

1 intended filing. To the extent the designating party believes the relevant standard for
2 sealing can be met, it shall provide a declaration supporting that assertion no later than
3 four days after receiving notice of the intended filing. The filing party shall then attach
4 that declaration to its motion to seal the designated material. If the designating party fails
to provide such a declaration in support of the motion to seal, the filing party shall file
a motion to seal so indicating and the Court may order the document filed in the public
record.

5 Docket No. 22 at 2. The motion to seal does not provide a declaration by Defendant as to why the
6 exhibit should be sealed, nor does it appear that the pre-filing procedures mandated by the Court were
7 followed.¹

8 Lastly, the motion to seal indicates that, “[t]o seal documents attached to a motion to compel,
9 a party must demonstrate a compelling reason to prevent disclosure.” Docket No. 44 at 2. The cases
10 cited by Plaintiffs do not support that position. To the contrary, one of the cases cited addresses
11 discovery motions as an example of instances in which courts will generally review motions to seal
12 under the more lenient “good cause” standard. *The Center for Auto Safety v. Chrysler Group, LLC*, 809
13 F.3d 1092, 1097 (9th Cir. 2016). Ultimately, however, the title of a motion is not determinative of the
14 applicable standard; instead, the Court must look to whether the particular motion is more than
15 tangentially related to the merits of the case. *See id.* at 1099.

16 In light of the above, the Court **ORDERS** as follows:

- 17 • The Clerk’s Office is **INSTRUCTED** to maintain Exhibit A-9 under seal for the time
18 being at both Docket Nos. 43 and 46;
- 19 • Plaintiffs’ counsel shall file, by October 11, 2017, a declaration as to why he filed on the
20 public docket at Docket No. 43 what he identifies as a sealed version of the exhibit;
- 21 • Plaintiffs’ counsel shall file, by October 11, 2017, a declaration as to why he did not
22 comply with the Court’s mandate regarding the applicable procedures for filing under
23 seal documents designated as confidential by another party;

26 ¹ The fact that Plaintiffs themselves believe Defendant’s document can be sealed does not obviate
27 the need to analyze the propriety of sealing that document. At bottom, the Court must ensure that the public
28 has access to court filings unless the appropriate standards have been met, so whether the parties agree to
sealing a document is not dispositive of the sealing request.

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- Plaintiffs shall file, by October 11, 2017, a supplemental brief in support of their position that the “compelling reasons” standard applies; and
- Defendant shall file, by October 11, 2017, either (1) a notice that Exhibit A-9 may be unsealed or (2) a brief supported by declaration indicating the standard applicable to the pending motion to seal and evidentiary support as to why that standard is met.

IT IS SO ORDERED.

DATED: October 5, 2017



NANCY J. KOPPE
United States Magistrate Judge