

1 RICK D. ROSKELLEY, ESQ., Bar # 3192
 KAITLYN M. BURKE, ESQ., Bar # 13454
 2 LITTLER MENDELSON, P.C.
 3 3960 Howard Hughes Parkway
 Suite 300
 Las Vegas, NV 89169-5937
 4 Telephone: 702.862.8800
 Fax No.: 702.862.8811
 5 Email: rroskelley@littler.com
 Email: kmburke@littler.com

6 Attorneys for Defendant
 7 WELLS FARGO FINANCIAL NATIONAL BANK

8 UNITED STATES DISTRICT COURT
 9 DISTRICT OF NEVADA

11 NICOLE ANTONE,
 12 Plaintiff,

Case No. 3:18-cv-00236-LRH-WGC

13 vs.

**STIPULATION AND ORDER TO SEAL
 EXHIBIT 4 ATTACHED TO PLAINTIFF'S
 COMPLAINT**

14 WELLS FARGO FINANCIAL
 15 NATIONAL BANK (FKA Wells Fargo
 Bank, National Association), a foreign
 16 Delaware corporation, and DOES 1
 through 10 inclusive,

17 Defendant.
 18

19 Plaintiff NICOLE ANTONE (“Antone”) and Defendant WELLS FARGO FINANCIAL
 20 NATIONAL BANK (“Wells Fargo”), by and through their respective counsel of record, hereby
 21 submit the following Stipulation requesting that the Court issue an order sealing Exhibit 4 attached
 22 to Plaintiff’s Complaint. (**ECF No. 1, p. 32-92**).

23 The Ninth Circuit comprehensively examined the presumption of public access to judicial
 24 files and records in *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir.
 25 2016). There, the Court recognized that a party seeking to seal judicial records bears the burden of
 26 meeting the “compelling reasons” standard, as previously articulated in *Kamakana v. City and*
 27 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). Under the compelling reasons standard, “a
 28

1 court may seal records only when it finds ‘a compelling reason and articulate[s] the factual basis for
2 its ruling, without relying on hypothesis or conjecture.’ *Ctr. for Auto Safety*, 809 F.3d at 1097.
3 (quoting *Kamakana*, 447 F.3d at 1179). “The court must then ‘conscientiously balance[] the
4 competing interests of the public and the party who seeks to keep certain judicial records secret.’
5 *Ctr. for Auto Safety*, 809 F.3d at 1097. For example, the Ninth Circuit noted that “sources of
6 business information that might harm a litigant’s competitive standing” could constitute a
7 compelling reason. *Id.*

8 Additionally, the Ninth Circuit noted an exception to the compelling reasons standard where
9 a party may satisfy the less exacting “good cause” standard for sealed materials attached to a
10 discovery motion unrelated to the merits of the case. *Id.* “The good cause language comes from
11 Rule 26(c)(1), which governs the issuance of protective orders in the discovery process: ‘The court
12 may, for good cause, issue an order to protect a party or person from annoyance, embarrassment,
13 oppression, or undue burden or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist,
14 the party seeking protection bears the burden of showing specific prejudice or harm will result if no
15 protective order is granted.” *Phillips v. General Motors*, 307 F.3d 1206, 1210-11 (9th Cir. 2002).
16 The Ninth Circuit further clarified that the labels of “dispositive” and “non-dispositive” will not be
17 the determinative factor for deciding which test to apply because the focal consideration is “whether
18 the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety*, 809 F.3d at
19 1101.

20 Here, the parties request that Exhibit 4 to the Complaint be sealed. (**ECF No. 1, p. 32-92**).
21 Exhibit 4 to the Complaint constitutes documents that are confidential personnel documents
22 describing Defendant’s process for evaluating its employees. *Id.* The documents in Exhibit 4 are
23 documents that are to be exchanged in discovery and therefore, are subject to the parties’ protective
24 order governing discovery documents. (**ECF No. 18**). Additionally, the documents to be sealed,
25 while attached to Plaintiff’s Complaint, do not go to the merits of the action itself. Indeed, the
26 documents are simply likely to be used in support of future summary judgment briefing, and
27 therefore, have no more than a tangential relationship to the merits of the case. Even if the Court
28 views the parties’ request to seal Exhibit 4 as “more than tangentially related to the merits of a case,”

1 *Ctr. for Auto Safety*, 809 F.3d at 1101, because they are attached to Plaintiff’s Complaint, the parties
2 can meet the compelling reasons test. The reason the parties seek to seal Exhibit 4 to the Complaint
3 is because the documents are a source “of business information that might harm” Defendant’s
4 competitive standing, which is an example of a compelling reason that the Court has discretion to
5 recognize. *Ctr. for Auto Safety*, 809 F.3d at 1097.

6 Specifically, public disclosure of Exhibit 4 would cause an identifiable, significant harm in
7 that Defendant’s confidential financial information utilized in evaluating employees would be
8 disclosed to its competitors. The documents contain customer performance statistics, yearly
9 financial targets, and specific profit and loss metrics that are confidential information that would
10 give Defendant’s competitors an unfair advantage. In fact, they contain detailed information
11 regarding Defendant’s financial performance for a range of years and in a region that would harm its
12 competitive standing. It would also disclose Defendant’s specific factors in evaluating management
13 employees that is kept confidential from other employees in the company and the public. Further,
14 the documents included in Exhibit 4 to the Complaint fall under the confidential designation
15 pursuant to the parties’ stipulated protective order governing the disclosure of discovery documents
16 identified as a trade secret or confidential financial information. (**ECF No. 18**). Rule 26(c) allows
17 the Court to protect “trade secrets[s] or other confidential research, development or commercial
18 information.” Indeed, this Court has sealed documents for this reason in the past and should do so
19 again here. *See, e.g., Youtoo Techs., Inc. v. Twitter, Inc.*, No. 3-17-cv-00414-LRH-WGC, 2017 WL
20 3396496, at *2 (D. Nev. Aug. 7, 2017) (granting motions to seal documents designed confidential in

21 ///

22 ///

23 ///

24
25
26
27
28

1 a protective order). Therefore, the parties stipulate and request that the Court issue an order sealing
2 Exhibit 4 to Plaintiff's Complaint. (ECF No. 1, p. 32-92).

3
4 Dated: August 21, 2018

Dated: August 21, 2018

5 Respectfully submitted,

Respectfully submitted,

6 /s/ Jason D. Guinasso, Esq.

/s/ Kaitlyn M. Burke, Esq.

7 JASON D. GUINASSO, ESQ.
8 HUTCHISON & STEFFEN, PLLC

RICK D. ROSKELLEY, ESQ.
KAITLYN M. BURKE, ESQ.
LITTLER MENDELSON, P.C.

9 Attorneys for Plaintiff
10 NICOLE ANTONE

Attorneys for Defendant
WELLS FARGO FINANCIAL NATIONAL
11 BANK

12 **IT IS SO ORDERED.**

13
14 

15 UNITED STATES MAGISTRATE JUDGE

16 DATED: August 28, 2018

17
18 Firmwide:156629140.1 091367.1024