek to seal portions and documents which pertain to Plaintiff’s motion
26 for partial judgment on the pleadings and the parties’ motions for summary judgment, the Court
27 applies the compelling reasons standard.

28 First, Plaintiff filed a motion to file under seal certain exhibits filed in opposition to the

1 motion for partial judgment on the pleadings and portions of the opposition brief and declaration
2 that reference these exhibits. Dkt. No. 57. The parties also filed motions to file under seal certain
3 exhibits filed in support of their motions for summary judgment, as well as portions of the brief
4 and declarations that reference these exhibits. See Dkt. Nos. 85, 90. Defendant filed declarations
5 in support of the motions to seal, explaining that the documents contain confidential
6 communications to their insurers as well as subpoenas related to its defense in the underlying
7 opioid litigation cases challenging Defendant’s sales and marketing of opioid products, which
8 remain ongoing. See Dkt. Nos. 61, 86-1, 92. The Court finds that revealing the contents of these
9 documents would prejudice Defendant’s defense in this pending or threatened litigation. See, e.g.,
10 *Montrose Chem. Corp. v. Superior Court*, 25 Cal. App. 4th 902, 909–10 (Cal. 1994), as modified
11 (June 30, 1994) (identifying several risks of prejudice, including that the insurer could “join forces
12 with the plaintiffs in the underlying actions as a means to defeat coverage” and that the insured
13 would then have “to fight a two-front war, doing battle with the plaintiffs in the third party
14 litigation while at the same time devoting its money and its human resources to litigating coverage
15 issues with its carriers”).

16 Second, the parties seek to file under seal exhibits that they each filed in support of their
17 respective motions for summary judgment, which contain confidential information relating to their
18 business operations. See Dkt. Nos. 85, 90. The unredacted information contains information
19 disclosing confidential investigation and evaluations of risk related to Defendant’s insurance
20 policy and related negotiations, as well as sales and pricing information related to Defendant’s
21 products. See, e.g., Dkt. Nos. 86-1, 88, 90-1. According to the parties, public disclosure of such
22 information would cause severe harm to them, as competitors could use the information to their
23 disadvantage. See *id.* The Court finds that these requests therefore fall within the class of
24 materials that may be filed under seal and are narrowly tailored. See, e.g., *Google Inc. v. Eolas*
25 *Techs. Inc.*, No. 15-CV-05446-JST, 2016 WL 9243337, at *2 (N.D. Cal. Mar. 22, 2016) *Linex*
26 *Techs., Inc. v. Hewlett-Packard Co.*, No. C 13-159 CW, 2014 WL 6901744 (N.D. Cal. Dec. 8,
27 2014); *Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal.
28 2011).

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III. CONCLUSION

The Court therefore **GRANTS** the parties' administrative motions to file under seal. Pursuant to Civil Local Rule 79-5(f)(1), documents filed under seal as to which the administrative motions are granted will remain under seal.

IT IS SO ORDERED.

Dated: 11/25/2020


HAYWOOD S. GILLIAM, JR.
United States District Judge