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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

EUGENE F. TOWERS,
Plaintiff,
v.
ROBERT A. IGER, et al.,
Defendants.

Case No. [15-cv-04609-BLF](#)

**ORDER GRANTING DEFENDANTS'
ADMINISTRATIVE MOTION TO SEAL
DOCUMENT**

[Re: ECF 56]

Before the Court is Defendants’ administrative motion to seal portions of their memorandum of points and authorities in support of their motion to dismiss the verified amended stockholder derivative complaint for breach of fiduciary duty and unjust enrichment (“motion to dismiss”). Mot., ECF 56. For the reasons discussed below, the motion is GRANTED.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

However, “while protecting the public’s interest in access to the courts, we must remain

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

21 In addition to making particularized showings of good cause, parties moving to seal
 22 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
 23 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
 24 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
 25 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
 26 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
 27 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable
 28 material” which “lists in table format each document or portion thereof that is sought to be

1 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by
2 highlighting or other clear method, the portions of the document that have been omitted from the
3 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
4 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
5 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

6 **II. DISCUSSION**

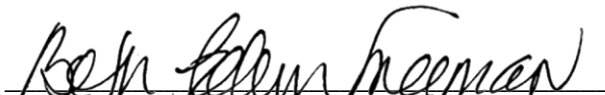
7 Because the sealing motion at issue relates to Defendants’ motion to dismiss, which is
8 more than tangentially related to the merits of the case, the motion is resolved under the
9 compelling reasons standard.

10 Defendants seek to seal portions of their motion to dismiss that relate to meetings of The
11 Walt Disney Company’s (the “Company”) board of directors during which the directors discussed
12 confidential matters regarding the Company’s acquisition of Pixar, Inc. (“Pixar”), including the
13 board of directors’ negotiations, strategic considerations for entering into the acquisition, and post-
14 acquisition operational issues. Mot. 1; Horvath Decl. ¶ 3, ECF 56-1. These matters were not
15 disclosed at the time of the Company’s acquisition of Pixar, and the Company has maintained the
16 confidentiality of that information since. Mot. 1; Horvath Decl. ¶ 3.

17 The Court finds these reasons compelling and the request narrowly tailored. Accordingly,
18 the Court GRANTS Defendants’ sealing motion as to the identified portions of the motion to
19 dismiss.

20 **IT IS SO ORDERED.**

21 Dated: November 22, 2016

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23 **BETH LABSON FREEMAN**
24 United States District Judge
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