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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ROBERT A. NITSCH, et al.,  
Plaintiffs,  
v.  
DREAMWORKS ANIMATION SKG INC.,  
et al.,  
Defendants.

Case No. 14-CV-04062-LHK  
**ORDER GRANTING SEALING  
MOTIONS**  
Re: Dkt. No. 361

Defendants the Walt Disney Company, Lucasfilm, Pixar, and Two Pic MC LLC (collectively, “Disney Defendants”) move to seal an attachment to the proposed Settlement Agreement submitted along with the parties’ motion for preliminary approval of class action settlement. ECF No. 358 (motion for preliminary approval of class action settlement); ECF No. 361 (motion to seal). Plaintiff Georgia Cano has also filed a motion to seal the same information. ECF No. 360.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435

1 U.S. 589, 597 & n.7 (1978)). Thus, when considering a sealing request, “a strong presumption in  
2 favor of access is the starting point.” *Id.* (internal quotation marks omitted).

3 Parties seeking to seal judicial records relating to motions that are “more than tangentially  
4 related to the underlying cause of action,” *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092,  
5 1099 (9th Cir. 2016), bear the burden of overcoming the presumption with “compelling reasons  
6 supported by specific factual findings” that outweigh the general history of access and the public  
7 policies favoring disclosure. *Kamakana*, 447 F.3d at 1178–79 (9th Cir. 2006). Compelling reasons  
8 justifying the sealing of court records generally exist “when such ‘court files might have become a  
9 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public  
10 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon*, 435  
11 U.S. at 598). However, “[t]he mere fact that the production of records may lead to a litigant’s  
12 embarrassment, incrimination, or exposure to further litigation will not, without more, compel the  
13 court to seal its records.” *Id.*

14 Records attached to motions that are “not related, or only tangentially related, to the merits  
15 of a case,” are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at  
16 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court  
17 records attached only to non-dispositive motions because those documents are often unrelated, or  
18 only tangentially related, to the underlying cause of action.” (internal quotation marks omitted)).  
19 Parties moving to seal records attached to motions unrelated or only tangentially related to the  
20 merits of a case must meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of  
21 Civil Procedure. *Ctr. for Auto Safety*, 809 F.3d at 1098-99; *Kamakana*, 447 F.3d at 1179–80. The  
22 “good cause” standard requires a “particularized showing” that “specific prejudice or harm will  
23 result” if the information is disclosed. *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th  
24 Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated by specific  
25 examples or articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d  
26 470, 476 (9th Cir. 1992).

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

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

23 In the instant case, the parties seek to seal Attachment 3 to the Settlement Agreement  
24 offered in support of Plaintiffs’ motion for preliminary approval of class action settlement. ECF  
25 No. 360. Specifically, the parties to seal the percentage of opt-outs that trigger the Disney  
26 Defendants’ right to terminate the settlement. ECF No. 361, at 2. The parties submit that there are  
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1 “compelling reasons” to seal Attachment 3 to the Settlement Agreement. ECF No. 360. *See*  
2 *Johnson v. Quantum Learning Network, Inc.*, 2016 WL 4472993, at \*2 (N.D. Cal. Aug. 22, 2016)  
3 (applying “compelling reasons” to seal documents associated with a motion for preliminary  
4 approval of class action settlement).

5 With this standard in mind, the Court GRANTS the motions to seal. The motions are  
6 narrowly tailored and seek to seal only the information that, if revealed, could lead to court files  
7 “becom[ing] a vehicle for improper purposes.” *Kamakana*, 447 F.3d at 1179. Both class members  
8 and the Disney Defendants have a strong interest in avoiding strategic conduct by potential  
9 objectors in targeting a specific number of opt-outs.

10 This conclusion is also supported by decisions of other courts. For example, another court  
11 in this district has found that there are “compelling reasons to keep [the opt-out percentage]  
12 confidential, in order to prevent third parties from utilizing it for the improper purpose of  
13 obstructing the settlement and obtaining higher payouts.” *Thomas v. Magnachip Semiconductor*  
14 *Corp.*, 2016 WL 3879193, at \*7 (N.D. Cal. July 18, 2016). Additionally, the Ninth Circuit, in  
15 affirming a district court’s preliminary approval of a settlement and denial of a renewed motion to  
16 decertify the class, noted that the district court maintained the confidentiality of the “exact  
17 threshold” of opt-outs that would have triggered a defendant’s right to terminate the settlement  
18 agreement. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015).

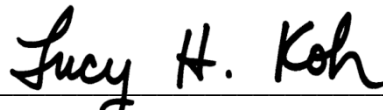
19 For these reasons, the Court GRANTS the motions to seal Attachment 3 to the Settlement  
20 Agreement.

21 **IT IS SO ORDERED.**

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23 Dated: March 2, 2017

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LUCY H. KOH  
United States District Judge

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