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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 DENYING PLAINTIFF AND
DEFENDANTS' MOTIONS TO SEAL**

(Doc. Nos. 422, 424, 430, 434, 437, 453,
456, 460, 463, 465, 472, 475, 478, 482)

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21 Beginning on January 16, 2018, and ending on March 6, 2018, Plaintiff San Diego
22 Comic Convention ("Plaintiff") and Defendants Dan Farr Productions, Daniel Farr, and
23 Bryan Brandenburg (collectively referred to as "Defendants") filed fourteen motions to file
24 documents under seal. (Doc. Nos. 422, 424, 430, 434, 437, 453, 456, 460, 463, 465, 472,
25 475, 478, 482.) Plaintiff has not filed express oppositions to the motions, however,
26 Defendants have articulated that they do not believe sealing is warranted in respect to a
27 handful of documents. (*See* Doc. Nos. 472, 475, 478.) As will be explained in greater detail
28 below, the Court **DENIES** both parties' motions to seal.

1 **DISCUSSION**

2 Plaintiff requests that the following documents be placed under seal: (1) Exhibits 2
3 and 5 attached to the Declaration of Callie Bjurstrom in support of Plaintiff’s motion for
4 attorneys’ fees and costs, (Doc. No. 422); (2) its memorandum of points and authorities in
5 support of its motion for judgment as a matter of law, (Doc. No. 430); (3) Exhibit 2 to the
6 declaration of Michelle A. Herrera and the memorandum of points and authorities related
7 to Defendants’ motion for ruling on unclean hands, (Doc. No. 453); (4) its memorandum
8 of points and authorities in opposition to Defendants’ motion for ruling on estoppel
9 defense, (Doc. No. 463); (5) Exhibit 1 to the declaration of Michelle A. Herrera in support
10 of Plaintiff’s opposition to Defendants’ motion for new trial of validity and infringement,
11 (Doc. No. 465); and (6) Exhibit 6 attached to the declaration of Peter K. Hahn in support
12 of Plaintiff’s reply to its motion for attorneys’ fees and costs, (Doc. No. 482).

13 Defendants seek to seal: (1) their motion and supporting memorandum for ruling on
14 estoppel defense, (Doc. No. 424); (2) Exhibits E and F to the declaration of Rex Sears in
15 support of their motion for new trial of validity and infringement, (Doc. No. 434); (3) their
16 motion and supporting memorandum for ruling on unclean hands defense, (Doc. No. 437);
17 (4) their opposition to Plaintiff’s motion for attorneys’ fees and costs, (Doc. No. 456); (5)
18 their opposition to Plaintiff’s motion for permanent injunction after the jury verdict, (Doc.
19 No. 460); (6) their reply in support of the motion for new trial of validity and infringement
20 and exhibit A to the reply, (Doc. No. 472); (7) their reply brief in support of their motion
21 for ruling on estoppel defense, (Doc. No. 475); and (8) their reply in support of their motion
22 for ruling on unclean hands defense, (Doc. No. 478).

23 Courts have historically recognized a “general right to inspect and copy public
24 records and documents, including judicial records and documents.” *Nixon v. Warner*
25 *Comm’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). “Unless a particular court record is one
26 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
27 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz*
28 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to

1 overcome this strong presumption, a party seeking to seal a judicial record must articulate
2 justifications for sealing that outweigh the public policies favoring disclosure. *See*
3 *Kamakana*, 447 F.3d at 1178–79. “In turn, the court must ‘conscientiously balance[] the
4 competing interests’ of the public and the party who seeks to keep certain judicial records
5 secret.” *Id.* at 1179 (citation omitted).

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

12 The Court notes that the driving force behind the majority of the motions to seal is
13 that the documents have been designated confidential by either Plaintiff or Defendants
14 pursuant to the protective order filed on January 20, 2016. (Doc. No. 46.) In pertinent part,
15 the protective order states:

16 Before any materials produced in discovery, answers to
17 interrogatories, responses to requests for admissions, deposition
18 transcripts, or other documents which are designated as
19 Confidential Information are filed with the Court for any
20 purpose, the party seeking to file such material must seek
21 permission of the Court to file the material under seal.

22 Subject to public policy, and further court order, nothing
23 shall be filed under seal and the Court shall not be required to
24 take any action, without separate prior order by the Judge before
25 whom the hearing or proceeding will take place, after application
26 by the affected party with appropriate notice to opposing counsel.

27 If the Court grants a party permission to file an item under
28 seal, a duplicate disclosing all non-confidential information, if
any, shall be filed and made part of the public record. The item
may be redacted to eliminate confidential material from the
document. The document shall be titled to show that it
corresponds to an item filed under seal, *e.g.*, “Redacted Copy of
Sealed Declaration of John Smith in Support of Motion for
Summary Judgment.” The sealed and redacted documents shall

1 be filed simultaneously.

2 (*Id.* at 7.) In general, when dealing with motions to seal documents for reasons related to a
3 protective order, the Ninth Circuit has “carved out an exception” to the strong preference
4 for public access. *Foltz*, 331 F.3d at 1135. Under this exception, a party need only satisfy
5 the less exacting “good cause” standard. *Id.* The “good cause” language comes from
6 Federal Rule of Civil Procedure 26(c), which governs the issuance of protective orders in
7 the discovery process: “The court may, for good cause, issue an order to protect a party or
8 person from annoyance, embarrassment, oppression, or undue burden or expense”
9 Fed. R. Civ. P. 26(c)(1).

10 Taking into consideration all of the above-mentioned standards and policies, the
11 Court finds that all of the motions to seal are unjustified. First, as to both parties’ requests
12 to file under seal their various memorandums of points and authorities, the Court notes that
13 neither party has presented compelling reasons that justify sealing the entire document.
14 This is especially in light of the fact that the redacted versions of the motions filed in
15 accordance with the protective order demonstrate that only a handful of lines within the
16 motion need be concealed.¹ (*See* Doc. Nos. 457, 458.)

17 Next, in general, all of the motions to seal and their corresponding declarations are
18 overly broad and unsupported by specific facts. Additionally, the motions are not narrowly
19 tailored to inform the Court as to what information within the document needs to be sealed.
20 *See Fujitsu Ltd. v. Belkin Int’l, Inc.*, No. 10-CV-03972-LHK, 2012 WL 6019754, at *5
21 (N.D. Cal. Dec. 3, 2012) (denying the motions to seal as the defendants’ “broad request to
22 seal [did] not specify which sections of [the] exhibits contain[ed] particularly sensitive
23 information, why [the] information must remain confidential, or how its disclosure might
24 become a vehicle for improper purposes.”). For instance, Plaintiff’s motion to file under
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27 ¹ Pursuant to the Protective Order, when filing motions to seal, the parties were instructed
28 to file redacted versions of the sealed document for the public record. Plaintiff has not done
so.

1 seal Exhibit 2 to the Declaration of Callie A. Bjurstrom simply states that the time entries
2 for attorneys' fees billed is "not intended for viewing by the general public" as it contains
3 "highly confidential and sensitive information" and Plaintiff would "suffer substantial
4 harm" if it was made part of the public record. (Doc. No. 422-1 at 2.) Defendants' motions
5 to seal are equally vague as their motions only repeatedly state that their briefs might
6 "reveal the contents of documents and deposition testimony that have been given
7 confidentiality designations" by Plaintiff. (Doc. No. 434 at 2.) These reasons are not
8 enough to provide a particularized showing of harm that warrants sealing of the
9 documents.²

10 At this stage of the litigation, the Court finds it appropriate to adhere to the strict
11 interpretation of case law dealing with motions to seal pursuant to protective orders. Thus,
12 "the mere fact that discovered material is subject to a protective order does not mean it
13 must be sealed when filed with the Court." *BT Collective v. IP Holdings, LLC*, No.
14 11cv0021-LAB (WVG), 2011 WL 5873388, at *1 (S.D. Cal. Nov. 23, 2011); *see also*
15 *Gonzales v. Comcast Corp.*, No. 1:10-cv-01010-LJO-SKO, 2011 WL 4089542, at *2 (E.D.
16 Cal. Sept. 13, 2011) (finding that there was no good cause to seal the documents as the
17 stipulated protective order was one in which "the judge signed off on the order without the
18 benefit of making an individualized determination as to specific documents.") (citation
19 omitted). Indeed, some district courts have declined to seal documents when the sole basis
20 for the request is a protective order that covers them. *See e.g., Stone v. Advance Am.*, No.

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22 ² The Court notes for Plaintiff's benefit that motions to seal attorney's rates and hours are
23 generally not considered privileged information that is sealable. *See Travelers Prop. Cas.*
24 *Co. of Am. v. Centex Homes*, No. 11-3638-SC, 2013 WL 707918, at *2 (N.D. Cal. Feb. 26,
25 2013) (noting that billing rates and numbers of hours billed was non-privileged information
26 and should not be sealed); *see also Muench Photography, Inc. v. Pearson Education, Inc.*,
27 No. 12-cv-1927-WHO, 2013 WL 6698465, at *2 (N.D. Cal. Dec. 18, 2013) (finding that
28 the defendant did not "adequately explain why disclosure of [the] negotiated billing
structures would prejudice it or how competitors could imitate or exploit their knowledge
of this sensitive information for their own financial gain and, accordingly, to the detriment
of [] its attorneys.") (internal quotation marks omitted).

1 08cv1549 WQH (WMC), 2011 WL 662972, at *1 (S.D. Cal. Feb. 11, 2011); *Bain v.*
2 *AstraZeneca*, No. C 09-4147 CW, 2011 WL 482767, at *1 (N.D. Cal. Feb. 7, 2011).

3 Thus, without more, both parties have failed to provide compelling or narrowly
4 tailored reasons to seal. Consequently, their motions are **DENIED**. *Ponomarenko v.*
5 *Shapiro*, No. 16-cv-02763-BLF, 2017 WL 3605226, at *4 (N.D. Cal. Aug. 21, 2017)
6 (“[T]he current request does not establish a compelling reason to seal the documents and
7 the request to seal the [] Agreement in its entirety is not narrowly tailored as required by
8 law.”).

9 **CONCLUSION**

10 For the foregoing reasons, the Court **DENIES** Plaintiff and Defendants’ motions to
11 seal **WITHOUT PREJUDICE**. (Doc. Nos. 422, 424, 430, 434, 437, 453, 456, 460, 463,
12 465, 472, 475, 478, 482.) Plaintiff and Defendants are instructed to submit new declarations
13 stating the compelling reasons supported by specific factual findings in favor of sealing the
14 documents at issue or propose narrowly tailored redactions to the documents by **April 25,**
15 **2018**. Failure to do either of the above mentioned actions will result in the public filing of
16 the documents contained in the fourteen motions to seal.

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18 **IT IS SO ORDERED.**

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20 Dated: April 10, 2018

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22 Hon. Anthony J. Battaglia
23 United States District Judge
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