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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SAN DIEGO COMIC CONVENTION, a
12 California non-profit corporation,
13 Plaintiff,

14 v.

15 DAN FARR PRODUCTIONS, a Utah
16 limited liability company; DANIEL
17 FARR, an individual; and BRYAN
18 BRANDENBURG, an individual,
19 Defendants.

Case No.: 14-cv-1865 AJB (JMA)

ORDER:

**(1) GRANTING DEFENDANTS AND
PLAINTIFF'S MOTIONS TO SEAL;
AND
(DOC. NOS. 89, 93, 164, 170, 184, 188,
192, 209, 217, 219, 224, 227)**

**(2) DENYING AS MOOT
DOCUMENTS 98, 160, AND 196**

20
21 Pending before the Court are both Plaintiff San Diego Comic Convention
22 ("Plaintiff") and Defendants Dan Farr Productions, Daniel Farr, and Bryan Brandenburg's
23 (collectively referred to as "Defendants") motions to file documents under seal. Pursuant
24 to Civil Local Rule 7.1.d.1, the Court finds the matters suitable for decision on the papers
25 and without oral argument. As explained more fully below, the Court **GRANTS** both
26 parties' motions to seal, (Doc. Nos. 89, 93, 164, 170, 184, 188, 192, 209, 217, 219, 224,
27 227), and **DENIES AS MOOT** Defendants' duplicative motions to seal, (Doc. Nos. 98,
28 160, and 196).

1 **BACKGROUND**

2 The heart of this case revolves around Defendants’ use of the unhyphenated form of
3 Plaintiff’s trademark “Comic-Con.” (Doc. No. 97 at 10.)¹ Since 1970, Plaintiff, a non-profit
4 organization, has held the Comic-Con Convention in San Diego, California celebrating
5 comic art, books, and other aspects of the popular arts. (*Id.* at 9.) In total, Plaintiff holds
6 four trademark registrations with the United States Patent and Trademark Office
7 (“USPTO”): (1) COMIC-CON; (2) COMIC CON INTERNATIONAL; (3) for the word-
8 plus-design mark that Plaintiff uses to advertise its products; and (4) for the word mark
9 ANAHEIM COMIC-CON.² (Doc. No. 1 ¶ 13.) Defendants Bryan Brandenburg and Daniel
10 Farr are co-founders of Defendant Dan Farr Productions. (Doc. No. 102 at 12.) On
11 September 5, 2014, Defendants held the first Salt Lake Comic Con (“SLCC”). (Herrera
12 Decl. Ex. 5 (“Farr Depo”) 11:4–9, Doc. No. 95-7.) In sum, Plaintiff contends that
13 Defendants have used “Comic Con” to advertise their event, which is identical to or
14 confusingly similar to Plaintiff’s family of trademarks. (Doc. No. 1 ¶ 18.)

15 On August 7, 2014, Plaintiff filed its complaint against Defendants asserting causes
16 of action for (1) federal trademark infringement; and (2) false designation of origin. (Doc.
17 No. 1.) On September 22, 2014, Defendants filed their answer to the complaint with a
18 counterclaim against Plaintiff. (Doc. No. 16.) On June 23, 2017, the last day for dispositive
19 motions to be filed, both parties filed the present matters, their motions to file documents
20 under seal. (Doc. Nos. 89, 93, 164, 170, 184, 188, 192, 209, 217, 219, 224, 227.)

21 **LEGAL STANDARD**

22 Courts have historically recognized a “general right to inspect and copy public
23 records and documents, including judicial records and documents.” *Nixon v. Warner*
24 *Comm’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). “Unless a particular court record is one
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26 ¹ All pinpoint cites are in reference to the CM/ECF page number and not the number on
27 the document.

28 ² The marks are registered with the USPTO as U.S. Service Mark Registration Numbers
3,221,808; 3,219,568; 2,218,236; and 4,425,806. (Doc. No. 97 at 10.)

1 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
2 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz*
3 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to
4 overcome this strong presumption, a party seeking to seal a judicial record must articulate
5 justifications for sealing that outweigh the public policies favoring disclosure. *See*
6 *Kamakana*, 447 F.3d at 1178–79. “In turn, the court must ‘conscientiously balance[] the
7 competing interests’ of the public and the party who seeks to keep certain judicial records
8 secret.” *Id.* at 1179 (citation omitted).

9 “After considering these interests, if the court decides to seal certain judicial records,
10 it must ‘base its decision on a compelling reason and articulate the factual basis for its
11 ruling, without relying on hypothesis or conjecture.’” *Id.* (quoting *Hagestad v. Tragesser*,
12 49 F.3d 1430, 1434 (9th Cir. 1995)). However, where the material is, at most, “tangentially
13 related” to the merits of the case, the request to seal may be granted on a showing of “good
14 cause.” *Ctr. For Auto Safety v. Chrysler Grp., LLC.*, 809 F.3d 1092, 1097 (9th Cir. 2016).

15 DISCUSSION

16 Plaintiff and Defendants have filed a tsunami of motions to seal that relate to their
17 motions for summary judgment and motions to exclude still pending before the Court. The
18 Court notes that the majority of the documents both parties seek to seal are based on the
19 protective order filed on January 20, 2016. (Doc. No. 46.)

20 Plaintiff’s request that the Court file under seal (1) its memorandum of points and
21 authorities in support of their motion to exclude and exhibits three and four to the
22 declaration of Michelle A. Herrera stating that they contain confidential financial
23 information, (Doc. No. 89); (2) exhibits two through nine attached to the declaration of
24 David Glanzer in support of its motion for summary judgment as it expresses in detail
25 Plaintiff’s efforts to enforce its trademark over the past several years, and contains
26 confidential litigation and settlement strategies, (Doc. No. 93); (3) its opposition to
27 Defendants’ motion for summary judgment based on abandonment and estoppel, and
28 exhibits 1, 4, 10, 11, 12, 13, 14, 18, 19 and 20 attached to the declaration of Callie

1 Bjurstrom as the documents consist of confidential agreements and correspondence
2 regarding infringement claims and potential settlement discussions, (Doc. No. 170); (4) its
3 reply to Defendants’ opposition to Plaintiff’s motion to exclude as it discloses confidential
4 financial information, (Doc. No. 184); and (5) its reply to Defendants’ opposition to its
5 motion for summary judgment and exhibit one to the declaration of Michelle Herrera, as
6 Defendants designated the transcript as confidential under the protective order, (Doc. No.
7 188).

8 Defendants request the Court seal (1) their motion for summary judgment based on
9 genericness, abandonment, and estoppel, as well as exhibits 2, 3, 4, 5, and 7 to the
10 declaration of Jessica D. Garcia and exhibits 4, 5, 6, 8, and 11 to the Declaration of Daniel
11 R. Barber in support of their motion for summary judgment, (Doc. Nos. 217, 219); (2) their
12 opposition to Plaintiff’s motion for summary judgment as well as exhibits 2, 3, 4, 9, 10,
13 11, 12, 13, and 15 to the declaration of Rachel Jacques as Plaintiff’s contend they contain
14 sensitive and non-public information, (Doc. No. 224); (3) their opposition to Plaintiff’s
15 motion to exclude, and exhibits B, D, and E to Daniel Barber’s declaration in support of
16 their opposition, and the testimony of Jeffrey P. Kaplan, and Clarke B. Nelson, as these
17 documents were given protective designations by Plaintiff, (Doc. No. 164); (4) their
18 “corrected” declaration of Jessica D. Garcia in support of their motions for summary
19 judgment, (Doc. No. 192); and (5) their reply in support of their motions for summary
20 judgment, exhibits 2, 3, 4 to the declaration of Daniel R Barber, and the declaration of
21 Daniel Farr, (Doc. No. 227).

22 In sum, the Court finds the sealing of the documents at issue appropriate in the
23 instant matter. First, the Court notes that it is cognizant that the compelling reasons
24 standard is a strict one. However, case law makes clear that motions to seal documents that
25 will cause “competitive harm” to a business are generally weighed in favor of sealing. *See*
26 *Apple Inc. v. Samsung Elec. Co.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013); *see also In re Elec.*
27 *Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (finding that the Ninth Circuit abused its
28 discretion when it refused to seal “pricing terms, royalty rates, and guaranteed minimum

1 payment terms” found in a license agreement); *Nixon*, 435 U.S. at 598 (holding that
2 “sources of business information that might harm a litigant’s competitive standing” may
3 give rise to a compelling reason to seal). Additionally, the Court highlights that in regards
4 to the documents that were given protective designations by both Plaintiff and Defendants,
5 it has already been determined that “good cause exists to protect [the] information from
6 being disclosed to the public by balancing the needs for discovery against the need for
7 confidentiality.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)
8 (internal quotation marks omitted).

9 Based on the foregoing, the Court finds that balancing the public’s right of access to
10 the listed documents does not outweigh the compelling and good reasons to seal.
11 Accordingly, Plaintiff and Defendants’ motions to seal are **GRANTED**.

12 Additionally, on August 8, 2017, the Court requested that Defendants file a
13 supplemental appendix to aid the Court in locating the documents proffered by them. (Doc.
14 No. 206.) Thereafter, Defendants filed their supplemental appendix under seal as some of
15 the information cited to is designated confidential under the protective order. (Doc. No.
16 209.) Accordingly, for the same reasons stated above, the Court **GRANTS** Defendants’
17 motion to seal their supplemental appendix.

18 On a final note, it is notable to clarify that the Court requested Defendants re-lodge
19 all of their motions and exhibits as their citations did not correspond to the correct exhibit
20 numbers on the docket.³ Shortly thereafter, on August 29, 2017, Defendants filed a notice
21 of withdrawal. (Doc. No. 232.) Unfortunately, Defendants’ notice is faulty as it fails to
22 withdraw all of the motions to seal that were replaced by the new lodgments. Thus, the
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27 ³ The Court notes that Defendants attached over three thousand documents to their various
28 motions. Thus, the need for correct citations was vital to aiding the Court in analyzing their
arguments and supporting evidence.

1 Court is left with duplicative motions on the docket.⁴ Accordingly, the Court **DENIES as**
2 **MOOT** said motions to seal. (Doc. Nos. 98, 160, 196.)

3 **CONCLUSION**

4 As explained more fully above, the Court **GRANTS** Defendants and Plaintiff's
5 motions to seal, (Doc. Nos. 89, 93, 164, 170, 184, 188, 192, 209, 217, 219, 224, 227), and
6 **DENIES as MOOT** Defendants' duplicative motions to seal, (Doc. Nos. 98, 160, 196).

7 Dated: August 30, 2017

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9 Hon. Anthony J. Battaglia
United States District Judge

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26 _____
27 ⁴ The Court notes that it is not the Court's function or responsibility to properly lodge
28 documents or manage the docket for Defendants. In the future, Defendants should take care
to inspect their filings to ensure their accuracy before filing them with the Court.