

1
2
3
4
5
6
7
8
9

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

10 AYA HEALTHCARE SERVICES, INC.,
11 and AYA HEALTHCARE, INC.,

12 Plaintiffs,

13 v.

14 AMN HEALTHCARE, INC., et al.,

15 Defendants.

Case No. 17cv205-MMA (MDD)

**ORDER GRANTING DEFENDANTS'
RENEWED MOTION TO FILE
DOCUMENTS UNDER SEAL**

[Doc. No. 166]

16 Defendants AMN Healthcare, Inc., AMN Healthcare Services, Inc., AMN
17 Healthcare Services LLC, Medefis, Inc., and Shiftwise Inc. (collectively, “AMN”) move
18 to file under seal portions of Exhibit 1 to the Declaration of Amanda Fitzsimmons in
19 support of AMN’s motion for summary judgment (lodged as Doc. No. 97-2) (hereinafter,
20 “Mutual Termination Agreement”) and correspondence included in Exhibit 56 of the
21 Declaration of William Markham in support of Plaintiffs’ (“Aya”) Opposition to AMN’s
22 motion for summary judgment (lodged as Doc. No. 108-59) (hereinafter,
23 “Correspondence”). *See* Doc. No. 166. Aya filed a response to AMN’s motion, to which
24 AMN replied. *See* Doc. Nos. 173, 180.

25 AMN argues that compelling reasons support sealing Exhibits A and B to the
26 Mutual Termination Agreement. Specifically, AMN asserts that “[p]ublicizing AMN’s
27 client lists would cause AMN irreparable harm because it would provide others in the
28 market with information that they would not otherwise be able to readily ascertain and

1 make it easier for competitors to target AMN’s client relationships.” Doc. Nos. 166-1 at
2 3;¹ 166-2 at ¶ 4. AMN also argues that “having the names of AMN clients publicized in
3 litigation with a competitor could have an adverse impact on AMN’s relationships with
4 those clients.” *Id.* Aya does not oppose AMN’s motion to seal these portions of the
5 Mutual Termination Agreement. The Court finds that AMN has supported its motion to
6 seal Exhibits A and B to the Mutual Termination Agreement with the compelling reason
7 that publicizing its clients would provide AMN’s competitors with sensitive information
8 that they might not otherwise be able to readily ascertain. *See* Doc. No. 141 at 12 (citing
9 *In re Qualcomm Litig.*, No. 17-CV-00108, 2019 WL 1557656, at *3 (S.D. Cal. Apr. 10,
10 2019) (granting motions to seal “confidential business information of the parties,
11 including trade secrets, proprietary business records, discussions of internal strategy,
12 company dealings, and materials designated as ‘Highly Confidential’”).

13 AMN further argues that compelling reasons support sealing the Correspondence
14 because it “relates to a confidential Settlement Agreement between AMN and a third
15 party and reflects the terms of that confidential agreement.” Doc. No. 166-1 at 4. AMN
16 asserts that the disclosure of the Correspondence “would provide others in the market
17 with information that they would not otherwise have regarding Defendants’ terms and
18 practices . . . in settling disputes, thereby providing an unfair strategic negotiating
19 advantage . . . [and] deprive the parties to the Settlement Agreement of the benefit of
20 their bargain for confidentiality.” *Id.* (citing Doc. No. 166-2 at ¶ 5). Aya “declines to
21 oppose [AMN’s] motion” because it agreed to respect the designation of Supplemental
22 Healthcare, Inc. (“SHC”), the counterparty to the Settlement Agreement. Doc. No. 175 at
23 4. However, Aya notes its disagreement that “public disclosure of [the Correspondence]
24 might expose AMN to the harm of the kind that the Protective Order is supposed to
25
26

27 ¹ Unless the Court indicates otherwise, the Court’s citations to electronically filed documents refer to the
28 pagination assigned by the document’s author, rather than the pagination assigned by the CM/ECF
system.

1 protect – harm caused by disclosure of trade secrets and other commercial sensitive
2 information . . . , not liability that might arise from the public disclosure” of the
3 Correspondence. *Id.*

4 The Court finds compelling reasons support sealing the Correspondence. In its
5 April 20, 2020 sealing order, the Court agreed with AMN that compelling reasons
6 supported sealing the Settlement Agreement between it and SHC and references thereto
7 for the reasons AMN provided, *see* Doc. No. 141 at 9-10, 20-21, which are the same
8 reasons again provided by AMN. *Compare* Doc. No. 96-1 at 5 *with* Doc. No. 166-1 at 4.
9 Aya does not address these reasons, but imply that they are pretextual and that AMN
10 instead would like to seal the Correspondence to protect itself from liability that might
11 arise from the public disclosure of the non-solicitation covenants discussed in the
12 Correspondence. *See* Doc. No. 175 at 4. The Court is not persuaded by this bare
13 assertion. Non-solicitation covenants like the kind embodied in the Settlement
14 Agreement similarly appear in AMN’s associate vendor agreements (*see, e.g.*, Doc. No.
15 108-89 at AMN0000102619-620) and reflect some of the “specific terms” upon which
16 AMN is willing to collaborate with other healthcare staffing agencies. *See* Doc. No. 141
17 at 5-6 (citing *In re Google Inc. Gmail Litig.*, No. 13-MD-02430, 2014 WL 10537440, at
18 *5 (N.D. Cal. Aug. 6, 2014) (granting motion to seal specific terms of Google’s contracts
19 as “trade secrets that, if disclosed, could cause competitive harm to Google”)).

20 Therefore, for the foregoing reasons, the Court **GRANTS** AMN’s renewed motion
21 to file documents under seal (Doc. No. 166). Accordingly, the Court **DIRECTS** the
22 Clerk of Court to **FILE UNDER SEAL**:²

- 23 • Exhibit 1 to the Declaration of Amanda Fitzsimmons in support of AMN’s motion
24 for summary judgment (lodged as Doc. No. 97-2). AMN must file an
25 appropriately redacted version of the Mutual Termination Agreement consistent
26

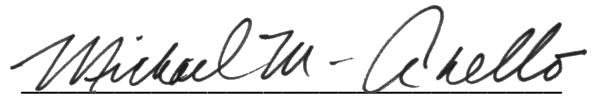
27
28 ² Pursuant to the Court’s CM/ECF policies and procedures, the entire documents discussed herein need to be placed under seal, rather than only the specified portions of such documents.

1 with the Court's ruling no later than ten (10) business days from the date this Order
2 is filed; and

- 3 • Exhibit 56 of the Declaration of William Markham (lodged as Doc. No. 108-59).
4 Aya must file an appropriately redacted version of Exhibit 56 consistent with the
5 Court's ruling no later than ten (10) business days from the date this Order is filed.
6

7 **IT IS SO ORDERED.**

8
9 Dated: May 7, 2020



10 HON. MICHAEL M. ANELLO
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28