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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

OBESITY RESEARCH INSTITUTE,
LLC,

Plaintiff,

v.

FIBER RESEARCH
INTERNATIONAL, LLC, *et al.*,

Defendants.

AND RELATED COUNTERCLAIM.

Case No. 15-cv-00595-BAS-MDD

ORDER:

- (1) GRANTING MOTIONS TO FILE DOCUMENTS UNDER SEAL (ECF Nos. 426, 428);**
- AND**
- (2) GRANTING IN PART AND DENYING IN PART MOTION TO FILE DOCUMENTS UNDER SEAL (ECF No. 430)**

Presently before the Court are three motions by the parties to file documents under seal. (*See* ECF Nos. 426, 428, 430.) The motions were filed following this Court’s previous Order on the parties’ motions to seal. (ECF No. 420.) Plaintiff Obesity Research Institute, LLC’s (“ORI”) filed a renewed request for leave to file three documents under seal. (ECF No. 426.) Defendant Fiber Research International,

1 LLC’s (“FRI”) filed two renewed requests for leave to file various documents under
2 seal. (ECF Nos. 428, 430.)

3 Consistent with its previous orders, the Court will refer to each motion by its
4 Electronic Case Filing number (“ECF No.”) on the docket for the purposes of this
5 order.

6
7 **I. LEGAL STANDARD**

8 “[T]he courts of this country recognize a general right to inspect and copy
9 public records and documents, including judicial records and documents.” *Nixon v.*
10 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record
11 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the
12 starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.
13 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
14 2003)). “The presumption of access is ‘based on the need for federal courts, although
15 independent—indeed, particularly because they are independent—to have a measure
16 of accountability and for the public to have confidence in the administration of
17 justice.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.
18 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

19 A party seeking to seal a judicial record bears the burden of overcoming the
20 strong presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet
21 this burden depends upon whether the documents to be sealed relate to a motion that
22 is “more than tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809
23 F.3d at 1102. When the underlying motion is more than tangentially related to the
24 merits, the “compelling reasons” standard applies. *Id.* at 1096–98. When the
25 underlying motion does not surpass the tangential relevance threshold, the “good
26 cause” standard applies. *Id.*

27 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest
28 in disclosure and justify sealing court records exists when such ‘court files might

1 have become a vehicle for improper purposes,’ such as the use of records to gratify
2 private spite, promote public scandal, circulate libelous statements, or release trade
3 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However,
4 “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,
5 incrimination, or exposure to further litigation will not, without more, compel the
6 court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). The decision to seal
7 documents is “one best left to the sound discretion of the trial court” upon
8 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*,
9 435 U.S. at 599.

10 Federal Rule of Civil Procedure 26(c), generally, provides the “good cause”
11 standard for the purposes of sealing documents. *See Kamakana*, 447 F.3d at 1179.
12 The test applied is whether “‘good cause’ exists to protect th[e] information from
13 being disclosed to the public by balancing the needs for discovery against the need
14 for confidentiality.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)
15 (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213
16 (9th Cir. 2002)). Under Rule 26(c), only “a *particularized showing* of ‘good cause’ .
17 . . is sufficient to preserve the secrecy of sealed discovery documents[.]” *In re*
18 *Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th
19 Cir. 2012) (emphasis added); *see also Kamakana*, 447 F.3d at 1180 (requiring a
20 “particularized showing” of good cause). “Broad allegations of harm, unsubstantiated
21 by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.”
22 *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). Moreover,
23 a blanket protective order is not itself sufficient to show “good cause,” let alone
24 compelling reasons, for sealing particular documents. *See Foltz*, 331 F.3d at 1133;
25 *Beckman Indus.*, 966 F.2d at 476; *San Jose Mercury News, Inc. v. U.S. District Court,*
26 *N. Dist.*, 187 F.3d 1096, 1103 (9th Cir. 1999).

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1 **II. ANALYSIS**

2 **A. ECF No. 426**

3 In ECF No. 426, ORI seeks leave to file under seal Exhibit 86, Exhibit 90, and
4 an unredacted version of Exhibit 130 to the Declaration of Henny den Uijl, filed in
5 along with its consolidated motion for summary judgment and opposition to FRI’s
6 motion for partial summary judgment. FRI did not file a response to ECF No. 426.

7 Exhibits 86 and 90 contain propriety business or product information. Exhibit
8 86 is an email chain between ORI and its suppliers, and ORI argues that it contains
9 proprietary information regarding its product sourcing and pricing. (ECF No. 426 at
10 4-5.) ORI argues that, if this information became public, it would cause “severe
11 business harm and competitive disadvantage.” (*Id.* at 4.) Exhibit 90 is a “formulation
12 and product specification” information sheet that ORI argues contains Lipozene’s
13 proprietary composition and product specifications. (*Id.* at 5.) ORI argues that a
14 competitor could use this information to “reverse engineer” Lipozene, causing a
15 “significant business disadvantage” to ORI. (*Id.*) ORI’s explanations appear to be
16 consistent with the Court’s assessment of these exhibits.

17 ORI proposes to seal proprietary information, such as “formulations, sourcing
18 information, supply quantities, and marketing strategies,” and financial information
19 in Exhibit 130, which is the Expert Report of Neil Beaton and has been partially
20 redacted. (ECF No. 426 at 3-4.) ORI argues that failing to seal the proprietary product
21 information will cause ORI “irreparable harm.” (*Id.* at 3.) ORI additionally argues
22 that it is a privately held business, making the redacted financial information (“highly
23 sensitive figures”) “extremely closely guarded.” (*Id.* at 4.) ORI further states that the
24 disclosure of this specific financial information is “not crucial” to public interest
25 because the unredacted, publically available portions of Exhibit 130 provide the
26 relevant foundation in this case. (*Id.*) ORI’s current request is more narrowly tailored
27 than its previous request to seal the entire report, and the Court’s assessment of the
28 redactions is consistent with ORI’s explanations.

1 Having reviewed ORI's requests, the Court finds that ORI provides
2 compelling reasons to seal the aforementioned documents. *See Kamakana*, 447 F.3d
3 at 1179. Therefore, the Court **GRANTS** ORI's motion to file documents under seal.
4 (ECF No. 426.)

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6 **B. ECF No. 428**

7 In ECF No. 428, FRI refiled its request to file under seal an unredacted copy
8 of ORI's memorandum of points and authorities in support of its motion to exclude
9 Dr. Fahey and Exhibit D to ECF No. 428, which is the unredacted deposition
10 transcript of Medallion Labs representative Timothy Peters and Exhibit 10 to the
11 Declaration of Sean D. Flaherty in support of ORI's aforementioned memorandum.
12 Originally, on March 17, 2017, the Court considered these documents, denied FRI's
13 request, and granted FRI leave to refile its request. (ECF No. 324.) The Court denied
14 these requests two more times (ECF Nos. 417, 420), ordering FRI to correct certain
15 deficiencies before it would consider its requests. The Court will now review its
16 amended requests. ORI did not file a response to ECF No. 428.

17 FRI requests to seal portions of Mr. Peters's deposition transcript (Exhibit D)
18 that contain testing methodologies and parameters. (ECF No. 428 at 4-5.) FRI argues
19 that this testing information is propriety and disclosure could cause irreparable harm.
20 (*Id.*) The redactions applied to the deposition transcript are narrowly tailored, and
21 FRI's explanations appear to be consistent with the Court's assessment of this
22 exhibit.

23 FRI argues that the unredacted version of ORI's aforementioned memorandum
24 should be sealed for the same reasons as above, as well as those reasons stated in the
25 Court's earlier Order (ECF No. 420), because it incorporates the same proprietary
26 information contained in the related documents. (ECF No. 428 at 6-7.) FRI appears
27 to have applied redactions in the memorandum consistent with the Court's
28 assessment of the relevant exhibits as stated in its orders.

1 Having reviewed FRI’s requests, the Court finds that FRI provides compelling
2 reasons to seal the aforementioned documents. *See Kamakana*, 447 F.3d at 1179.
3 Therefore, the Court **GRANTS** FRI’s motion to file documents under seal. (ECF No.
4 428.)

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6 **C. ECF No. 430**

7 In ECF No. 430, FRI seeks leave to file under seal Exhibits 109, 112, 114-115,
8 and 149 to ORI’s consolidated cross-motion for summary judgment and opposition
9 to FRI’s motion for partial summary judgment. ORI did not file a response to ECF
10 No. 430.

11 FRI narrowly tailors its request to seal information in Exhibits 114, 115, and
12 149. FRI only seeks to redact and seal information identifying current or prospective
13 customers of FRI or relating to Propol A pricing information. (ECF No. 430 at 7.)
14 FRI argues that competitors could use this information improperly, damaging FRI’s
15 business and sales efforts, by either diverting clients, adjusting pricing, or tailoring
16 marketing strategies. (*Id.*) FRI’s explanations appear to be consistent with the Court’s
17 assessment of these exhibits.

18 Exhibit 109 is a supplemental interrogatory response that lists the names of
19 FRI’s owners and “sub-owners.” (ECF No. 430 at 4.) FRI tailored its renewed request
20 by requesting to seal only the specific names of the “sub-owners”—thirteen of fifteen
21 individuals’ or entities’ names listed. (*See* ECF No. 430-2.)

22 First, FRI misinterprets the Court’s previous Order regarding a lack of case
23 law to support its reasoning. (ECF No. 420 at 9 (“FRI argues that Nevada State law,
24 which does not require public disclosure of a corporation’s ownership, justifies
25 sealing this document. FRI provides no case law to support its reasoning.”); ECF No.
26 430 at 6 (“The Court should thus seal the identities of the holding companies . . .
27 because . . . [FRI] has an interest in maintaining that information as confidential, as
28 permitted under Nevada law”)) FRI cites to a string of cases stating that

1 propriety business or commercially sensitive information is appropriate for sealing,
2 but this does not cure the deficiency the Court noted. (ECF No. 430 at 6.) What FRI
3 fails to do is to provide legal support explaining why Nevada corporate law allowing
4 companies to keep their ownership structure confidential supports sealing that
5 information in federal court. In other words, FRI has not shown that “removing
6 protections” afforded by state law amounts to a “compelling reason” to seal. (See
7 ECF No. 430 at 4-6.) Moreover, FRI has not shown that a corporate ownership
8 structure is the type of propriety business or commercially sensitive information that
9 merits sealing. See *Kite Shipping LLC v. San Juan Nav. Corp.*, No. 11CV02694
10 BTM WVG, 2012 WL 6591579, at *2 (S.D. Cal. Dec. 17, 2012) (declining to seal
11 information relating to corporate structure); *In re Hydroxycut Mktg. & Sales*
12 *Practices Litig.*, No. 09MD2087 BTM AJB, 2011 WL 1135114, at *2 (S.D. Cal. Mar.
13 29, 2011) (same).

14 Second, FRI has failed again to provide any other compelling reason for why
15 this limited information in Exhibit 109 should be sealed. (See ECF No. 420 at 9
16 (finding that FRI failed to provide “any other reasons, injuries, or risks to support
17 sealing this document.”).) Instead, FRI continues to assert conclusory statements that
18 it “has an interest” in keeping this information confidential, and focuses on the
19 irrelevancy of the redacted names. (ECF No. 430 at 5-6.) While a court may consider
20 the relevancy of the information sought to be sealed, a party still must articulate some
21 reasoning for why the information should be kept confidential. See *Ctr. for Auto*
22 *Safety*, 809 F.3d at 1096-97 (“Under this stringent ‘compelling reasons’ standard, a
23 court may seal records only when it finds ‘a compelling reason and articulate[s] the
24 factual basis for its ruling, without relying on hypothesis or conjecture.’” (quoting
25 *Kamakana*, 447 F.3d at 1179)); see also *Apple Inc.*, 727 F.3d at 1225-26 (analyzing
26 both parties’ arguments that making their “detailed product-specific information”
27 public would cause competitive harm before considering public interest and
28 relevancy). Thus, the Court finds FRI’s reasoning inadequate.

1 FRI applies many of the same arguments as above to Exhibit 112. (ECF No.
2 430 at 4-6.) Exhibit 112 is FRI’s operating agreement. FRI tailored its renewed
3 request by requesting to seal only the specific names of entities mentioned throughout
4 the agreement. (*See, e.g.*, ECF No. 430-3 at 3.) FRI previously argued that this
5 agreement “contain[ed] confidential business information, ‘including, but not limited
6 to, detailed financial information about Defendants’ business, such as the allocation
7 of net income and net losses.’” (ECF No. 430 at 4 (quoting its previous motion to
8 seal, ECF No. 364).) As discussed above, FRI fails again to provide any compelling
9 reason for why this limited information should be sealed. *See Berkeley Research*
10 *Grp., LLC v. United Potato Growers of Am., Inc.*, No. CV C 16-07205 WHA, 2017
11 WL 1650582, at *5 (N.D. Cal. May 2, 2017) (finding that an operating agreement
12 should not be sealed); *Ne. Series of Lockton Companies, LLC v. Bachrach*, No. 12
13 CV 1695, 2013 WL 3989295, at *2 (N.D. Ill. Aug. 2, 2013) (same). Instead, FRI
14 continues to assert conclusory statements that it “has an interest” in keeping this
15 information confidential, and focuses on the irrelevancy of the redacted names. (ECF
16 No. 430 at 5-6.) For the reasons stated above, the Court finds FRI’s reasoning
17 inadequate.

18 Having reviewed FRI’s requests, the Court finds FRI failed to carry its burden
19 to demonstrate that sealing Exhibits 109 and 112 is appropriate under the compelling
20 reasons standard. *See Kamakana*, 447 F.3d at 1179. Otherwise, having reviewed
21 FRI’s requests, the Court finds that FRI provides compelling reasons to seal Exhibits
22 114, 115, and 149. *See Kamakana*, 447 F.3d at 1179. Therefore, the Court **GRANTS**
23 **IN PART AND DENIES IN PART** FRI’s motion to file documents under seal.
24 (ECF No. 430.)

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1 **III. CONCLUSION & ORDER**

2 In light of the foregoing, the Court:

- 3 (1) **GRANTS** ORI's request to file documents under seal in ECF No. 426.
4 The Clerk of the Court is directed to file the following exhibits under
5 seal: ECF Nos. 341-26, 341-28, and 347-21.
- 6 (2) **GRANTS** FRI's request to file documents under seal in ECF No. 428.
7 The Clerk of the Court is directed to file the following exhibits under
8 seal: ECF Nos. 429 and 429-1.
- 9 (3) **GRANTS IN PART** and **DENIES IN PART** FRI's request to file
10 documents under seal in ECF No. 430. The Clerk of the Court is directed
11 to file the following exhibits under seal: ECF Nos. 431-2, 431-3, and
12 431-4.

13 If FRI wishes to re-file any denied request, addressing the defects identified in
14 this order, it may do so no later than **December 22, 2017** after the issuance of this
15 Order. Otherwise, FRI is instructed to file the unredacted versions of the
16 aforementioned documents as directed by the Court in this Order on the public docket
17 no later than **December 22, 2017** after the issuance of this Order. When filing the
18 documents on the public docket, FRI must strictly adhere to the relevant Federal
19 Rules of Civil Procedure, this district's Civil Local Rules, this Court's Standing
20 Order for Civil Cases, and this district's Electronic Case Filing Administrative
21 Policies & Procedures Manual. Non-compliance with this order or any relevant rules
22 may result in sanctions pursuant to Civil Local Rule 83.1.

23 **IT IS SO ORDERED.**

24
25 **DATED: December 8, 2017**

26 
27 **Hon. Cynthia Bashant**
28 **United States District Judge**