

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 TASNEEM L. MOHAMED,
12 Plaintiff,
13 v.
14 KELLOGG COMPANY,
15 Defendant.

Case No.: 14-cv-2449-L-MDD

**ORDER GRANTING IN PART
DEFENDANT'S APPLICATION TO
FILE UNDER SEAL [doc. no. 75]**

16
17 Pending before the Court is Defendant's unopposed application to file under seal a
18 portion of Exhibit 2 and entirety of Exhibits 6, 7 and 9 to Declaration of Kenneth K. Lee
19 (doc. no. 77-3) and portions of Defendant's memorandum of points and authorities in
20 opposition to Plaintiff's motion for class certification. For the reasons which follow,
21 Defendant's application is granted in part and denied in part.

22 Sealing court records implicates the "general right to inspect and copy public
23 records and documents, including judicial records and documents." *Nixon v. Warner*
24 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). The lack of opposition to a motion to
25 seal therefore does not automatically resolve it. See *Foltz v. State Farm Mut. Auto Ins.*
26 *Co.*, 331 F.3d 1128, 1130 & passim (9th Cir. 2003). Aside from "grand jury transcripts
27 and warrant materials in the midst of a pre-indictment investigation," a strong
28 presumption applies in favor of public access to judicial records. *Kamakana v. City and*

1 County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). Accordingly, a party seeking
2 to seal a judicial record bears the burden of overcoming the strong presumption of public
3 access by meeting the “compelling reasons” standard. *Id.* at 1178. The compelling
4 reasons standard applies to all motions except those that are only “tangentially related to
5 the merits of a case.” *Center for Auto Safety v. Chrysler Grp. LLC*, 809 F.3d 1092, 1101
6 (9th Cir. 2016). Plaintiff’s motion for class certification, which Defendant seeks to
7 oppose in part through documents it wants to have sealed, is more than tangentially
8 related to the merits. See *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2552 & n.6
9 (2011) (although in ruling on class certification the court does not decide the merits of the
10 case, the inquiry overlaps with the merits inquiry); see also *Ellis v. Costco Wholesale*
11 *Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (the merits of a plaintiff’s substantive claims are
12 often highly relevant in determining whether to grant class certification).

13 To meet its burden, the moving party must make a "particularized showing,"
14 *Kamakana*, 447 F.3d at 1180 (internal quotation marks and citation omitted) and, further,
15 must articulate compelling reasons supported by specific factual findings
16 that outweigh the general history of access and the public policies favoring
17 disclosure, such as the public interest in understanding the judicial process.
18 In turn, the court must conscientiously balance the competing interests of the
19 public and the party who seeks to keep certain judicial records secret. After
20 considering these interests, if the court decides to seal certain judicial
21 records, it must base its decision on a compelling reason and articulate the
22 factual basis for its ruling, without relying on hypothesis or conjecture.

23 In general, “compelling reasons” sufficient to outweigh the public’s interest
24 in disclosure and justify sealing court records exist when such court files
25 might have become a vehicle for improper purposes, such as the use of
26 records to gratify private spite, promote public scandal, circulate libelous
27 statements, or release trade secrets. The mere fact that the production of
28 records may lead to a litigant’s embarrassment, incrimination, or exposure to
further litigation will not, without more, compel the court to seal its records.

Id. at 1178-79 (internal quotation marks, brackets and citations omitted).

1 Defendant's request is based primarily on a stipulated protective order. This is
2 insufficient to meet the compelling reasons test or make a "particularized showing." See
3 *Kamakana*, 447 F.3d at 1180, 1179.

4 However, upon review of the redacted portions of the opposition brief, and
5 Exhibits 2, 6, and 9, it is apparent that they constitute or are based on Defendant's
6 consumer surveys and internal studies which it seeks to shield from competitors. The
7 trade secret nature of these documents is sufficient to meet the compelling reasons
8 standard. Accordingly, Defendant's application is granted as to the memorandum of
9 points and authorities and Exhibits 2, 6 and 9.

10 The request to seal Exhibit 7 is based solely on the representation that Defendant
11 obtained it from a third party and promised to keep it confidential. (See doc. no. 75-1
12 (Decl. of Kenneth K. Lee in Supp. of App. to File Under Seal) at 2.) The document is a
13 letter from the United States Department of Agriculture to Solae, LLC regarding the
14 labeling of certain of Solae's products. No reason, other than the confidentiality
15 agreement between Defendant and Solae, is provided to support the sealing of this letter.
16 In this regard, Defendant has not met the compelling reasons standard, and its application
17 is denied as to Exhibit 7. The Court will not consider Exhibit 7 or any redacted
18 corresponding portion of the memorandum of points and authorities, unless publicly filed
19 or sealed pursuant to a renewed motion supported by an appropriate showing.

20 For the foregoing reasons, Defendant's application to seal is granted in part and
21 denied in part. The Clerk is directed to file under seal Defendant's memorandum of
22 points and authorities as well as Exhibits 2, 6 and 9 to the declaration of Kenneth K. Lee
23 in opposition to Plaintiff's motion for class certification.

24 **IT IS SO ORDERED.**

25 Dated: September 17, 2018

26 
27 Hon. M. James Lorenz
28 United States District Judge