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

IN RE ILLUMINA, INC.
SECURITIES LITIGATION

No. 3:16-CV-03044-L-KSC

**ORDER DENYING
DEFENDANTS' MOTION TO
FILE UNDER SEAL [ECF NO.
69]**

1 Pending before the Court is defendants' motion to file documents under seal
2 [ECF No. 69].

3 Sealing court records implicates the "general right to inspect and copy public
4 records and documents, including judicial records and documents." *Nixon v. Warner*
5 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). The lack of opposition to a motion
6 to seal therefore does not automatically resolve it. *See Foltz v. State Farm Mut. Auto*
7 *Ins. Co.*, 331 F.3d 1128, 1130 (9th Cir. 2003). Aside from "grand jury transcripts
8 and warrant materials in the midst of a pre-indictment investigation," a strong
9 presumption applies in favor of public access to judicial records. *Kamakana v. City*
10 *and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Accordingly, a party
11 seeking to seal a judicial record bears the burden of overcoming the strong
12 presumption of public access by meeting the "compelling reasons" standard. *Id.* at
13 1178. Whether a party's proffered reasons for filing documents under seal are
14 compelling is fact specific and left to the "sound discretion of the trial court." *Nixon*,
15 435 U.S. at 599. "In general, compelling reasons sufficient to outweigh the public's
16 interest in disclosure and justify sealing court records exist when such 'court files
17 might have become a vehicle for improper purposes,' such as the use of records to
18 gratify private spite, promote public scandal, circulate libelous statements, or release
19 trade secrets." *Kamakana*, 447 F.3d at 1179.

20 "While most judicial records are subject to the "compelling reasons" standard,
21 the Ninth Circuit has "carved out an exception to the presumption of access" to court
22 records. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).
23 "[W]hen a party attaches a sealed discovery document to a nondispositive motion the
24 usual presumption of the public's right of access is rebutted." *Phillips ex rel. Estates*
25 *of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). In that instance,
26 "'good cause' suffices to warrant preserving the secrecy of sealed discovery
27 material." *Foltz*, 331 F.3d at 1135. For good cause to exist, the the party seeking
28 protection must make a "particularized showing," *Kamakana*, 447 F.3d at 1180, of

1 the “specific prejudice or harm” that will result if the information is made public,
2 *Phillips*, 307 F.3d at 120-11. “[B]road allegations of harm, unsubstantiated by
3 specific examples or articulated reasoning” do not satisfy the good cause standard.
4 *Id.* at 1211 (quoting *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 476
5 (9th Cir. 1992)).

6 Here, defendants move to file the following under seal: (1) certain portions of
7 defendants’ memorandum of points and authorities in opposition to plaintiff’s motion
8 to amend [ECF No. 62]; (2) the declaration of Mark P. Gimbel in support of that
9 opposition brief; and accompanying exhibits 1, 2, 8, 15, 17. Defendants solely rely
10 on the parties’ Protective order to justify maintaining the confidentiality of
11 information contained within the above documents which was identified as
12 confidential by plaintiff. Defendants however fail to specify what information *in*
13 *particular* has been identified as confidential. This is not enough. *Foltz*, 331 F.3d at
14 1133 (“[A] party seeking the protection of the court via a blanket protective order
15 typically does not make the ‘good cause’ showing required by Rule 26(c) with respect
16 to any particular document.”). It is unclear what information has been earmarked as
17 “Confidential” by plaintiff. While that critical information is left unknown, the Court
18 finds that good cause has not been shown by defendants to summarily file the above
19 documents under seal. Therefore, defendants’ motion to file under seal is **DENIED**
20 **WITHOUT PREJUDICE.**

21 As such, these documents need not be filed on the public docket and will be
22 returned to the parties.

23 **IT IS SO ORDERED.**

24 Date: October 2, 2018

25
26 
27 Hon. M. James Lorenz
28 United States District Judge