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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 FITEQ INC,

7 Plaintiff,

8 v.

9 VENTURE CORPORATION, et al.,

10 Defendants.

Case No. [5:13-cv-01946-BLF](#)

ORDER DENYING MOTIONS TO SEAL

[Re: ECF 352, 355]

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12 Before the Court are two administrative motions to seal from Plaintiff FiTeq, Inc. See
13 Mots., ECF 352, 355. FiTeq initially filed a motion to exclude Defendant Venture Corporation's
14 counterclaim for direct damages and also filed an accompanying motion to seal. See Mots., ECF
15 352, 353. FiTeq then re-captioned the motion to exclude as a motion in limine, and re-filed both
16 the substantive motion and the accompanying motion to seal. See Mots., ECF 355, 356. FiTeq's
17 first sealing motion, located at ECF 352, thus is DENIED as moot. FiTeq's second sealing
18 motion, located at ECF 355, also is DENIED.

19 **I. LEGAL STANDARD**

20 "Historically, courts have recognized a 'general right to inspect and copy public records
21 and documents, including judicial records and documents.'" *Kamakana v. City & County of*
22 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435
23 *U.S. 589, 597 & n. 7* (1978)). Accordingly, when considering a sealing request, "a 'strong
24 presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto.*
25 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
26 motions that are "more than tangentially related to the underlying cause of action" bear the burden
27 of overcoming the presumption with "compelling reasons" that outweigh the general history of
28 access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d

1 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178-79.

2 However, “while protecting the public’s interest in access to the courts, we must remain
3 mindful of the parties’ right to access those same courts upon terms which will not unduly harm
4 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed.
5 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
6 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto*
7 *Safety*, 809 F.3d at 1099; see also *Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
8 for access to court records attached only to non-dispositive motions because those documents are
9 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
10 to seal the documents attached to such motions must meet the lower “good cause” standard of
11 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
12 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
13 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
14 1210-11 (9th Cir. 2002); see Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by
15 specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*,
16 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during discovery
17 may reflect the court’s previous determination that good cause exists to keep the documents
18 sealed, see *Kamakana*, 447 F.3d at 1179-80, but a blanket protective order that allows the parties
19 to designate confidential documents does not provide sufficient judicial scrutiny to determine
20 whether each particular document should remain sealed. See Civ. L.R. 79-5(d)(1)(A) (“Reference
21 to a stipulation or protective order that allows a party to designate certain documents as
22 confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

23 In addition to making particularized showings of good cause, parties moving to seal
24 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
25 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
26 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
27 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
28 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the

1 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
2 material” which “lists in table format each document or portion thereof that is sought to be
3 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by
4 highlighting or other clear method, the portions of the document that have been omitted from the
5 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
6 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
7 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

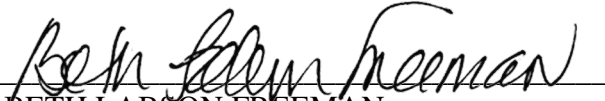
8 **II. DISCUSSION**

9 Because FiTeq’s motion in limine is non-dispositive, the Court applies the good cause
10 standard. With that standard in mind, the Court rules on the instant motion as follows:

| <u>ECF No.</u> | <u>Document to be Sealed</u> | <u>Result</u> | <u>Reasoning</u> |
|----------------|---|---------------|---|
| 355-7 | Ex. J to Hosie Decl. in support of Plaintiff’s motion in limine no. 1 | UNSEALED. | Venture—the designating party—declares that the exhibit need not be sealed. See Jones Decl. ¶ 2, ECF 359. |
| 355-8 | Ex. L to Hosie Decl. in support of Plaintiff’s motion in limine no. 1 | UNSEALED. | Venture—the designating party—declares that the exhibit need not be sealed. See Jones Decl. ¶ 2, ECF 359. |
| 355-9 | Ex. N to Hosie Decl. in support of Plaintiff’s motion in limine no. 1 | UNSEALED. | Venture—the designating party—declares that the exhibit need not be sealed. See Jones Decl. ¶ 2, ECF 359. |

23 **IT IS SO ORDERED.**

24 Dated: August 9, 2016

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26 
27 BETH LABSON FREEMAN
28 United States District Judge