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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WILLIAM PHILIPS, et al.,
Plaintiffs,
v.
FORD MOTOR COMPANY,
Defendant.

Case No. 14-CV-02989-LHK

**ORDER GRANTING IN PART AND
DENYING IN PART SEALING
MOTIONS**

Re: Dkt. Nos. 195, 199, 206

Before the Court are the parties’ “Joint Administrative Motion to File Under Seal Ford’s Opposition to Plaintiffs’ Motion for Class Certification and Certain Exhibits to that Opposition,” ECF No. 195, the “Joint Administrative Motion to File Under Seal Plaintiffs’ Motion for Class Certification and Certain Exhibits to that Motion,” ECF No. 199, and the “Joint Administrative Motion to File Under Seal Plaintiffs’ Reply in Support of Motion for Class Certification and Exhibit 52 to that Reply,” ECF No. 206.

Pursuant to the Court’s order, ECF No. 188, Ford filed a “Provisional Motion to Seal Ford’s Opposition to Plaintiffs’ Motion for Class Certification and Certain Exhibits to that Opposition” (“Provisional Motion”), ECF No. 193, and Plaintiffs filed a provisional motion to file Plaintiffs’ Reply under seal, ECF No. 203. Because the joint motions to seal, ECF Nos. 195 &

1 206, supersede the provisional motions, the provisional motions to seal are DENIED AS MOOT.

2 As to the remaining motions, “[h]istorically, courts have recognized a ‘general right to
3 inspect and copy public records and documents, including judicial records and documents.’”
4 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v.*
5 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Thus, when considering a sealing
6 request, “a strong presumption in favor of access is the starting point.” *Id.* (internal quotation
7 marks omitted).

8 Parties seeking to seal judicial records relating to motions that are “more than tangentially
9 related to the underlying cause of action,” *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092,
10 1099 (9th Cir. 2016), bear the burden of overcoming the presumption with “compelling reasons
11 supported by specific factual findings” that outweigh the general history of access and the public
12 policies favoring disclosure. *Kamakana*, 447 F.3d at 1178–79 (9th Cir. 2006). Compelling reasons
13 justifying the sealing of court records generally exist “when such ‘court files might have become a
14 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
15 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon*, 435
16 U.S. at 598). However, “[t]he mere fact that the production of records may lead to a litigant’s
17 embarrassment, incrimination, or exposure to further litigation will not, without more, compel the
18 court to seal its records.” *Id.*

19 Records attached to motions that are “not related, or only tangentially related, to the merits
20 of a case,” are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at
21 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court
22 records attached only to non-dispositive motions because those documents are often unrelated, or
23 only tangentially related, to the underlying cause of action.” (internal quotation marks omitted)).
24 Parties moving to seal records attached to motions unrelated or only tangentially related to the
25 merits of a case must meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of
26 Civil Procedure. *Ctr. for Auto Safety*, 809 F.3d at 1098-99; *Kamakana*, 447 F.3d at 1179–80. The
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1 “good cause” standard requires a “particularized showing” that “specific prejudice or harm will
2 result” if the information is disclosed. *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th
3 Cir. 2002); *see* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
4 examples or articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d
5 470, 476 (9th Cir. 1992).

6 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court
7 documents for, *inter alia*, the protection of “a trade secret or other confidential research,
8 development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has
9 adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a]
10 trade secret may consist of any formula, pattern, device or compilation of information which is
11 used in one’s business, and which gives him an opportunity to obtain an advantage over
12 competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)
13 (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the
14 production of goods. . . . It may, however, relate to the sale of goods or to other operations in the
15 business. . . .” *Id.* (ellipses in original). In addition, the U.S. Supreme Court has recognized that
16 sealing may be justified to prevent judicial documents from being used “as sources of business
17 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598.

18 In addition, parties moving to seal documents must comply with the procedures established
19 by Civil Local Rule 79-5. Pursuant to that rule, a sealing order is appropriate only upon a request
20 that establishes the document is “sealable,” or “privileged, protectable as a trade secret or
21 otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). “The request must be narrowly
22 tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” *Id.*
23 Civil Local Rule 79-5(d), moreover, requires the submitting party to attach a “proposed order that
24 is narrowly tailored to seal only the sealable material” and that “lists in table format each
25 document or portion thereof that is sought to be sealed,” as well as an “unredacted version of the
26 document” that “indicate[s], by highlighting or other clear method, the portions of the document
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1 that have been omitted from the redacted version.” *Id.* R. 79-5(d)(1).

2 Since the Ninth Circuit’s decision in *Center for Auto Safety v. Chrysler Group*, 809 F.3d
3 1092, 1099 (9th Cir. 2016), most district courts to consider the question have found that a motion
4 for class certification is “more than tangentially related to the underlying cause of action” and
5 therefore merits application of the “compelling reasons” standard. *See Opperman v. Path, Inc.*,
6 2016 WL 1321296 (N.D. Cal. Feb. 11, 2016); *Corvello v. Wells Fargo Bank N.A.*, 2016 U.S. Dist.
7 LEXIS 11647 (N.D. Cal. Jan. 29, 2016); *Cohen v. Trump*, 2016 WL 3036302 (S.D. Cal. May 27,
8 2016); *but see Gustafson v. Goodman Mfg. Co. LP*, 2016 WL 393640, at *2 (D. Ariz. Feb. 2,
9 2016) (declining to “decid[e] which standard applies in this case . . . because the same records
10 would be sealed under either standard”).

11 The Court need not decide whether, in general, motions for class certification are “more
12 than tangentially related to the underlying cause of action.” *Ctr. for Auto Safety*, 809 F.3d at 1099.
13 Instead, the Court merely decides that the instant motion for class certification meets this standard.
14 *See In re Google Inc. Gmail Litig.*, 2014 WL 10537440, at *3 (N.D. Cal. Aug. 6, 2014) (holding
15 that the particular circumstances of a class certification motion justified applying the “compelling
16 reasons” standard). The dispute over class certification in the instant case has focused in large part
17 on whether the evidence shows that the power steering systems in certain Ford vehicles failed
18 because of a class-wide defect or because of individual issues. Thus, the issues on class
19 certification “entail some overlap with the merits of the plaintiff’s underlying claim.” *Wal-Mart*
20 *Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). This conclusion is reinforced by the fact that in their
21 sealing motions, the parties appear to agree that the compelling reasons standard should apply.
22 *See, e.g.*, ECF No. 199 at 2 (discussing the “compelling reasons” standard in the motion’s “Legal
23 Standard” section). In these circumstances, the Court finds that the instant motion for class
24 certification is “more than tangentially related to the underlying cause of action.” *Ctr. for Auto*
25 *Safety*, 809 F.3d at 1099. The Court therefore applies the “compelling reasons” standard to the
26 parties’ requests.

1 In support of the motions to seal, the parties have filed the following declarations:

2 (1) Declaration of Jeffrey Williams, *see* ECF No. 195

3 (2) Declaration of Amir Nassihi, *see* ECF No. 195

4 (3) Declaration of Jeffrey Williams, *see* ECF No. 199

5 (4) Declaration of Amir Nassihi, *see* ECF No. 199

6 (5) Declaration of Jeffrey Williams, *see* ECF No. 206

7 (6) Declaration of Andrew Chang, *see* ECF No. 206

8 Although the motions to seal are filed as joint motions, Plaintiffs have specified that they join the
9 motions only to indicate that they do not oppose sealing. Plaintiffs do not seek to seal any portion
10 of the briefing and do not endorse Ford’s analysis. ECF No. 195, at 1; ECF No. 199, at 1; ECF No.
11 206, at 1.

12 In the motions to seal and the supporting declarations, Ford argues that the documents
13 which Ford seeks to seal contain “sensitive, confidential, and proprietary business and company
14 information.” ECF No. 199, at 2. This includes information about the EPAS systems at issue in the
15 instant case, including the design of the EPAS systems; the evaluation, performance, and
16 investigation of the EPAS systems; corrective actions that Ford took with respect to the EPAS
17 systems; root cause analysis for faults in EPAS systems. ECF No. 195, at 2; ECF No. 199, at 2;
18 ECF No. 206, at 2. The documents also contain information about specific costs associated with
19 the EPAS systems, including component costs, replacement costs, warranty costs, and the costs of
20 corrective actions. Finally, the documents contain other information such as “information
21 concerning certain types of warranty claims,” information about Ford’s business procedures and
22 databases, and information about the units of vehicles produced for sale in the United States. ECF
23 No. 199, at 2.

24 Ford argues that public release of these categories of information would give a competitive
25 advantage to Ford’s competitors. First, Ford claims that “research, development, testing,
26 evaluation, investigations, and root cause analyses pertaining to vehicle components may take
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1 several years,” and that Ford’s competitors could use this information to free ride off of Ford’s
2 advanced diagnostic systems and research methods. ECF No. 195, at 4; ECF No. 199, at 4; ECF
3 No. 206, at 4. The Court agrees that the details of Ford’s diagnostic procedures are valuable and
4 that Ford could suffer competitive harm if they were publicly revealed. Nevertheless, the Court
5 also finds that some of Ford’s sealing requests are not narrowly tailored to this goal. Most notably,
6 Ford has sought to redact any statement by Ford employees indicating that electro-mechanical
7 relays should not have been used in EPAS systems or suggesting that the relays could or should be
8 replaced in future EPAS systems with solid state relays. The Court finds that Ford’s concerns
9 regarding free-riding do not constitute a compelling reason for sealing these statements. The
10 filings in this case are full of Plaintiffs’ arguments and suggestions that electro-mechanical relays
11 should not be used in EPAS systems. In these circumstances, it is unlikely that similar statements
12 from Ford employees that offer only general opinions would cause competitive harm to Ford.

13 Second, Ford argues that information regarding pricing decisions and costs, if disclosed,
14 would allow Ford’s competitors “to undercut Ford’s costs and timetables without incurring the
15 substantial research and development costs incurred by Ford.” ECF No. 199, at 4. Ford also argues
16 that these costs would cause competitive harm by revealing Ford’s “motives, goals, and strategies
17 with respect to automobile design and development.” *Id.* The Court finds that the need to avoid
18 competitive disadvantage in contract negotiations and undercutting by competitors is a compelling
19 reason that justifies sealing specific pricing and cost information. *See Apple Inc. v. Samsung Elecs.*
20 *Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (applying Ninth Circuit law and stating that “it seems
21 clear that if Apple’s and Samsung’s suppliers have access to their profit, cost, and margin data, it
22 could give the suppliers an advantage in contract negotiations, which they could use to extract
23 price increases for components.”). However, here again the Court finds that Ford’s requests are
24 not sufficiently narrowly tailored to this goal. Specifically, Ford seeks to redact all mention that
25 Ford or its dealers have a “markup” when selling replacement EPAS systems, as well as any
26 suggestion by Ford employees that the price for replacement EPAS systems should be lower. Ford
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1 has identified no competitive harm that could result from generalized acknowledgement of a profit
 2 margin or vague statements that the margin should be lower, and therefore these statements do not
 3 meet the “compelling reason” standard.

4 With these particular findings and the overall standard in mind, the Court rules on the
 5 instant motions as follows:

<u>Motion to Seal</u>	<u>Standard</u>	<u>Document</u>	<u>Ruling</u>
195	Compelling Reason	Ford’s Opposition	DENIED as to page 6 because page 6 contains information that is discussed elsewhere without redaction, <i>see, e.g.</i> , Ex. B at 42, and thus there is no compelling reason to redact this information. GRANTED otherwise.
195	Compelling Reason	Exhibit A	GRANTED.
195	Compelling Reason	Exhibit B	GRANTED.
195	Compelling Reason	Exhibit D	Exhibit D to Ford’s Opposition is identical to Exhibit 2 to Plaintiffs’ Motion for Class Certification. <i>See</i> Exhibit 2 below for the Court’s ruling.
195	Compelling Reason	Exhibit G	GRANTED.
195	Compelling Reason	Exhibit S	GRANTED.
199	Compelling Reason	Plaintiff’s Motion for Class Certification	DENIED as to page 1, pages 3 lines 1–7 and 12–26, page 4 lines 1–8 and lines 10–23, page 5, page 6 lines 5–10, page 7 lines 1–8, page 8 lines 17–28, page 9. GRANTED otherwise.
199	Compelling Reason	Ex. 2	GRANTED as to pages 6, 8, 18, 19, 20, 25, the second requested redaction on page 28, and the first and third proposed redactions on page 35. GRANTED as to the portions of page 14 for which redaction was requested both for Exhibit 2 and Exhibit 4. GRANTED as to the portions of page 24 for which redaction was requested both for Exhibit 2 and Exhibit 6. DENIED otherwise.
199	Compelling Reason	Ex. 3	DENIED.
199	Compelling Reason	Ex. 4	GRANTED as to the portions of page 62 for which redaction was requested both for Exhibit 2 page 14 and Exhibit 4. DENIED otherwise.
199	Compelling Reason	Ex. 5	DENIED as to page 68. GRANTED otherwise.

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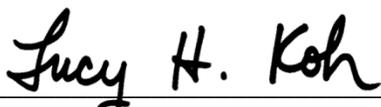
<u>Motion to Seal</u>	<u>Standard</u>	<u>Document</u>	<u>Ruling</u>
199	Compelling Reason	Ex. 6	GRANTED as to the portions of page 71 for which redaction was requested both for Exhibit 2 page 24 and Exhibit 6. DENIED otherwise.
199	Compelling Reason	Ex. 8	GRANTED.
199	Compelling Reason	Ex. 9	GRANTED.
199	Compelling Reason	Ex. 10	DENIED because Ford has identified no competitive harm or other compelling reason that would justify sealing the number of warranty returns.
199	Compelling Reason	Ex. 11	DENIED.
199	Compelling Reason	Ex. 12	GRANTED.
199	Compelling Reason	Ex. 13	GRANTED.
199	Compelling Reason	Ex. 15	DENIED as to page 114. GRANTED otherwise.
199	Compelling Reason	Ex. 16	DENIED as to page 122 and page 125. GRANTED otherwise.
199	Compelling Reason	Ex. 17	DENIED.
199	Compelling Reason	Ex. 18	DENIED.
199	Compelling Reason	Ex. 19	GRANTED.
199	Compelling Reason	Ex. 21	DENIED.
199	Compelling Reason	Ex. 23	DENIED because Ford has identified no competitive harm or other compelling reason that would justify sealing the number of warranty returns.
199	Compelling Reason	Ex. 26	GRANTED.
199	Compelling Reason	Ex. 28	GRANTED as to pages 166–68 and as to the second proposed redaction on page 173. DENIED otherwise.
199	Compelling Reason	Ex. 29	GRANTED.
199	Compelling Reason	Ex. 30	DENIED as to the first proposed redaction on page 187. GRANTED otherwise.
199	Compelling Reason	Ex. 38	GRANTED.

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<u>Motion to Seal</u>	<u>Standard</u>	<u>Document</u>	<u>Ruling</u>
199	Compelling Reason	Ex. 39	GRANTED.
199	Compelling Reason	Ex. 43	GRANTED.
199	Compelling Reason	Ex. 44	GRANTED as to the first proposed redaction under the caption "08/11/2011, Exhibit 4." DENIED otherwise.
199	Compelling Reason	Ex. 45	DENIED as to first two proposed redactions on page 313. Ford did not seek redaction of these portions of the document when the document was reproduced in Exhibit 2 page 28. GRANTED otherwise.
199	Compelling Reason	Ex. 46	DENIED because Ford has not identified any competitive harm or other compelling reason to seal discussion of the timing of Ford's meetings with its supplier.
206	Compelling Reason	Plaintiffs' Reply in Support of Motion for Class Certification	GRANTED as to page 1. DENIED otherwise.
206	Compelling Reason	Ex. 52	DENIED as to page 360. GRANTED otherwise.

IT IS SO ORDERED.

Dated: December 20, 2016



 LUCY H. KOH
 United States District Judge