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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 A-ROO Distributing of California, LLC,  
11 Plaintiff,  
12 v.  
13 Michael Switzer,  
14 Defendant.

Case No.: 17-cv-2140-AJB-AGS

**ORDER DENYING JOINT MOTION  
TO FILE SETTLEMENT UNDER  
SEAL (Doc. No. 3)**

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16 The parties jointly moved to file the settlement agreement under seal according to  
17 Local Rules 7.2 and 79.2. (Doc. No. 3.) The parties request the agreement be filed under  
18 seal because the agreement contains confidential “specific terms, amounts, and conditions  
19 of the settlement agreement. . . .” (*Id.* at 2.)

20 Unless a particular court record is one “traditionally kept secret,” a “strong  
21 presumption in favor of access” is the starting point. *Foltz v. State Farm Mut. Auto. Ins.*  
22 *Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *Hagestad v. Tragesser*, 49 F.3d 1430,  
23 1434 (9th Cir. 1995)). The court must “conscientiously balance [ ] the competing interests”  
24 of the public and those requesting a sealing order. *Foltz*, 331 F.3d at 1135. After  
25 considering these interests, if the court decides to seal certain records, it must “base its  
26 decision on a compelling reason and articulate the factual basis for its ruling, without  
27 relying on hypothesis or conjecture.” *Hagestad*, 49 F.3d at 1434 (citing *Valley*  
28 *Broadcasting Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1295 (9th Cir. 1986)); *Ambrosino v.*

1 *Home Depot U.S.A., Inc.*, No. 11-cv-1319-L-MDD, 2014 WL 931780, at \*1 (S.D. Cal.  
2 Mar. 10, 2014). Regarding FLSA cases, “the overwhelming consensus of district courts  
3 that have considered the issue [ ] hold that an FLSA settlement cannot be sealed absent  
4 some showing that overcomes the presumption of public access.” *Joo v. Kitchen Table,*  
5 *Inc.*, 763 F. Supp. 2d 643, 646–48 (S.D.N.Y. 2011) (listing cases).

6 The parties give five reasons as to why the settlement should be sealed.  
7 (Doc. No. 3-1.) The first two reasons argue that confidentiality protects both defendant  
8 Switzer from future employers taking issue with any of the settlement terms and A-ROO  
9 from “the risk of similar litigation.” (*Id.* at 5.) A-ROO asserts it acted lawfully and is fearful  
10 a non-confidential settlement agreement may encourage “employees and former  
11 employees to bring suit merely for the purpose of obtaining similar settlements.” (*Id.* at 6.)  
12 However, “[a] litigant is not entitled to the court’s protection from’ exposure to ‘additional  
13 liability and litigation.’” *Luo v. Zynga Inc.*, Case No. 13–cv–00186 NC, 2013 WL 5814763,  
14 at \*3 (N.D. Cal. Oct. 29, 2013) (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d  
15 1122, 1137 (9th Cir. 2003) (holding that exposure to liability in collateral suits is not a  
16 compelling reason to overcome the presumption of public access)). “The mere fact that the  
17 production of records may lead to a litigant’s embarrassment, incrimination, or exposure  
18 to further litigation will not, without more, compel the court to seal its records.” *Kamakana*  
19 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006); *see also Carpenter v.*  
20 *Colonial Mgmt. Grp., LP*, No. 12–cv–686, 2012 WL 2992490, at \*2 (D. Md. July 19, 2012)  
21 (noting that the well-recognized presumption of public access to FLSA settlements was not  
22 outweighed by the settlement’s confidentiality provision or defendant’s concern with  
23 “negative publicity or attention” that could follow from having the terms of this settlement  
24 made public).

25 Similarly to what the Court pointed out in *Luo*, this lawsuit was already a matter of  
26 public record exposing both A-ROO and Switzer to potential embarrassment or unwanted  
27 recognition. Other than a conclusory statement that Switzer might be prejudiced by future  
28 employers and that A-ROO might be sued by greedy employees, the parties have not

1 explained why or how future employers might preconceive Switzer nor how “making the  
2 settlement agreement public would discourage employees from filing similar claims.” *Luo*,  
3 2013 WL 5814763, at \*3.

4 In the parties’ second and third arguments, they state the motion should be granted  
5 as they intended the agreement be kept confidential and the terms of the agreement “are  
6 the product of confidential settlement negotiations . . . .” (Doc. No. 3-1 at 6.) However,  
7 district courts in the Ninth Circuit have held that an agreement “to make the settlement  
8 agreement confidential” is insufficient on its own. *Select Portfolio Servicing v. Valentino*,  
9 No. C 12–0334 SI, 2013 WL 1800039, at \*3 (N.D. Cal. Apr. 29, 2013); *Luo*, 2013 WL  
10 5814763, at \*3 (“The existence of a confidentiality provision, without more, does not  
11 constitute good cause, let alone a compelling reason, to seal.”). The argument that A-ROO  
12 and Switzer may have agreed to keep the agreement confidential has been thoroughly  
13 rejected by courts as non-persuasive. *See Joo*, 763 F. Supp. 2d at 648 (“Courts that have  
14 considered this sort of justification for sealing the settlement agreement, however, have  
15 roundly rejected it.”).

16 Finally, the parties state that the agreement also settles non-FLSA claims, which they  
17 argue are not applicable to the strong policies disfavoring sealing FLSA settlement  
18 agreements. (*Id.* at 6–7.) However, looking through the agreement, the Court finds no  
19 mention of any other specific claims which are settled per the terms of the agreement that  
20 are not already public knowledge from A-ROO’s complaint, (Doc. No. 1).

21 After reviewing the settlement agreement, the Court finds that nearly the entire  
22 agreement contains neither confidential nor sensitive information. The recitals section  
23 contains information from the complaint, which is already public knowledge. Beyond that,  
24 save the payment section, the rest of the agreement contains boilerplate provisions found  
25 in nearly every settlement—hardly matters traditionally kept secret. It does not contain the  
26 reasons courts typically find as compelling, such as medical records, trade secrets,  
27 proprietary information, or a showing that harm or prejudice will result. *See Luo*, 2013 WL  
28 5814763, at \*3 (“Because the parties here have failed to articulate any facts—for example

1 that the settlement agreement contains trade secrets or competitively sensitive  
2 information—that would justify sealing their settlement agreement, the Court finds that the  
3 settlement agreement should be unsealed.”); *Select Portfolio Servicing*, 2013 WL 1800039,  
4 at \*3 (denying motion to seal agreement partially because defendants had “not even made  
5 a showing that some specific harm or prejudice will result from its publication.”).  
6 Regarding the settlement payment section, the Court agrees it contains confidential  
7 information including the settlement amount and payment details. However, that  
8 information can be redacted to protect A-ROO’s and Switzer’s negotiations and the final  
9 settlement amount.

10 Overall, the Court is not persuaded that the settlement agreement contains the type  
11 of information which overcomes the strong interest in public disclosure and the surplus of  
12 cases disfavoring sealing FLSA agreements. Accordingly, the parties’ joint motion to file  
13 the settlement under seal is **DENIED** without prejudice. (Doc. No. 3.) The parties,  
14 however, may redact the settlement amount and other payment information as instructed  
15 herein. The parties may also withdraw the settlement agreement as they see fit. The Court  
16 notes that there is no legal requirement that the settlement agreement must be filed, but  
17 where the parties want it, they must conform to the law on public access.

18 **IT IS SO ORDERED.**

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20 Dated: November 22, 2017

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22 Hon. Anthony J. Battaglia  
23 United States District Judge  
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