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

SKILLZ PLATFORM INC.,
Plaintiff,
v.
AVIAGAMES INC.,
Defendant.

Case No. 21-cv-02436-BLF

**ORDER ON SEALING MOTIONS RE:
AVIAGAMES MOTIONS IN LIMINE**

[Re: ECF No. 351, 352, 381, 382]

Before the Court are Defendant AviaGames Inc.’s sealing motions relating to its motions in limine. ECF Nos. 351, 352, 381, 382. The Court has considered the motions, and its rulings are laid out below.

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 and Cnty. 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)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097.

In addition, in this district, all parties requesting sealing must comply with Civil Local Rule 79-5. That rule requires, inter alia, the moving party to provide “the reasons for keeping a document under seal, including an explanation of: (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive

1 alternative to sealing is not sufficient.” Civ. L.R. 79-5(c)(1). Further, Civil Local Rule 79-5
2 requires the moving party to provide “evidentiary support from declarations where necessary.”
3 Civ. L.R. 79-5(c)(2). And the proposed order must be “narrowly tailored to seal only the sealable
4 material.” Civ. L.R. 79-5(c)(3).

5 Further, when a party seeks to seal a document because it has been designated as
6 confidential by another party, the filing party must file an Administrative Motion to Consider
7 Whether Another Party’s Material Should be Sealed. Civ. L.R. 79-5(f). In that case, the filing
8 party need not satisfy the requirements of subsection (c)(1). Civ. L.R. 79-5(f)(1). Instead, the
9 party who designated the material as confidential must, within seven days of the motion’s filing,
10 file a statement and/or declaration that meets the requirements of subsection (c)(1). Civ. L.R. 79-
11 5(f)(3). A designating party’s failure to file a statement or declaration may result in the unsealing
12 of the provisionally sealed document without further notice to the designating party. *Id.* Any
13 party can file a response to that declaration within four days. Civ. L.R. 79-5(f)(4).

14 **II. DISCUSSION**

15 Because motions in limine seek to exclude evidence from the trial, the Court finds that
16 they are more than tangentially related to the merits of the case and applies the compelling reasons
17 standard. *See MasterObjects, Inc. v. Amazon.com, Inc.*, No. C 20-08103 WHA, 2022 WL
18 1144634, at *1 (N.D. Cal. Mar. 9, 2022) (“Evidentiary motions such as motions in limine and
19 Daubert motions can be strongly correlative to the merits of a case.”); *Space Data Corp. v.*
20 *Alphabet Inc.*, No. 16-CV-03260-BLF, 2019 WL 8012584, at *1 (N.D. Cal. July 18, 2019)
21 (applying the compelling reasons standard to motions to seal related to motions in limine); *Fed.*
22 *Trade Comm’n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2018 WL 6575544, at *2 (N.D. Cal.
23 Dec. 12, 2018) (same).

24 **A. Defendant AviaGames Inc.’s Administrative Motion to Seal Relating to Its**
25 **Motions in Limine (ECF No. 351)**

26 AviaGames argues that the information it seeks to seal “describes and/or quotes from the
27 Highly Confidential documents produced by AviaGames, including source code printouts, that
28 contain aspects of AviaGames’ business practices and strategy, its products, and source code

1 algorithms.” ECF No. 351 ¶ 3. Skillz did not file an opposition to the motion.

2 Compelling reasons exist to seal trade secrets. *Kamakana*, 447 F.3d at 1179.
 3 “Confidential source code clearly meets the definition of a trade secret,” and it thus meets the
 4 compelling reasons standard. *See Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-CV-01846-
 5 LHK, 2012 WL 6115623, at *2 (N.D. Cal. Dec. 10, 2012). And the “compelling reasons”
 6 standard is met for confidential business information that would harm a party’s competitive
 7 standing. *See Jam Cellars, Inc. v. Wine Grp. LLC*, No. 19-cv-01878-HSG, 2020 WL 5576346, at
 8 *2 (N.D. Cal. Sept. 17, 2020) (finding compelling reasons for “confidential business and
 9 proprietary information relating to the operations of both Plaintiff and Defendant”); *Fed. Trade*
 10 *Comm’n v. Qualcomm, Inc.*, No. 17-cv-00220-LHK, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3,
 11 2019) (finding compelling reasons for “information that, if published, may harm [a party’s] or
 12 third parties’ competitive standing and divulges terms of confidential contracts, contract
 13 negotiations, or trade secrets”); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008)
 14 (finding sealable “business information that might harm a litigant’s competitive standing”).

15 Although the Court finds compelling reasons to seal some of the information in
 16 AviaGames’ motions in limine and its exhibits, the Court finds that there are not compelling
 17 reasons to seal entire exhibits. In fact, such broad sealing requests are not “narrowly tailored to
 18 seal only the sealable material.” Civ. L.R. 79-5(c)(3). For example, AviaGames seeks to seal the
 19 entirety of four expert reports including the experts’ qualifications, for which there are no
 20 compelling reasons to seal.

21 The Court rules as follows:

ECF No.	Document	Portions to Seal	Ruling
351-1	AviaGames’ Motion in Limine 1	Page 1:8–10	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
351-2	AviaGames’ Motion in Limine 2	Highlighted Portions	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive

			harm.	
1	351-3	Ex. 1: Dr. Zagal’s Supplemental Expert Report dated October 13, 2023	Entire Document	DENIED as not narrowly tailored.
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3	351-4	Ex. 2: Mr. Bergman’s Supplemental Expert Report dated October 13, 2023	Entire Document	DENIED as not narrowly tailored.
4				
5	351-5	Ex. 8: Ex. B to Skillz’s August 27, 2021 Infringement Contentions	Entire Document	DENIED as not narrowly tailored.
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7	351-6	Ex. 9: Ex. B to Skillz’s December 17, 2021 Amended Infringement Contentions	Entire Document	DENIED as not narrowly tailored.
8				
9	351-7	Ex. 10: Dr. Zagal’s Expert Report dated May 26, 2023	Entire Document	DENIED as not narrowly tailored.
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11	351-8	Ex. 11: Dr. Zagal’s Supplemental Report dated June 19, 2023	Entire Document	DENIED as not narrowly tailored.
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The above denials are WITHOUT PREJUDICE to AviaGames filing a renewed motion that seeks to seal specified redacted portions of these exhibits. The Court notes that redactions must be “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3).

B. Defendant AviaGames Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should be Sealed Relating to Its Motions in Limine (ECF No. 352)

AviaGames filed an administrative motion to consider whether another party’s material should be sealed in connection with its motions in limine. ECF No. 352. AviaGames identified highlighted portions of its motions in limine and attached exhibits as containing information that Skillz has designated as highly confidential. *Id.* at 1.

Skillz filed a statement in support of the motion. ECF No. 403. No party has filed an opposition to the statement. Skillz states that the highlighted portions of ECF Nos. 352-1 and 352-3 and the entirety of ECF Nos. 352-6, 352-7, 352-8, 352-9, 352-12, and 352-14 “contain descriptions of Skillz’s proprietary technology, including explanations of Skillz’s efforts to develop its own products.” *Id.* at 1. This information includes confidential business information

1 about the development and operation of Skillz’s products, the release of which would cause Skillz
 2 to suffer competitive harm. *Id.* Because Skillz does not seek to seal ECF Nos. 352-2, 352-4, 352-
 3 5, 352-10, 352-11, and 352-13, the Court will DENY AviaGames’ motion with respect to those
 4 documents.

5 As noted above, compelling reasons exist to seal trade secrets, which includes confidential
 6 source code and confidential business information that, if published, may harm a party’s
 7 competitive standing. *See Apple*, 2012 WL 6115623, at *2; *Jam Cellars*, 2020 WL 5576346, at
 8 *2; *Qualcomm*, 2019 WL 95922, at *3; *Elec. Arts*, 298 F. App’x at 569.

9 Although the Court finds compelling reasons to seal some of the information that Skillz
 10 identifies in AviaGames’ motions in limine and the attached exhibits, the Court does not find
 11 compelling reasons to seal certain exhibits in their entirety. Such broad sealing requests are not
 12 “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3). For example, Skillz
 13 seeks to seal the entirety of two of Dr. Zagal’s expert reports, including his qualifications, for
 14 which there are no compelling reasons to seal.

15 The Court rules as follows:

ECF No.	Document	Portions to Seal	Ruling
352-1	AviaGames’ Motion in Limine 1	Highlighted Portions	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive harm.
352-2	AviaGames’ Motion in Limine 2	Highlighted Portions	DENIED because Skillz’s statement did not request sealing.
352-3	AviaGames’ Motion in Limine 4	Highlighted Portions	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive harm.
352-4	Ex. 1: Dr. Zagal’s Supplemental Expert Report dated October 13, 2023	Entire Document	DENIED because Skillz’s statement did not request sealing.
352-5	Ex. 2: Mr. Bergman’s Supplemental Expert	Entire Document	DENIED because Skillz’s statement did not request sealing.

1		Report dated October 13, 2023		
2	352-6	Ex. 4: SKLZPAT00057289	Entire Document	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive harm.
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5	352-7	Ex. 5: SKLZPAT00466825	Entire Document	DENIED as not narrowly tailored.
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7	352-8	Ex. 6: SKLZPAT00212701	Entire Document	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
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10	352-9	Ex. 7: SKLZPAT00016164	Entire Document	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
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12	352-10	Ex. 8: Ex. B to Skillz's August 27, 2021 Infringement Contentions	Entire Document	DENIED because Skillz's statement did not request sealing.
13				
14	352-11	Ex. 9: Ex. B to Skillz's December 17, 2021 Amended Infringement Contentions	Entire Document	DENIED because Skillz's statement did not request sealing.
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17	352-12	Ex. 10: Dr. Zagal's Expert Report dated May 26, 2023	Entire Document	DENIED as not narrowly tailored.
18				
19	352-13	Ex. 11: Dr. Zagal's Supplemental Report dated June 19, 2023	Entire Document	DENIED because Skillz's statement did not request sealing.
20				
21	352-14	Ex. 12: Dr. Zagal's deposition transcript	Entire Document	DENIED as not narrowly tailored.

22 The above denials are WITHOUT PREJUDICE to Skillz filing a renewed statement that seeks to
 23 seal specified redacted portions of these exhibits. The Court notes that redactions must be
 24 "narrowly tailored to seal only the sealable material." Civ. L.R. 79-5(c)(3).

25 **C. Defendant AviaGames Inc.'s Administrative Motion to Consider Whether**
 26 **Another Party's Material Should be Sealed Relating to Its Motions in Limine #2**
 27 **and #4 (ECF No. 381)**

28 AviaGames filed an administrative motion to consider whether another party's material should be sealed in connection with motions in limine #2 and #4. ECF No. 381. AviaGames

1 identified highlighted portions of its motions in limine and attached exhibits as containing
2 information that Skillz has designated as highly confidential. *Id.* at 1.

3 Skillz filed a statement in support of the motion. ECF No. 428. No party has filed an
4 opposition to the statement. Skillz states that the highlighted portions of ECF Nos. 381-1 and 381-
5 2 and the entirety of ECF Nos. 381-3, 381-4, 381-5, 381-6, 381-7, 381-8, 381-9, 381-10, 381-11,
6 381-12 “contain descriptions of Skillz’s proprietary technology, including explanations of Skillz’s
7 efforts to develop its own products.” *Id.* at 1. This information includes confidential business
8 information about the development and operation of Skillz’s products, the release of which would
9 cause Skillz to suffer competitive harm. *Id.*

10 As noted above, compelling reasons exist to seal trade secrets, which includes confidential
11 source code and confidential business information that, if published, may harm a party’s
12 competitive standing. *See Apple*, 2012 WL 6115623, at *2; *Jam Cellars*, 2020 WL 5576346, at
13 *2; *Qualcomm*, 2019 WL 95922, at *3; *Elec. Arts*, 298 F. App’x at 569.

14 As above, the Court finds compelling reasons to seal some of the information that Skillz
15 identifies in AviaGames’ motions in limine #2 and #4 and the attached exhibits, but the Court does
16 not find compelling reasons to seal certain exhibits in their entirety. Such broad sealing requests
17 are not “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3). For example,
18 Skillz seeks to seal the entirety of two of Dr. Bergman’s expert reports, including his
19 qualifications, for which there are no compelling reasons to seal.

20 The Court rules as follows:

ECF No.	Document	Portions to Seal	Ruling
381-1	AviaGames’ Motion in Limine 2	Highlighted Portions	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive harm.
381-2	AviaGames’ Motion in Limine 4	Highlighted Portions	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
381-3	Ex. 13: Opening Report	Entire Document	DENIED as not narrowly

	of Jim W. Bergman		tailored.	
1	381-4	Exhibit 14: SKLZPAT0005708	Entire Document	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
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4	381-5	Exhibit 15: Second Supplemental Expert Report of Jim Bergman served October 13, 2023	Entire Document	DENIED as not narrowly tailored.
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7	381-6	Exhibit 16: SKILPAT00000798	Entire Document	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
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10	381-7	Exhibit 19: June 6, 2023 deposition transcript of Casey Chafkin	Entire Document	DENIED as not narrowly tailored.
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12	381-8	Exhibit 20: Jim Bergman Deposition Transcript (excerpted)	Entire Document	DENIED as not narrowly tailored.
13				
14	381-9	Exhibit 21: Andrew Paradise Deposition Transcript	Entire Document	DENIED as not narrowly tailored.
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16	381-10	Exhibit 22: Opening Expert Report of Jose P. Zagal Regarding Infringement	Entire Document	DENIED as not narrowly tailored.
17				
18	381-11	Exhibit 23: May 12, 2023 deposition transcript of Casey Chafkin	Entire Document	DENIED as not narrowly tailored.
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20				
21	381-12	Exhibit 24: Jose Zagal Deposition Transcript (excerpted)	Entire Document	DENIED as not narrowly tailored.
22				

The above denials are WITHOUT PREJUDICE to Skillz filing a renewed statement that seeks to seal specified redacted portions of these exhibits. The Court notes that redactions must be “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3).

D. Defendant AviaGames Inc.’s Administrative Motion to Seal Relating to Its Motions in Limine #2 and #4 (ECF No. 382)

AviaGames argues that the information it seeks to seal “describes and/or quotes from the Highly Confidential documents produced by AviaGames, including source code printouts, that

1 contain aspects of AviaGames’ business practices and strategy, its products, and source code
2 algorithms.” ECF No. 382 ¶ 3. Skillz did not file an opposition to the motion.

3 As noted above, compelling reasons exist to seal trade secrets, which includes confidential
4 source code and confidential business information that, if published, may harm a party’s
5 competitive standing. *See Apple*, 2012 WL 6115623, at *2; *Jam Cellars*, 2020 WL 5576346, at
6 *2; *Qualcomm*, 2019 WL 95922, at *3; *Elec. Arts*, 298 F. App’x at 569.

7 As above, the Court finds compelling reasons to seal some of the information in
8 AviaGames’ motions in limine #2 and #4 and the attached exhibits, but the Court finds that there
9 are not compelling reasons to seal entire exhibits. In fact, such broad sealing requests are not
10 “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3). For example,
11 AviaGames seeks to seal the entirety of three expert reports including the experts’ qualifications,
12 for which there are no compelling reasons to seal.

13 The Court rules as follows:

ECF No.	Document	Portions to Seal	Ruling
382-2	AviaGames’ Motion in Limine No. 2 to Exclude New “Bot” Arguments	Highlighted Portions	GRANTED as containing confidential source code and confidential business information, the release of which would cause a party competitive harm.
382-3	AviaGames’ Motion in Limine No. 4 to Exclude Certain Opinions of Jim. W. Bergman and Jose P. Zagal	Highlighted Portions	GRANTED as containing confidential business information, the release of which would cause a party competitive harm.
382-4	Ex. 13: Opening Report of Jim W. Bergman	Entire Document	DENIED as not narrowly tailored.
382-5	Exhibit 15: Second Supplemental Expert Report of Jim Bergman served October 13, 2023	Entire Document	DENIED as not narrowly tailored.
382-6	Exhibit 20: Jim Bergman Deposition Transcript (excerpted)	Entire Document	DENIED as not narrowly tailored.
382-7	Exhibit 22: Opening Expert Report of Jose	Entire Document	DENIED as not narrowly tailored.

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	P. Zagal Regarding Infringement		
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The above denials are WITHOUT PREJUDICE to AviaGames filing a renewed motion that seeks to seal specified redacted portions of these exhibits. The Court notes that redactions must be “narrowly tailored to seal only the sealable material.” Civ. L.R. 79-5(c)(3).

III. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Defendant AviaGames Inc.’s Administrative Motion to Seal Relating to Its Motions in Limine (ECF No. 351) is GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART. AviaGames may file a renewed motion with more narrow redactions within 7 days of the date of this Order.

2. Defendant AviaGames Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should be Sealed Relating to Its Motions in Limine (ECF No. 352) is GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART. Skillz may file a renewed statement in support of sealing with more narrow redactions of the documents for which the Court denied sealing as not narrowly tailored within 7 days of the date of this Order.

3. Defendant AviaGames Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should be Sealed Relating to Its Motions in Limine #2 and #4 (ECF No. 381) is GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART. Skillz may file a renewed statement in support of sealing with more narrow redactions within 7 days of the date of this Order.

4. Defendant AviaGames Inc.’s Administrative Motion to Seal Relating to Its Motions in Limine #2 and #4 (ECF No. 382) is GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART. AviaGames may file a renewed motion with more narrow redactions within 7 days of the date of this Order.

Dated: November 13, 2023


BETH LABSON FREEMAN
United States District Judge