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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 USSC HOLDINGS CORP., a Nevada
8 corporation, MUSIC CITY FIRE CO., a Nevada
9 corporation, ROBERT J. BUCKLEY, an
10 individual, and STEVE PALADINO, an
11 individual,

12 Plaintiffs,

13 v.

14 TK PRODUCTS, LLC, an Oregon limited
15 liability company, KURT O. BAUER, an
16 individual, TRENT C. FARRER, an individual,

17 Defendants.
18

Case No. 3:16-cv-00398-RCJ-WGC

ORDER

19 Before the court is Defendants' Motion to Seal. (ECF No. 60.) Defendants seek an order
20 sealing portions of their response to Plaintiffs' pending motion to compel that reference
21 designated confidential information, as well as Exhibit 2 to the supporting declaration of Sandra
22 S. Gustitus.

23 "Historically, courts have recognized a general right to inspect and copy public records
24 and documents, including judicial records and documents." *See Kamakana v. City and County of*
25 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted).
26 "Throughout our history, the open courtroom has been a fundamental feature of the American
27 judicial system. Basic principles have emerged to guide judicial discretion respecting public
28 access to judicial proceedings. These principles apply as well to the determination of whether to
permit access to information contained in court documents because court records often provide
important, sometimes the only, bases or explanations for a court's decision." *Oliner v.*
Kontrabecki, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp.*
v. F.T.C., 710 F.2d 1165, 1177 (6th Cir. 1983)).

1 Documents that have been traditionally kept secret, including grand jury transcripts and
2 warrant materials in a pre-indictment investigation, come within an exception to the general right
3 of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of
4 access is the starting point.” *Id.* (internal quotation marks and citation omitted). “The
5 presumption of access is ‘based on the need for federal courts, although independent—indeed,
6 particularly because they are independent—to have a measure of accountability and for the
7 public to have confidence in the administration of justice.’” *Center for Auto Safety v. Chrysler*
8 *Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016)
9 (quoting *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley*
10 *Broad Co. v. U.S. Dist. Court-D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document
12 under seal: the compelling reasons standard or the good cause standard. *See Center for Auto*
13 *Safety*, 809 F.3d at 1096-97. Under the compelling reasons standard, “a court may seal records
14 only when it finds ‘a compelling reason and articulate[s] the factual basis for its ruling, without
15 relying on hypothesis or conjecture.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court
16 must then ‘conscientiously balance[] the competing interests of the public and the party who
17 seeks to keep certain judicial records secret.’” *Id.* “What constitutes a ‘compelling reason’ is ‘best
18 left to the sound discretion of the trial court.’” *Id.* (quoting *Nixon v. Warner Comm., Inc.*,
19 435 U.S. 589, 599 (1978)). “Examples include when a court record might be used to ‘gratify
20 private spite or promote public scandal,’ to circulate ‘libelous’ statements, or ‘as sources of
21 business information that might harm a litigant’s competitive standing.’” *Id.* (quoting *Nixon*,
22 435 U.S. at 598-99).

23 *Center for Auto Safety* described the good cause standard, on the other hand, as the
24 exception to public access that had been applied to “sealed materials attached to a discovery
25 motion unrelated to the merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen.*
26 *Motors Corp.*, 307 F.3d 1206, 1213-14 (9th Cir. 2002)). “The ‘good cause language comes from
Rule 26(c)(1), which governs the issuance of protective orders in the discovery process: ‘The
court may, for good cause, issue an order to protect a party or person from annoyance,

1 embarrassment, oppression, or undue burden or expense.” *Id.* (citing Fed. R. Civ. P. 26(c)).

2 The Ninth Circuit has clarified that the key in determining which standard to apply in
3 assessing a motion for leave to file a document under seal is whether the documents proposed for
4 sealing accompany a motion that is “more than tangentially related to the merits of a case.”
5 *Center for Auto Safety*, 809 F.3d at 1101 (9th Cir. 2016). If that is the case, the compelling
6 reasons standard is applied. If not, the good cause standard is applied.

7 Here, Defendants seek to file under seal portions of their response to Plaintiffs’ motion
8 compel and Exhibit 2 to the supporting Gustitus declaration. The motion to compel and response
9 are not related to the merits of the case, but concern a request to compel discovery. This comes
10 within the parameters of the “good cause” standard.

11 According to Defendants, portions of their response to the motion to compel, as well as
12 Exhibit 2 to the Gustitus declaration relate to Defendants’ trade secrets which are subject to the
13 protective order entered in this case. Rule 26 allows the court to protect “trade secret[s] or other
14 confidential research, development or commercial information[.]” As such, the court finds that
15 good cause exists to seal portions of the response to the motion to compel as well as Exhibit 2 to
16 the supporting Gustitus declaration. Therefore, Defendants’ motion (ECF No. 60) is
17 **GRANTED.**

18 **IT IS SO ORDERED.**

19 DATED: April 12, 2017.

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WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE