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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 WHITEWATER WEST INDUSTRIES,
12 LTD., a Canadian corporation,
13 Plaintiff,

14 v.

15 PACIFIC SURF DESIGNS, INC., a
16 Delaware corporation, and FLOW
17 SERVICES, INC., a California
18 corporation,
19 Defendants.

Case No.: 3:17-cv-01118-BEN-BLM

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
FILE UNDER SEAL**

[ECF Nos. 189, 198, 201, 203, 206, 213,
218, 221, 224, 226, 234, 237, 240, 243,
245, 249, 253.]

20 Before the Court is Plaintiff Whitewater West Industries, Ltd. ("Whitewater") and
21 Defendants Pacific Surf Designs, Inc. ("PSD") and Flow Services, Inc. ("Flow Services")
22 numerous Motions to Seal. Specifically, there are seventeen Motions seeking to seal well
23 over 1,000 pages of the public record. The Court addresses all the Motions to Seal in this
24 Order.

25 **I. The Right of Access to Judicial Records**

26 In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), the Supreme Court
27 recognized "a general right to inspect and copy public records and documents, including
28 judicial records and documents." *Id.* at 597. The main reason for this general right is to

1 accommodate “the citizen’s desire to keep a watchful eye on the workings of . . .
2 government.” *Id.* at 598. However, the Supreme Court also stated that “the right to inspect
3 and copy judicial records is not absolute.” *Id.* at 589. “Every court has supervisory power
4 over its own records and files, and access has been denied where court files might have
5 become a vehicle for improper purposes,” such as “to gratify private spite or promote
6 public scandal,” or to serve as a source of “business information that might harm a litigant’s
7 competitive standing.” *Id.* (internal citations omitted).

8 Except for certain documents “traditionally kept secret,” federal courts begin a
9 sealing analysis with “a strong presumption in favor of access to court records.” *Foltz v.*
10 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to
11 seal a judicial record then bears the burden of overcoming this strong presumption by
12 meeting the “compelling reasons” standard. *Id.*; *Kamakana v. City & Cnty. of Honolulu*,
13 447 F.3d 1172, 1179 (9th Cir. 2006) (applying compelling reasons standard to dispositive
14 motions); *DISH Network, L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553-L, 2009 WL
15 2579052, at *1 (S.D. Cal. Aug. 20, 2009) (treating motion for preliminary injunction as
16 dispositive for sealing analysis because the motion directly addresses the merits and seeks
17 injunctive relief before trial). That is, the party must “articulate [] compelling reasons
18 supported by specific factual findings,” *Foltz*, 331 F.3d at 1135, that outweigh the general
19 history of access and the public policies favoring disclosure, such as the “public interest in
20 understanding the judicial process,” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.
21 1995).

22 “The mere fact that the production of records may lead to a litigant’s embarrassment,
23 incrimination, or exposure to further litigation will not, without more, compel the court to
24 seal its records.” *Kamakana*, 447 F.3d at 1179. A party must satisfy the compelling
25 reasons standard even if the motion, or its attachments, were previously filed under seal or
26 protective order. *Foltz*, 331 F.3d at 1136 (“[T]he presumption of access is not rebutted
27 where . . . documents subject to a protective order are filed under seal as attachments to a
28 dispositive motion.”). And “[s]imply mentioning a general category of privilege, without

1 further elaboration or any specific linkage with the documents, does not satisfy the burden.”
2 *Kamakana*, 447 F.3d at 1184. A party’s failure to meet the burden of articulating specific
3 facts showing a “compelling reason” means that the “default posture of public access
4 prevails.” *Id.* at 1182.

5 In turn, the court must “conscientiously balance [] the competing interests” of the
6 public and the party who seeks to keep certain judicial records secret. *Foltz*, 331 F.3d at
7 1135. After considering these interests, if the court decides to seal certain judicial records,
8 it must “base its decision on a compelling reason and articulate the factual basis for its
9 ruling, without relying on hypothesis or conjecture.” *Hagestad*, 49 F.3d at 1434 (citing
10 *Valley Broadcasting Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1295 (9th Cir.1986)).

11 In ruling on motions to seal in Related Case No. 15-cv-1879, this Court has
12 recognized that “compelling reasons sufficient to outweigh the public’s interest in
13 disclosure and justify sealing court records exist when such court files might . . . become a
14 vehicle for improper purposes, such as the use of records to . . . release trade secrets.”
15 *Kamakana*, 447 F.3d at 1179. A “trade secret may consist of any formula, pattern, device
16 or compilation of information which is used in one’s business, and which gives him an
17 opportunity to obtain an advantage over competitors who do not know or use it.”
18 Restatement of Torts § 757 cmt. b.

19 Similarly, other “sources of business information that might harm a litigant’s
20 competitive standing” may also constitute a compelling reason to seal, *see Nixon*, 435 U.S.
21 at 598, as a company’s confidential profit, cost, and pricing information if publicly
22 disclosed could put the company at a competitive disadvantage, *see Apple, Inc. v. Samsung*
23 *Elec. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (“[I]t seems clear that if Apple’s and
24 Samsung’s suppliers have access to their profit, cost, and margin data, it could give the
25 suppliers an advantage in contract negotiations, which they could use to extract price
26 increases for components.”).

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1 **II. Discussion**

2 The Court has previously expressed to the parties how seriously it takes the public
3 right of access to judicial records. A party seeking to seal documents must satisfy the
4 compelling reasons standard. In its August 3, 2017 Order (Doc. No. 40), the Court
5 admonished the parties that going forward, if a motion to seal is denied, the document will
6 immediately be publicly filed on CM/ECF. The fact that the Court has sealed a document
7 once does not mean that the Court will seal the document again, particularly at trial.
8 Moreover, the fact that both sides agree to seal or that the documents are designated
9 confidential under a protective order is insufficient cause for sealing.

10 **A. Plaintiffs' Motions to Seal**

11 Plaintiff Whitewater has filed eight Motions to Seal. The Motions are unopposed,
12 and Plaintiff asserts that all documents sought to be sealed in each Motion have been
13 designated as "CONFIDENTIAL—FOR COUNSEL ONLY" pursuant to the Protective
14 Order entered by the Court on December 18, 2015, in the related FSL Action.¹ The Court
15 will review each motion in turn.

16 1. Motion to File Under Seal, 11/2/18 – (Doc. No. 198.)

17 ***Exhibit 1 and Portions of its Daubert Motion to Strike or Exclude***
18 ***the Report and Testimony of James T. Carmichael*** (Doc. No. 199.)

19 Plaintiff seeks to file under seal portions of its *Daubert* Motion to Strike or Exclude
20 the Report and Testimony of James T. Carmichael and Exhibit 1 to the Declaration for
21 Roger L. Scott in support of the Motion.² The Court finds that Plaintiff has not narrowly
22 tailored its request to seal to only those portions of Exhibit 1 that contain business, financial
23 and technical information that would place the designating party at a competitive
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26 ¹ On December 18, 2015, the Court entered the Protective Order stipulated by the parties
27 in *Flowrider Surf, Ltd., et al v. Pacific Surf Designs, Inc.*, No. 3:15-cv-01879-BEN-BLM
(the "FSL Action"). (FSL Action, Doc. Nos. 23, 24.)

28 ² Plaintiff simultaneously filed a redacted version of the *Daubert* Motion with the motion
to seal. (Doc. No. 197.)

1 disadvantage. In this case, Plaintiff seeks to entirely seal the expert report of James T.
2 Carmichael, Ph.D. This Court has previously denied requests to entirely seal expert reports
3 finding the practice to be excessive and against public policy. The Court finds Plaintiff's
4 Motion does not provide sufficient justification to seal Exhibit 1 in its entirety.

5 Therefore, the Court **DENIES** Plaintiff's Motion to Seal.

6 2. Motion to File Under Seal, 11/2/18 – (Doc. No. 201.)

7 *Exhibits 1, 15, 16, 19 and 21 in Support of its Motion for Summary*
8 *Judgment* (Doc. No. 202.)

9 Plaintiff seeks to file under seal portions of its Motion for Summary Judgment and
10 Exhibits 1, 15, 16, 19 and 21 to the Declaration of Roger L. Scott. The Court finds that the
11 Motion and Exhibits 1 and 15 include sensitive information regarding PSD's finances,
12 customers and/or products which Plaintiff has narrowly tailored its request to seal to only
13 those portions of the Motion and Exhibits 1 and 15 that, if disclosed, would place Plaintiff
14 at a competitive disadvantage.

15 The Court is not persuaded the information contained in Exhibits 16, 19, and 21
16 warrants sealing. As to Exhibits 16 and 19, the Plaintiff seeks to entirely seal the expert
17 reports of Edward Pribonic. As discussed *supra*, such requests are deemed excessive and
18 denied as Exhibits 16 and 19 are here. Moreover, Exhibit 21 seeks to seal excerpts of
19 James T. Carmichael's October 11, 2018 deposition transcript. The Court does not find
20 the information contained in Exhibit 21 relates to PSD's Customers, Products or Finances
21 in order to justify it being sealed. Thus, the Court denies Plaintiff's request to seal Exhibit
22 21 as well.

23 Therefore, the Court **GRANTS** Plaintiff's Motion to Seal in part and **ORDERS** the
24 Motion and Exhibits 1 and 15 filed under seal. The Court **DENIES** Plaintiffs Motion to
25 Seal Exhibits 16, 19 and 21.

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1 3. Motion to File Under Seal, 11/26/18 – (Doc. No. 213.)

2 *Exhibits 1, 2, 6 and 7 and Portions of its Opposition to Defendant’s*
3 *DAUBERT and IN LIMINE Motion to Exclude Expert Testimony*
4 *and Evidence* (Doc. No. 214.)

5 Plaintiff seeks to file under seal portions of its Opposition to Defendant’s *Daubert*
6 and *In Limine* Motion to Exclude Expert Testimony, Evidence and Exhibits 1, 2, 6 and 7
7 to the Declaration of Roger L. Scott. The Court finds Plaintiff narrowly tailored the request
8 to seal to only those portions of the Opposition and Exhibits 1 and 2 that, if disclosed,
9 would place the designating party at a competitive disadvantage. In this case, the
10 Opposition includes direct quotations from the confidential deposition transcripts of Dr.
11 Glen Stevick (“Stevick”) and Dr. Robert L. Vigil (“Vigil”).

12 Plaintiffs have not persuaded the Court Exhibit 7 warrants sealing. Plaintiff seeks
13 to entirely seal Vigil’s expert report. Unnecessarily sealing expert reports in their entirety
14 is excessive and is hereby denied.

15 Therefore, the Court **GRANTS** Plaintiff’s Motion to Seal in part and **ORDERS**
16 portions of the Opposition and Exhibits 1, 2 and 6 filed under seal. The Court **DENIES**
17 Plaintiffs Motion to Seal Exhibit 7.

18 4. Motion to File Under Seal, 12/3/18 – (Doc. No. 234.)

19 *Exhibits 23, 24 and 25 in Support of its Reply in Support of Motion*
20 *for Summary Judgment* (Doc. No. 235.)

21 Plaintiff seeks to file under seal certain portions of its Reply in Support of Motion
22 for Summary Judgment and Exhibits 23, 24 and 25. The Court finds that Plaintiff has
23 narrowly tailored its request to only those portions of the Reply containing direct quotations
24 from the confidential deposition transcripts of Richard Alleshouse (“Alleshouse”) and
25 Yong Yeh (“Yeh”) which the Court concurs would place the Plaintiff at a competitive
26 disadvantage if disclosed.

27 Therefore, the Court **GRANTS** Plaintiff’s Motion to Seal and **ORDERS** portions of
28 the Reply and Exhibits 23, 24, and 25 filed under seal.

1 5. Motion to File Under Seal, 12/3/18 – (Doc. No. 237.)

2 *Exhibit 1 in Support of its Reply in Support of IN LIMINE Motion*
3 *No. 2 to Exclude Argument, Testimony, and Evidence regarding*
4 *Prior Lawsuits involving the '589 Patent (Doc. No. 238.)*

5 Plaintiff seeks to file under seal certain portions of its Reply in Support of Motion
6 *In Limine* No. 2 to Exclude Argument, Testimony, and Evidence Regarding Prior Lawsuits
7 Involving the '589 Patent and Exhibit 1 to the Declaration of Roger L. Scott. The Court
8 finds that Plaintiff has narrowly tailored its request to seal to the Reply to direct quotations
9 from the confidential deposition transcripts of Alleshouse.

10 Therefore, the Court **GRANTS** Plaintiff's Motion to Seal and **ORDERS** portions of
11 its Reply and Exhibit 1 filed under seal.

12 6. Motion to File Under Seal, 12/3/18 – (Doc. No. 240.)

13 *Opposition Exhibits 1 and 2 in Support of its Reply in Support of*
14 *Motion IN LIMINE No. 4 to Exclude Any Argument, Testimony, or*
15 *Evidence regarding the Arbitration Between Plaintiff and Wave*
16 *Loch, LLC. (Doc. No. 241.)*

17 Plaintiff seeks to file under seal certain portions of its Reply in Support of Motion
18 *In Limine* No. 4 to Exclude Argument, Testimony, and Evidence Regarding the Arbitration
19 Between Plaintiff and Wave Loch, LLC and Exhibits 1 and 2. The Court finds that Plaintiff
20 has narrowly tailored its request to only those portions of its Reply that contain information
21 that, if disclosed, would place it at a competitive disadvantage.

22 The Court declines to seal the entire expert reports of James T. Carmichael and
23 Lewis contained in Exhibits 1 and 2. Entirely sealing expert reports is excessive and is
24 hereby denied.

25 Therefore, the Court **GRANTS** Plaintiff's Motion to Seal in part and **ORDERS**
26 portions of the Reply filed under seal. Plaintiff's request to Seal Exhibits 1 and 2 is
27 **DENIED.**

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1 7. Motion to File Under Seal, 12/3/18 – (Doc. No. 243.)

2 *Portions of its Reply in Support of its DAUBERT Motion to Exclude*
3 *the Report and Testimony of James T. Carmichael* (Doc. No. 244.)

4 Plaintiff seeks to file under seal certain portions of its Reply in Support of Daubert
5 Motion to Exclude the Report and Testimony of James T. Carmichael. The Court finds
6 that Plaintiff has narrowly tailored its request to only those portions of the Reply containing
7 sensitive information regarding PSD’s finances, customers and/or products, which
8 disclosure of this information would place it at a competitive disadvantage.

9 Therefore, the Court **GRANTS** Plaintiff’s Motion to Seal and **ORDERS** the
10 portions of the Reply filed under seal.

11 8. Motion to File Under Seal, 12/3/18 – (Doc. No. 249.)

12 *Exhibits 2 and 3 in Support of its Errata to Evidence Submitted in*
13 *Support of Motion for Summary Judgment* (Doc. No. 250.)

14 Plaintiff seeks to file under seal Exhibits 2 and 3 in support of its Errata to Evidence
15 Submitted in Support of Plaintiff’s Motion for Summary Judgment. The Court finds that
16 Plaintiff has narrowly tailored its request to seal to only those portions of Exhibit 2 that
17 contain information that, if disclosed, would place it at a competitive disadvantage.

18 The Court is not persuaded Exhibit 3 warrants sealing. Exhibit 3 seeks to seal
19 excerpts of James T. Carmichael’s October 11, 2018 deposition transcript. The Court fails
20 to find how any of the information contained in Exhibit 3 relates to PSD’s Customers,
21 Products or Finances.

22 Therefore, the Court **GRANTS** Plaintiff’s Motion to Seal in part and **ORDERS**
23 Exhibit 2 filed under seal. The Court **DENIES** Plaintiffs Motion to Seal Exhibit 3.

24 **B. Defendants’ Motions to Seal**

25 Defendants PSD and Flow Services have filed nine Motions to Seal. The Motions
26 are unopposed, and Defendants assert all documents sought to be sealed in each Motion
27 have been designated as “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL
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1 ONLY” pursuant to the Protective Order in the Related FSI Action. The Court addresses
2 each motion in turn.

3 1. Motion to File Under Seal, 11/1/18 – (Doc. No. 189.)

4 *Exhibits A, B, C, D, E, F, G, H, J, K, M, O, S, T, U, V, W, X and Y*
5 *to Declaration of Christopher M. Franich in Support of their*
6 *Motion for Summary Judgment* (Doc. No. 190.)

7 Defendants seek to file under seal Exhibits A, B, C, D, E, F, G, H, J, K, M, O, S, T,
8 U, V, W, X and Y to the Declaration of Christopher M. Franich in support of their Motion
9 for Summary Judgment. The Court finds that Defendants have narrowly tailored the
10 request to seal to only those portions of the Declaration and Exhibits A, C, D, E, F, G, H,
11 J, K, M, O, S, T, U, V, W, X, and Y. The Court finds that PSD would be competitively
12 and economically disadvantaged if this information was publicly disclosed.

13 Defendants have not persuaded the Court Exhibit B warrants sealing. The
14 Defendants seek to entirely seal Exhibit B containing the expert report of James T.
15 Carmichael which is excessive and is hereby denied.

16 Therefore, the Court **GRANTS** in part Defendants’ Motion to Seal. The Court
17 **ORDERS** portions of the Declaration in Support of its Motion for Summary Judgment and
18 Exhibits A, C, D, E, F, G, H, J, K, M, O, S, T, U, V, W, X, and Y filed under seal. The
19 Court **DENIES** Defendants’ request to seal Exhibit B.

20 2. Motion to File Under Seal, 11/2/18 – (Doc. No. 203.)

21 *Exhibits A, B, C, D, E, I and J in Support of Defendants’*
22 *DAUBERT and IN LIMINE Motion to Exclude Expert Evidence*
23 *and Testimony* (Doc. No. 208.)

24 Defendants seek to file under seal Exhibits A, B, C, D, E, I and J. The Court finds
25 the Defendants have narrowly tailored their request to exhibits A, C, E, I and J, which, if
26 disclosed, would place them at a competitive disadvantage.

1 The Court is not persuaded Exhibits B and D warrant sealing. Exhibits B and D
2 contain the expert reports of Robert L. Vigil, Ph.D., and Glen Stevick, Ph.D. Entirely
3 sealing expert reports is excessive and is hereby denied.

4 Therefore, the Court **GRANTS** in part Defendants Motion to Seal and **ORDERS**
5 Exhibits A, C, E, I and J filed under seal. The Court **DENIES** Defendants Motion to Seal
6 as to Exhibits B and D.

7 3. Motion to File Under Seal, 11/2/18 – (Doc. No. 206.)

8 *Exhibits A, B, C, D, E, I and J in Support of Defendants’*
9 *DAUBERT and IN LIMINE Motion to Exclude Expert Evidence*
10 *and Testimony (Doc. No. 207.)*

11 Defendants seek to file under seal Exhibits A, B, D, G, I and J. The Court finds the
12 Defendants have narrowly tailored their request to only those exhibits A, C, E, I and J,
13 which, if disclosed, would place them at a competitive disadvantage.

14 The Court is not persuaded Exhibits B and D warrant sealing. Exhibits B and D
15 contain the expert reports of Robert L. Vigil, Ph.D. and Glen Stevick, Ph.D. Entirely
16 sealing expert reports is excessive and is hereby denied.

17 Therefore, the Court **GRANTS** in part Defendants Motion to Seal and **ORDERS**
18 Exhibits A, C, E, I and J filed under seal. The Court **DENIES** Defendants Motion to Seal
19 as to Exhibits B and D.

20 4. Motion to File Under Seal, 11/26/18 – (Doc. No. 218.)

21 *Exhibits A, B, D, G, I and J in Support of Defendants’ Opposition*
22 *to Plaintiff’s Motion IN LIMINE No. 2 to Exclude any Argument,*
23 *Testimony, or Evidence (Doc. No. 219.)*

24 Defendants seek to file under seal portions of its Opposition to Plaintiff’s Motion *In*
25 *Limine* No. 2 and Exhibits A, B, D, G, I and J. The Court finds that the Defendants have
26 narrowly tailored their request to only those portions of the Opposition and Exhibits B, D,
27 G, I and J containing business, financial and technical information that, if disclosed, would
28 place them at a competitive disadvantage.

1 The Court is not persuaded Exhibit A warrants sealing. Exhibit A contains the expert
2 report of Robert L. Vigil, Ph.D. Entirely sealing expert reports is excessive and is hereby
3 denied.

4 Therefore, the Court **GRANTS** in part Defendants' Motion to Seal. The Court
5 **ORDERS** portions of the Opposition and Exhibits B, D, G, I and J be filed under seal. The
6 Court **DENIES** Defendants Motion to Seal as to Exhibit A.

7 5. Motion to File Under Seal, 11/26/18 – (Doc. No. 221.)

8 *Exhibits A, B, C, E, F, G and I in Support of Defendants'*
9 *Opposition to Plaintiff's Motion IN LIMINE No. 4 to Exclude any*
10 *Argument, Testimony, or Evidence regarding the Arbitration*
11 *between Plaintiff and Wave Loch, LLC (Doc. No. 222.)*

12 Defendants seek to file under seal portions of their Opposition to Plaintiff's Motion
13 *In Limine* No. 4 and Exhibits A, B, C, E, F, G and I in support of their Opposition. The
14 Court finds that the Defendants have narrowly tailored the request to only those portions
15 of their Opposition and Exhibits A, B, C, F, G and I that contain business, financial and
16 technical information that, if disclosed, would place them at a competitive disadvantage.

17 The Court is not persuaded that the information contained in Exhibit E warrants
18 sealing. Exhibit E seeks to seal entirely the expert report of Robert L. Vigil, Ph.D. This
19 Court has repeatedly denied sealing entirely expert reports as excessive and does the same
20 here as to Exhibit E.

21 Therefore, the Court **GRANTS** in part Defendant's Motion to Seal. The Court
22 **ORDERS** portions the Opposition and Exhibits A, B, C, F, G and I be filed under seal.
23 The Court **DENIES** Defendants Motion to Seal as to Exhibit E.

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1 6. Motion to File Under Seal, 11/26/18 – (Doc. No. 224.)

2 *Exhibits A and B in Support of Defendant’s Opposition to Plaintiff’s*
3 *Motion IN LIMINE No. 3 to Exclude any Argument, Testimony, or*
4 *Evidence regarding U.S. Patent No. 8,088,016 (Doc. No. 225.)*

5 Defendants seek to file under seal certain portions of its Opposition to Plaintiff’s
6 Motion *In Limine* No. 3 and Exhibits A and B. The Court finds that Defendant has
7 narrowly tailored its request to only those portions of its Opposition that contains
8 information that, if disclosed, would place the designating party at a competitive
9 disadvantage. Upon review, the Court concurs that disclosure of this information would
10 place them at a competitive disadvantage. However, the Court declines to seal the entire
11 expert reports of Vigil and Stevick contained in Exhibits A and B.

12 Therefore, the Court **GRANTS** Defendants’ Motion to Seal in part and **ORDERS**
13 portions of its Opposition filed under seal. Defendant’s request to Seal Exhibits A and B
14 is **DENIED**.

15 7. Motion to File Under Seal, 11/26/18 – (Doc. No. 226.)

16 *Defendants’ Opposition to Plaintiff’s Motion for Summary*
17 *Judgment; Exhibit A to the Declaration of Edward M. Pribonic; and*
18 *Exhibits A, B, D, E, F, H, I, J, L and M to the Declaration of*
19 *Charanjit Brahma (Doc. No. 227.)*

20 Defendants seek to file under seal its Opposition to Plaintiff’s Motion for Summary
21 Judgment, Exhibit A to the Declaration of Edward M. Pribonic; and Exhibits A, B, D, E,
22 F, H, I, J, L and M. The Court finds that the Defendants have narrowly tailored their request
23 to only those portions of the Opposition, Exhibit A to the Declaration of Edward M.
24 Pribonic and Exhibits B, D, E, F, H, I, J, L and M to the Declaration of Charanjit Brahma
25 that contain business, financial and technical information that, if disclosed, would place
26 them at a competitive disadvantage if disclosed. However, the Court declines to seal the
27 entire expert report of Glen Stevick Ph.D. contained in Exhibit A.

1 Therefore, the Court **GRANTS** in part Defendants' Motion to Seal. The Court
2 **ORDERS** portions of Defendants Opposition and Exhibits A to the Declaration of Edward
3 M. Pribonic and Exhibits B, D, E, F, H, I, J, L, and M filed under seal. Defendants request
4 to seal Exhibit A is **DENIED**. Additionally, the Court advises the Defendant that future
5 requests to seal outside of those motions covered by this Order shall be summarily
6 DENIED unless they include a brief description of each exhibit sought to be sealed.

7 8. Motion to File Under Seal, 12/3/18 – (Doc. No. 245.)

8 *Exhibits C, D, E, and F Under Seal in Support of Defendants' Reply*
9 *Memorandum of Points and Authorities in Support of Defendants'*
10 *DAUBERT and IN LIMINE Motion to Exclude Expert Testimony*
11 *and Evidence* (Doc. No. 246.)

12 Defendants seek to file under seal portions of their Reply Memorandum of Points
13 and Authorities in Support of Defendants' Daubert Motion and Motion In Limine and
14 Exhibits C, D, E and F. The Court finds that the Defendants have narrowly tailored their
15 request to only those portions of their Reply and Exhibits D, E and F that contain business,
16 financial and technical information that, if disclosed, would place them at a competitive
17 disadvantage.

18 The Court is not persuaded that the information contained in Exhibit C warrants
19 sealing. Exhibit C seeks to seal entirely the Supplemental expert report of Glen Stevick
20 Ph.D. This Court has repeatedly denied sealing entirely expert reports as excessive and
21 does the same here as to Exhibit C.

22 Therefore, the Court **GRANTS** in part Defendants' Motion to Seal. The Court
23 **ORDERS** portions the Reply and Exhibits D, E and F be filed under seal. The Court
24 **DENIES** Defendants Motion to Seal as to Exhibit C.

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1 9. Motion to File Under Seal, 3/26/18 – (Doc. No. 253.)

2 ***Defendants’ Memorandum of Contentions of Fact and Law and***
3 ***Defendants’ Trial Exhibit List*** (Doc. No. 255.)

4 Defendants seek to file under seal, pursuant to § 2(f) of the Southern District of
5 California Electronic Case Filing Administrative Policies and Procedures and the parties’
6 stipulated Protective Order, an Order filing under seal their Memorandum of Contentions
7 of Fact and Law and Trial Exhibit List.

8 Therefore, the Court **GRANTS** Defendants’ Motion to Seal. The Court **ORDERS**
9 the Memorandum of Contentions of Fact and Law and Trial Exhibit List be filed under
10 seal.

11 **III. Conclusion**

12 In sum, the Court finds that most of the parties’ various Motions to Seal are narrowly
13 tailored such that they do not impede upon the public’s ability to understand the nature of
14 the proceedings and the factual basis for the parties’ claims. As such and considering the
15 compelling reasons justifying sealing, the Court **GRANTS** the Motions to Seal as
16 described above and as identified by the **following table** in its entirety. Furthermore, any
17 and all documents the Court declined to seal shall be filed in the public record accordingly.

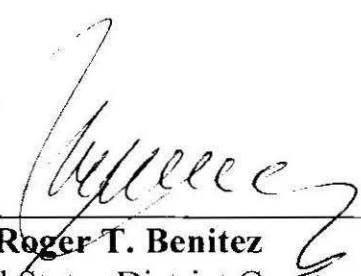
<u>Doc. No.</u>	<u>Movant</u>	<u>Document(s) to be Sealed</u>
189	PSD/Flow Services	Documents lodged at <i>Docket Number 190</i> as Defendant’s Motion to Seal Exhibits A, C, E, I and J.
198	Whitewater	N/A
201	Whitewater	Documents lodged at <i>Docket Number 202</i> as Plaintiffs’ Motion to Seal Exhibits 1 and 15 in Support of its Motion for Summary Judgment.
203	PSD/Flow Services	Documents lodged at <i>Docket Number 208</i> as Defendants’ Motion to File Exhibits A, C, E, I and J in Support of Defendants’ <i>DAUBERT</i> and <i>IN LIMINE</i> Motion to Exclude Expert Evidence and Testimony.
206	PSD/Flow Services	Documents lodged at <i>Docket Number 207</i> as Defendants’ Motion to File Exhibits A, C, E, I and J in Support of Defendants’ <i>DAUBERT</i> and <i>IN LIMINE</i> Motion to Exclude Expert Evidence and Testimony.

1	213	Whitewater	Documents lodged at <u>Docket Number 208</u> as Plaintiffs' Motion to Seal Exhibits 1, 2 and 6 and Portions of its Opposition to Defendants' <i>DAUBERT</i> Motion <i>IN LIMINE</i> to Exclude Expert Testimony and Evidence.
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4	218	PSD/Flow Services	Documents lodged at <u>Docket Number 219</u> as Defendants' Motion to File Exhibits B, D, G, I and J in Support of Defendants' <i>DAUBERT</i> and <i>IN LIMINE</i> Motion to Exclude Expert Evidence and Testimony.
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7	221	PSD/Flow Services	Documents lodged at <u>Docket Number 222</u> as Defendants' Motion to File Exhibits A, B, C, F, G and I in Support of Defendants' Opposition to Plaintiff's Motion <i>IN LIMINE</i> No. 4 to Exclude any Argument, Testimony, or Evidence regarding the Arbitration between Plaintiff and Wave Loch, LLC.
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11	224	PSD/Flow Services	N/A
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13	226	PSD/Flow Services	Documents lodged at <u>Docket Number 227</u> as Defendants' Opposition to Plaintiff's Motion for Summary Judgment; Exhibit A to the Declaration of Edward M. Pribonic and Exhibits B, D, E, F, H, I, J, L, and M to the Declaration of Charanjit Brahma.
14			
15	234	Whitewater	Documents lodged at <u>Docket Number 200</u> as Plaintiffs' Motion to Seal Exhibits 23, 24 and 25 in Support of its Reply in Support of Motion for Summary Judgment.
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17	237	Whitewater	Documents lodged at <u>Docket Number 238</u> as Plaintiffs' Motion to Seal Exhibit 1 in Support of its Reply in Support of Motion <i>IN LIMINE</i> NO. 2 to Exclude Argument, Testimony, and Evidence regarding prior lawsuits involving the '589 Patent.
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21	240	Whitewater	N/A
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23	243	Whitewater	Documents lodged at <u>Docket Number 244</u> as Plaintiffs' Motion to Seal Portions of its Reply in Support of its <i>DAUBERT</i> Motion to Exclude the Report and Testimony of James T. Carmichael.
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25	245	PSD/Flow Services	Documents lodged at <u>Docket Number 246</u> as Defendants' Motion to File Exhibits D, E, and F in Support of Defendants' Reply Memorandum of Points and Authorities in Support of Defendants' <i>DAUBERT</i> and <i>IN LIMINE</i> Motion to Exclude Expert Testimony and Evidence.
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1	249	Whitewater	Documents lodged at <i>Docket Number 250</i> as Plaintiffs' Motion to Seal Exhibits 2 in Support of its Errata to Evidence submitted in Support of Motion for Summary Judgment.
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3	253	PSD/Flow Services	Documents lodged at <i>Docket Number 255</i> as Defendants' Memorandum of Contentions of Fact and Law and Defendants' Trial Exhibit List.
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7 **IT IS SO ORDERED.**

8 DATED: 4/11, 2019

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11 **Hon. Roger T. Benitez**
12 United States District Court
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