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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
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8 OPTRONIC TECHNOLOGIES, INC,

9 Plaintiff,

10 v.

11 NINGBO SUNNY ELECTRONIC CO.,
12 LTD., et al.,

13 Defendants.

Case No. [16-cv-06370-EJD](#) (VKD)

**ORDER RE ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
DOCUMENTS UNDER SEAL**

Re: Dkt. No. 171

14 In connection with three joint discovery dispute letters, the parties have briefed Orion's
15 administrative motion to file under seal portions of those submissions. Dkt. Nos. 171 (Section
16 II),¹ 179.

17 Having considered the parties' respective submissions, the Court grants in part and denies
18 in part Orion's administrative motion.

19 **I. BACKGROUND**

20 Section II of Orion's administrative motion concerns materials filed with the Court in
21 connection with three discovery disputes (Dkt. Nos. 173, 174, 175). Orion asks the Court not to
22 seal certain materials, which defendants have designated "Confidential" or "Highly Confidential"
23 under the protective order in this action. These materials are attached as exhibits to the Fisher
24 Declaration (Dkt. No. 171-1):

- 25 1. Exhibit 1: Portions of Joint Discovery Letter Brief re Subject-Matter Waiver of
26 Privilege re FTC Inquiry

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28 ¹ The Court addressed Section I of Dkt. No. 171 in an earlier order.

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2. Exhibit 2: Portions of Joint Discovery Letter Brief re Depositions of Defendants’ Witnesses James Chiu and Peter Ni
3. Exhibit 3: Deposition of Peter Ni
4. Exhibit 4: Deposition of James Chiu
5. Exhibit 5: Computer disk with video of Peter Ni deposition
6. Exhibit 6: Computer disk with video of James Chiu deposition
7. Exhibit 7: Deposition of James Chiu
8. Exhibit 8: Deposition of Peter Ni
9. Exhibit 9: Rule 30(b)(6) deposition of James Chiu
10. Exhibit 10: Portions of Joint Discovery Letter Brief re Deposition of Defendants’ Rule 30(b)(6) Designee
11. Exhibit 11: Rule 30(b)(6) deposition of James Chiu
12. Exhibit 12: Computer disk with video of defendants’ Rule 30(b)(6) designee
13. Exhibit 13: Rule 30(b)(6) deposition of James Chiu

Dkt. No. 171. Defendants Ningbo Sunny Electronic Co., Ltd., Sunny Optics, Inc., and Meade Instruments Corp. ask the Court to seal some, but not all, of this material. See Dkt. No. 179.

II. LEGAL STANDARDS

Civil Local Rule 79-5 requires that where a party seeks to file under seal a document designated as confidential by the opposing party pursuant to a protective order, the designating party must submit a declaration establishing the material sought to be sealed meets the applicable criteria for sealing. Civil L.R. 79-5(e)(1). In addition, the request to seal must be narrowly tailored to seal only the sealable material. Civil L.R. 79-5(d). In considering a sealing request, the Court begins with the strong presumption in favor of access by the public to judicial records and documents. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006).

Where the judicial records at issue relate to dispositive motions or other motions that are more than “tangentially related” to the merits of the case, the party seeking to seal the records must overcome the presumption by offering “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.”

1 Id. at 1178-79 (internal quotation marks and citation omitted). Compelling reasons to seal judicial
 2 records may exist when those records are filed for an improper purpose, such as to release trade
 3 secrets. Id. at 1179. However, the fact that disclosure of the records may lead to a party’s
 4 embarrassment or even exposure to further litigation does not, without more, require the Court to
 5 seal its records. Id.

6 The strong presumption of public access does not apply to judicial records that are not
 7 related, or only tangentially related, to the merits of a case. *Center for Auto Safety v. Chrysler*
 8 *Group, LLC*, 809 F.3d 1092, 1101 (9th Cir.), cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto*
 9 *Safety*, 137 S. Ct. 38 (2016); *Kamakana*, 447 F.3d at 1179. For such records, a party seeking to
 10 seal documents or information must meet the lower “good cause” standard of Rule 26(c) of the
 11 Federal Rules of Civil Procedure. *Center for Auto Safety*, 809 F.3d at 1098-99; *Kamakana*, 447
 12 F.3d at 1179-80. The “good cause” standard requires a particularized showing that disclosure will
 13 cause specific prejudice or harm. *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307
 14 F.3d 1206, 1210-11 (9th Cir. 2002) (citation omitted).

15 Orion argues that the “good cause” standard governs the Court’s consideration of the
 16 parties’ sealing requests and objections thereto because these discovery motions are only
 17 tangentially related to the merits of the case. See Dkt. No. 171 at 2. Defendants do not dispute the
 18 application of this standard. The Court agrees that the “good cause” standard applies to the
 19 discovery-related portion of Orion’s administrative motion.

20 **III. DISCUSSION**

21 Defendants ask the Court to seal portions of Exhibits 7, 8, 9, 11 and 13 to the Fisher
 22 Declaration, each of which is an excerpt of deposition testimony from a witness for defendants.
 23 Dkt. No. 179. For each such excerpt, defendants rely on the declaration of James Chiu.
 24 Defendants ask the Court to seal the following deposition testimony:

25 Exhibit 7	Deposition of James Chiu, pp. 23-27 and 115-119
26 Exhibit 8	Deposition of Peter Ni, pp. 80-85, 181-186 and 192
27 Exhibit 9	Rule 30(b)(6) deposition of James Chiu, pp. 167-177
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Exhibit 11	Rule 30(b)(6) deposition of James Chiu, pp. 111-114 and 179-180
Exhibit 13	Rule 30(b)(6) deposition of James Chiu, pp. 151-152, 159, 205, 210-211, 216:15, 217:1-2, 218:13, 218:21 and 219-222

A. Exhibits 7-9

According to Mr. Chiu, the cited deposition testimony in Exhibits 7-9 discloses confidential payment and credit terms for defendants’ customers. Defendants consider this information highly confidential and competitively-sensitive information, and they argue that disclosure of this deposition testimony would harm to defendants’ business and financial interests. Dkt. No. 179, ¶¶ 4-9. Orion offers no explanation in support of its view that these materials do not meet the “good cause” standard for sealing.

The Court has reviewed the above-referenced portions of Exhibits 7-9 and finds that defendants have established that these deposition excerpts are sealable for the reasons stated in Mr. Chiu’s declaration, and that there is good cause to maintain them under seal.

B. Exhibit 11

Exhibit 11 contains excerpts from the Rule 30(b)(6) deposition of Mr. Chiu. The testimony at pages 111-114 of the deposition discloses confidential information of certain of defendants’ customers and reflects an internal discussion of how defendants chose to supply those customers. The testimony at pages 179-180 of the deposition refers to how defendants do or do not calculate profits, but contains no substantive information about sales or profits. According to Mr. Chiu, both excerpts include confidential business information of defendants, and that public disclosure of the testimony would negatively affect defendants’ relationships with its customers or permit competitors to gain insight into many aspects of defendants’ business. Orion offers no explanation in support of its view that these materials do not meet the “good cause” standard for sealing.

The Court is persuaded that the testimony at pages 111-114 does contain competitively-sensitive information concerning defendants’ customers and customer relationships for the reasons described in Mr. Chiu’s declaration, and concludes that good cause exists to maintain this

1 testimony under seal. However, the Court is not persuaded that sealing is warranted for the
 2 testimony at pages 179-180. This deposition testimony contains very little substantive information
 3 at all, and certainly does not contain actual “profits information” or any information about
 4 defendants’ “financial health” or “cash flow.” Defendants have not established good cause to seal
 5 the testimony at pages 179-180 and that portion of Exhibit 11 must be filed on the public record.

6 **C. Exhibit 13**

7 Exhibit 13 also contains excerpts from the Rule 30(b)(6) deposition of Mr. Chiu. The
 8 testimony at pages 151-152, 159, 205, and 210-211 of the deposition includes a discussion of
 9 defendants’ profits and how those profits are calculated. The testimony at pages 216:15, 217:1-2,
 10 218:13, 218:21 and 219-222 of the deposition includes information about defendants’ specific
 11 pricing of particular products. According to Mr. Chiu, this type of financial information is
 12 competitively-sensitive business information of defendants. Orion offers no explanation in
 13 support of its view that these materials do not meet the “good cause” standard for sealing.

14 For the reasons stated in Mr. Chiu’s declaration, the Court concludes that good cause exists
 15 to maintain the cited portions of Exhibit 13 under seal.

16 **IV. CONCLUSION**

17 In summary, the following material may remain under seal:

Dkt. No.	Document	Under Seal
171-16	Fisher Declaration (Dkt. No. 171-1), Exhibit 7	Deposition of James Chiu, pp. 23-27 and 115-119
171-18	Fisher Declaration (Dkt. No. 171-1), Exhibit 8	Deposition of Peter Ni, pp. 80-85, 181-186 and 192
171-20	Fisher Declaration (Dkt. No. 171-1), Exhibit 9	Rule 30(b)(6) deposition of James Chiu, pp. 167-177
171-24	Fisher Declaration (Dkt. No. 171-1), Exhibit 11	Rule 30(b)(6) deposition of James Chiu, pp. 111-114
171-28	Fisher Declaration (Dkt. No. 171-1), Exhibit 13	Rule 30(b)(6) deposition of James Chiu, pp. 151-152, 159, 205, 210-211, 216:15, 217:1-2, 218:13, 218:21 and 219-222

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The remainder of the material that is the subject of Orion’s administrative motion must be filed in the public record four days after entry of this order:

Dkt. No.	Document	Public Record
171-4	Fisher Declaration (Dkt. No. 171-1), Exhibit 1	Entire document
171-6	Fisher Declaration (Dkt. No. 171-1), Exhibit 2	Entire document
171-8	Fisher Declaration (Dkt. No. 171-1), Exhibit 3	Entire document
171-10	Fisher Declaration (Dkt. No. 171-1), Exhibit 4	Entire document
171-12	Fisher Declaration (Dkt. No. 171-1), Exhibit 5	Entire document
171-14	Fisher Declaration (Dkt. No. 171-1), Exhibit 6	Entire document
171-22	Fisher Declaration (Dkt. No. 171-1), Exhibit 10	Entire document
171-24	Fisher Declaration (Dkt. No. 171-1), Exhibit 11	All pages <u>except pp. 111-114</u>
171-26	Fisher Declaration (Dkt. No. 171-1), Exhibit 12	Entire document
171-34	Fisher Declaration (Dkt. No. 171-1), Exhibit 16	Entire document

IT IS SO ORDERED.

Dated: December 14, 2018

Virginia K. DeMarchi
VIRGINIA K. DEMARCHI
United States Magistrate Judge