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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YANIRA ALGARIN and PATSY MURDOCK, on Behalf of Themselves and All Others Similarly Situated,)	Civil No.12cv3000 AJB (DHB)
Plaintiffs,)	ORDER GRANTING THE JOINT MOTION TO FILE DOCUMENTS UNDER SEAL
v.)	[Doc. No. 60]
MAYBELLINE, LLC, A New York Limited Liability Company, dba MAYBELLINE NEW YORK,)	
Defendants.)	

The matter before the Court is the Parties’ Joint Motion to Seal select documents filed in support of Plaintiffs’ Motion for Class Certification. (Doc. No. 61.) On February 20, 2014, Plaintiffs filed a Motion for Class Certification. (Doc. No. 61.) The Motion’s Memorandum of Points and Authorities, as well as certain Exhibits attached, contain certain information designated by Defendant as “CONFIDENTIAL” and under a Protective Order entered on July 19, 2013. The Parties now requests the Court to seal those portions pursuant to Local Rule 79.2 and the July 19, 2013 Protective Order. For the following reasons, the Motion to Seal is GRANTED.

1 **I. BACKGROUND**

2 This is a putative class action regarding Defendant Maybelline LLC’s (“Defendant”)
3 SuperStay 24HR Lipcolor and SuperStay 24HR Makeup products (the “Class Products”).
4 Plaintiffs seek to certify a class alleging violations of California’s Unfair Competition Law
5 (“UCL”), Business and Professions Code § 17200, *et seq.* and Consumers Legal Remedies
6 Act (“CRLA”), Civil Code § 1750, *et seq.*, based on Defendant’s alleged false advertising
7 of the Class Products. (Doc. No. 47.)
8

9 On July 19, 2013, the Parties entered into a Protective Order regarding certain
10 discovery material to be made available by Defendants. The Protective Order permitted the
11 parties and other non parties to designate as “CONFIDENTIAL” documents they, in good
12 faith, believe contains or constitutes: “sensitive personal information; commercial research
13 or development; proprietary business or sales information; or other information required by
14 applicable law or agreement to be kept confidential.” (Doc. No. 40.)

15 The Parties now seek to seal the information those portions Defendant designated as
16 “CONFIDENTIAL” filed with their Motion for Class Certification. Specifically, Defen-
17 dant’s confidential, proprietary, and business information. (Doc. No. 60.)

18 **II. LEGAL STANDARD**

19 Courts have historically recognized a “general right to inspect and copy public records
20 and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns,*
21 *Inc.*, 435 U.S. 589, 597 & n. 7 (1978). “Unless a particular court record is one ‘traditionally
22 kept secret,’ a ‘strong presumption in favor of access’ is the starting point. *Kamakana v.*
23 *City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State*
24 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to overcome this
25 strong presumption, a party seeking to seal a judicial record must articulate justifications for
26 sealing that outweigh the public policies favoring disclosure. *See id.* at 1178–79. In turn,
27 the court must “conscientiously balance the competing interests” of the public and the party
28 who seeks to keep certain judicial records secret. *Id.* After considering these interests, if the

1 court decides to seal certain judicial records, it must “base its decision on a compelling
2 reason and articulate the factual basis for its ruling, without relying on hypothesis or
3 conjecture.” *Id.* (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

4 On non-dispositive motions, a party seeking to file under seal a document produced
5 under seal in discovery only needs to establish that there is “good cause” for sealing the
6 record. *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119
7 (9th Cir. 2012) (“[A] particularized showing of ‘good cause’ under Federal Rule of Civil
8 Procedure 26(c) is sufficient to preserve the secrecy of sealed discovery documents attached
9 to non-dispositive motion”); *see also Kamakana v. City and County of Honolulu*, 447 F.3d
10 1172, 1180 (9th Cir.2006). Unless the denial of a motion for class certification would
11 constitute the death knell of a case, “the vast majority of []courts within this circuit” treat
12 motions for class certification as non-dispositive motions to which the “good cause” sealing
13 standard applies. *Dugan v. Lloyds TSB Bank, PLC*, 2013 WL 1435223, *1 (citing *In re*
14 *NCAA Student–Athlete Name and Likeness Licensing Litig.*, 2012 WL 6561088 (N.D. Cal.
15 Sept. 14, 2012)).¹

17 A strong presumption of access to judicial records applies fully to dispositive
18 pleadings and their attachments. In the case of motions for class certification, if the motion
19 will affect whether or not the litigation proceeds, then the motion constitutes a dispositive
20 motion for which a party must show “compelling reasons” for sealing the record. *See*
21 *Rosales v. El Rancho Farms*, 2014 WL 321159, *3 (E.D. Cal. Jan. 29, 2014). In the instant
22 case, it is likely that denial of class certification will sound the “death knell” of the
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24 ¹ “[T]he Ninth Circuit has not yet addressed whether or not, or under what
25 circumstances, a motion for class certification is a dispositive motion” for purposes of
26 deciding what standard applies on sealing motions and that courts in this district have
reached different conclusions.” *Dugan*, 2013 WL 1435223, at *1.

27 The Eleventh Circuit observes that a motion for class certification might be dispositive if “denial
28 of class status means that the stakes are too low for the named plaintiffs to continue the matter.” *Prado*
v. Bush, 221 F.3d 1266, 1274 (11th Cir. 2000). Under this articulation, Plaintiffs’ class certification
presents such a situation.

1 litigation, as Plaintiffs have only alleged de minimis individual damages.² Thus, to warrant
2 the Court’s grant of the request to seal, the Court must be satisfied that “compelling reasons”
3 exist. *Kamakana*, 447 F.3d at 1179. Relevant factors include the “public interest in
4 understanding the judicial process and whether disclosure of the material could result in
5 improper use . . .” *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 659 (9th Cir.
6 2010)(citations omitted). In general, “compelling reasons” sufficient to outweigh the
7 public's interest in disclosure and justify sealing court records exist when such “court files
8 might have become a vehicle for improper purposes,” such as the use of records to gratify
9 private spite, promote public scandal, circulate libelous statements, or release trade secrets.
10 *Id.*

11 **III. ANALYSIS**

12 The Parties seek permission to seal the following documents as they allegedly contain
13 Defendant’s confidential, proprietary and sensitive business information:
14

- 15 1. Exhibit 1 to the Declaration of Patricia N. Syverson in Support of Plaintiffs’
16 Motion for Class Certification (“Early Trier Study”);
- 17 2. Exhibit 8 to the Declaration of Patricia N. Syverson in Support of Plaintiffs’
18 Motion for Class Certification (“The Sales Data”); and
- 19 3. Select portions of pages 1, 2, 6, 7, 10, and 17 of Plaintiffs’ Memorandum of
20 Points and Authorities in Support of Plaintiff’s Motion for Class Certification.

21 Although the documents are subject to a Protective Order, the Court does not take that
22 into consideration on this Motion to Seal and will only grant the Motion if compelling
23 reasons are shown. *See Kamakana*, 447 F.3d at 1179 (“The ‘compelling reasons’ standard
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26 ² Plaintiff Yanira Alгарin alleges she paid approximately \$10.00 for the SupreStay 24HR
27 Lipcolor product, and but for any of Defendant’s alleged misrepresentations and omissions, she would
28 not have purchased the “premium priced” product. (Doc. No. 47 at 5.)

29 Plaintiff Patsy Murdock, in reliance on the alleged misrepresentation, paid approximately \$10.00
for the SuperStay 24HR Lipcolor and \$12.00 for the SuperStay 24HR Makeup. (*Id.*)

1 is invoked even if the dispositive motion, or its attachments, were previously filed under seal
2 or protective order.”).

3 A. Early Trier Study

4 According to the Parties, the Early Trier Study is a compilation of sales data, market
5 research, consumer research, advertising data and marketing strategy prepared by L’Oréal
6 USA, Inc. (L’Oréal) and its outside marketing consultant. (Doc. No. 60 at 3; *see also* Decl.
7 Of Mark Brooks in Support of Joint Motion (“Brooks Decl.”) at 2.) L’Oréal is Defendant
8 Maybelline’s parent company. L’Oréal uses the subject data to develop and market its
9 products and to build market share. (*Id.*) The Early Trier Study also contains copies of
10 proprietary consumer results not publicly available and are considered by L’Oréal to be a
11 valuable asset to its product research and development.
12

13 Where a party shows that its documents contain sources of business information
14 that might harm its competitive standing, the need for public access to the records is
15 lessened. *See Nixon v. Warner Comm'ns, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306 (1978).
16 The Parties first contend that this Court should apply the “good cause” standard to their
17 motion to seal. However, as stated above, this is incorrect. Instead, the Court applies the
18 “compelling reasons” standard as a ruling on the Motion for Class Certification will
19 affect whether or not the litigation proceeds.

20 Even applying the more exacting standard, the Court is satisfied that the Parties
21 have demonstrated compelling reasons to warrant sealing. The Parties assert that
22 L’Oréal will suffer serious competitive harm if the Early Trier Study is revealed to the
23 public. Public disclosure of L’Oréal’s confidential business material, marketing
24 strategies, product development plans could result in improper use by business competi-
25 tors seeking to replicate L’Oréal’s business practices and circumvent the time and
26 resources necessary in developing their own practices and strategies. Moreover, the
27 Court finds that the Parties only seek to seal a limited amount of information. Accord-
28

1 ingly, the Courts finds the Parties to have shown compelling reasons to seal the Early
2 Trier Study, Exhibit 1 to the Motion for Class Certification.

3 B. The Sales Data

4 The Sales Data comprises nationwide, regional, and segmented sales data regard-
5 ing the Class Products at issue not publicly available. (Doc. No. 60 at 3.) This informat-
6 ion was primarily from IRI - a market research group that compiles sales and market data
7 for major consumer manufacture or retail companies. Any company that wishes to
8 utilize the IRI data repository must purchase the data. L'Oréal states that the data
9 purchased is used in furtherance of its own market research and sales strategy. (*Id.*)

10 As with the Early Trier Study, public disclosure may result in improper use by
11 competitors who may circumvent expending their own resources in obtaining the
12 information at L'Oréal's expense. Moreover, the Court is satisfied that the information
13 sought to be sealed is limited in scope. The Court finds the Parties to have shown
14 compelling reasons to seal the information contained in Exhibit 8 to the Motion for Class
15 Certification as well.

16 C. Memorandum of Points and Authority

17 Plaintiffs' Memorandum filed with their Motion for Class Certification reference
18 or explicitly incorporate the information the Court has determined should be sealed. The
19 Parties only seek to file those portions of pages in the Memorandum that reference or
20 incorporate information contained in the Early Trier Studies or the Sales Data. The
21 Court notes the Parties' attempt to seal only a narrow portion of the Memorandum and is
22 satisfied that the compelling reason standard has been met. Accordingly, the Parties may
23 file the select portions of pages 1, 2, 6, 7, 10, and 17 of the Memorandum under seal.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court GRANTS the Motion to Seal. The Clerk of
3 Court is instructed to file the currently sealed lodged proposed Motion for Class
4 Certification under seal. (Doc. No. 61.) The Parties are directed to prepare a redacted
5 version of their Motion for Class Certification, pursuant to this Order, to be filed and
6 made available publicly no later than February 26, 2014.

7 IT IS SO ORDERED.

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9 DATED: February 21, 2014

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12 Hon. Anthony J. Battaglia

13 U.S. District Judge
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