

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,)	
)	
Plaintiff,)	
)	Case No. 4:11-cv-00244-Y
vs.)	
)	
TRAVELPORT LIMITED, et al.,)	
)	
Defendants)	
)	

**APPENDIX TO TRAVELPORT'S UNOPPOSED MOTION TO PERMANENTLY SEAL
DOCUMENTS CONTAINING CONFIDENTIAL TRAVELPORT INFORMATION**

Travelport Appendix Exhibit	Description	Page(s)
1	List of documents that Travelport is requesting be permanently sealed	1-4
2	<i>Oldendorff Carriers GmbH & Co., KG v. Grand China Shipping Co., Ltd.</i> , 2013 WL 1867604 (S.D. Tex. Apr. 22, 2013)	5-9
3	<i>Gate Guard Servs. L.P. v. Solis</i> , 2012 WL 4625679 (S.D. Tex. Sept. 30, 2012)	9-12
4	<i>In re High-Tech Emp. Antitrust Litig.</i> , 2013 WL 163779 (N.D. Cal. Jan. 15, 2013)	13-35
5	Declaration of Thomas DeMay	36-37

Dated: October 14, 2013

Respectfully submitted,

/s/ Michael L. Weiner

Michael L. Weiner
michael.weiner@dechert.com

DECHERT LLP

1095 Avenue of the Americas
New York, New York 10036-6797
212.698.3608
212.698.3599 (Fax)

Mike Cowie
mike.cowie@dechert.com
Craig G. Falls
craig.falls@dechert.com
DECHERT LLP
1775 I Street, NW
Washington, D.C. 20006-2401
202.261.3300
202.261.3333 (Fax)

Carolyn M. Hazard
carolyn.hazard@dechert.com
Justin N. Pentz
justin.pentz@dechert.com
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104
215.994.4000
215.994.2222 (Fax)

Walker C. Friedman
State Bar No. 07472500
wcf@fsclaw.com
Christian D. Tucker
State Bar No. 00795690
tucker@fsclaw.com
FRIEDMAN, SUDER & COOKE, P.C.
Tindall Square Warehouse No. 1
604 East 4th Street, Suite 200
Fort Worth, Texas 76102
817.334.0400
817.334.0401 (Fax)

**ATTORNEYS FOR DEFENDANTS
TRAVELPORT LIMITED and
TRAVELPORT, LP**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2013, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, Fort Worth Division, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Justin N. Pentz _____
Justin N. Pentz

EXHIBIT 1

Date Filed	Document No.	Description
6/1/2011	52	American Airlines Inc.'s Motion for Leave to File Under Seal Attaching First Amended Complaint
6/6/2011	57	American Airlines Inc.'s Motion for Leave to File Under Seal attaching Opposition to Travelport's FRCP 12(b)(3) and 28 U.S.C. § 1406(a) Motion to Dismiss or Transfer AA's Complaint
6/8/2011	66	American Airlines Inc.'s Unopposed Motion for Leave to File Under Seal attaching Opposition to Travelport's FRCP 12(b)(3) and 28 U.S.C. § 1406(a) Motion to Dismiss or Transfer AA's Complaint
6/9/2011	70	First Amended Complaint
10/20/2011	148	American Airlines Inc.'s Motion for Leave to File Second Amended Complaint and Brief in Support
12/5/2011	159	Second Amended Complaint
12/22/2011	170	Memorandum in Support of Travelport's Rule 12(b)(6) Motion to Dismiss the Third through Sixth Claims for Relief in Plaintiff's Second Amended Complaint
12/22/2011	171	Appendix of Exhibits to Memorandum in Support of Travelport's Rule 12(b)(6) Motion to Dismiss the Third through Sixth Claims for Relief in Plaintiff's Second Amended Complaint
12/22/2011	172	Partial Answer, Affirmative Defenses, and Counterclaims by Travelport
12/28/2011	175	Appendix of Exhibits to Travelport's Opposition to Plaintiff American Airlines Inc.'s Motion for Protective Order with Respect to Travelport's Requests for Admission and Interrogatories
1/9/2012	182	Travelport's Response in Opposition to Plaintiff American Airlines Inc.'s Motion for Reconsideration
1/9/2012	183	Appendix in Support of Travelport's Response in Opposition to Plaintiff American Airlines Inc.'s Motion for Reconsideration
1/10/2012	184	Travelport's Response in Opposition to Plaintiff American Airlines Inc.'s Motion to Extend Scheduling Order Deadlines
1/10/2012	185	Appendix in Support of Travelport's Response in Opposition to Plaintiff American Airline Inc.'s Motion to Extend Scheduling Order Deadlines
1/19/2012	201	American Airlines Inc.'s Opposition to Defendant Travelport's Motion to Dismiss the Third through Sixth Claims in American's Second Amended Complaint
1/23/2012	203	Appendix in Support of American Airlines Inc.'s Reply to Travelport's Response in Opposition to American's Motion for Reconsideration of the Court's November 21, 2011 Order
2/2/2012	216	Defendant Orbitz Worldwide, LLC's Reply in Support of its Motion to Dismiss Plaintiff's Second Amended Complaint

Date Filed	Document No.	Description
2/2/2012	217	Appendix in Support of Defendant Orbitz Worldwide, LLC's Reply in Support of its Motion to Dismiss Plaintiff's Second Amended Complaint
2/2/2012	218	Reply in Further Support of Travelport's Rule 12(b)(6) Motion to Dismiss the Third through Sixth Claims for Relief in Plaintiff's Second Amended Complaint
2/6/2012	222	Travelport's Opposed Motion for Leave to File Surreply in Opposition to American Airlines, Inc.'s Motion for Reconsideration
2/7/2012	223	Travelport's Response to Plaintiff's Motion to File Supplemental Brief in Support of its Motion to Extend Scheduling Order Deadlines
2/9/2012	224	Motion for an Order to Permitting Defendant Orbitz Worldwide, LLC to Share Certain Documents with In-House Counsel Pursuant to the Protective Order
2/9/2012	225	Appendix in Support of Orbitz's Motion for Order Permitting it to Share Certain Documents
2/14/2012	231	Appendix in Support of Motion by the Travelport Defendants to Compel Discovery and for Sanctions
3/9/2012	256	American Airlines Inc.'s Motion to Compel Travelport Defendants and Memorandum in Support Thereof
3/9/2012	257	Appendix in Support of American Airlines Inc.'s Motion to Compel Travelport Defendants and Memorandum in Support Thereof
3/13/2012	258	Travelport's Brief in Opposition to Plaintiff American Airlines, Inc.'s Rule 12(b)(6) Motion to Dismiss Travelport's Counterclaims
3/19/2012	265	Supplement to Second Amended Complaint
3/30/2012	278	Response in Opposition to American Airlines Inc.'s Motion to Compel Travelport Defendants
3/30/2012	279	Appendix in Support of Response in Opposition to American Airlines Inc.'s Motion to Compel Travelport Defendants
4/2/2012	280	American Airlines Inc.'s Motion to Compel Travelport Production of Documents in Response to American Airlines Inc.'s Third, Fourth, and Fifth Requests for Production of Documents and Memorandum in Support Thereof
4/2/2012	281	Appendix in Support of American Airlines Inc.'s Motion to Compel Travelport Production of Documents in Response to American Airlines Inc.'s Third, Fourth, and Fifth Requests for Production of Documents and Memorandum in Support Thereof
4/5/2012	288	Brief in Support of Travelport's Supplemental Rule 12(b)(6) Motion to Dismiss Plaintiff American Airlines, Inc.'s Supplement to Second Amended Complaint
4/6/2012	290	American Airlines Inc.'s Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants and Memorandum in Support Thereof

Date Filed	Document No.	Description
4/6/2012	291	Appendix in Support of American Airlines Inc.'s Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants and Memorandum in Support Thereof
4/13/2012	297	American Airlines Inc.'s Reply in Support of its Motion to Compel Travelport Defendants
4/13/2012	298	Appendix in Support of American Airlines Inc.'s Reply in Support of its Motion to Compel Travelport Defendants
4/26/2012	307	Plaintiff American Airlines Inc.'s Supplemental Brief in Opposition to Travelport's Motion to Dismiss the Second Amended Complaint
4/26/2012	308	Appendix in Support of Plaintiff American Airlines Inc.'s Supplemental Brief in Opposition to Travelport's Motion to Dismiss the Second Amended Complaint
5/7/2012	316	American Airlines Inc.'s Combined (I) Amended Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants, and (II) Motion for Leave to File Supplemental Amended Motion and Memorandum in Support Thereof
5/7/2012	317	Appendix in Support of American Airlines Inc.'s Combined (I) Amended Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants, and (II) Motion for Leave to File Supplemental Amended Motion and Memorandum in Support Thereof
5/10/2012	319	Reply in Support of Travelport's Supplemental Rule 12(b)(6) Motion to Dismiss Plaintiff American Airlines Inc.'s Supplement to Second Amended Complaint
5/14/2012	320	Response in Opposition to American Airlines Inc.'s Combined (I) Amended Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants, and (II) Motion for Leave to File Supplemental Amended Motion and Memorandum in Support Thereof
5/14/2012	321	Appendix in Support of Response in Opposition to American Airlines Inc.'s Combined (I) Amended Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants, and (II) Motion for Leave to File Supplemental Amended Motion and Memorandum in Support Thereof
5/16/2012	327	Appendix to Motion by Defendants Travelport and Orbitz (A) for Leave to Take up to Twenty-Five Fact Depositions and (B) for Expedited Treatment

Date Filed	Document No.	Description
5/18/2012	328	American Airlines Inc.'s Reply in Support of its Combined (I) Amended Motion to Compel Production of Documents Wrongfully Withheld Under the Guise of Privilege by the Travelport Defendants, and (II) Motion for Leave to File Supplemental Amended Motion and Memorandum in Support Thereof
6/4/2012	344	Appendix in Support of Plaintiff American Airlines Inc.'s Reply Brief in Support of its Cross Motion for Expansion of Deposition Limit, Enlargement of Time, and for Expedited Treatment
6/13/2012	346	American Airlines Inc.'s Supplement Brief in Support of its Cross Motion for Expansion of Deposition Limit, Enlargement of Time, and for Expedited Treatment
6/13/2012	347	Appendix in Support of American Airlines Inc.'s Supplement Brief in Support of its Cross Motion for Expansion of Deposition Limit, Enlargement of Time, and for Expedited Treatment
8/21/2012	388	Travelport's Consolidated Answer and Affirmative Defenses
1/29/2013	425	American Airlines Inc.'s Motion to Compel production of Documents Improperly Clawed Back by Orbitz under Claim of Privilege and Memorandum in Support Thereof
1/29/2013	426	Appendix in Support of American Airlines Inc.'s Motion to Compel production of Documents Improperly Clawed Back by Orbitz under Claim of Privilege and Memorandum in Support Thereof
2/25/2013	455	Brief in Support of Plaintiff American Airlines' Motion to Authorize Deposit into Court Registry and for Expedited Trial
2/25/2013	456	Appendix in Support of Brief in Support of Plaintiff American Airlines' Motion to Authorize Deposit into Court Registry and for Expedited Trial

2013 WL 1867604

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas.

OLDENDORFF CARRIERS GMBH & CO., KG

v.

GRAND CHINA SHIPPING
(HONG KONG) CO., LTD., et al.

C.A. No. C-12-074. | April 22, 2013.

Attorneys and Law Firms

Briton P. Sparkman, George A. Gaitas, Chalos and Co. PC, Houston, TX, Dabney Welsh Pettus, Welder Leshin LLP, Corpus Christi, TX, George M. Chalos, Chalos and Co., Oyster Bay, NY, for Plaintiff.

John “Jack” C. Partridge, Royston Rayzor et al., Corpus Christi, TX, Richard Anthony Branca, Royston Rayzor Vickery & Williams LLP, Houston, TX, for Defendants.

Opinion

MEMORANDUM AND RECOMMENDATION TO UNSEAL DOCUMENTS

BRIAN L. OWSLEY, United States Magistrate Judge.

*1 This is an admiralty action filed pursuant to Supplemental Rule B of the Federal Rules of Civil Procedure and the Federal Arbitration Act, 9 U.S.C. §§ 4, 8 in aid of maritime arbitration by plaintiff Oldendorff Carriers GmbH & Co., KG (“Oldendorff”). (D.E.1). Pending is an advisory to the Court regarding documents that should remain under seal submitted by defendants Offshore Heavy Transport AS (“OHT”) and OHT Eagle AS (“OHT Eagle”). (D.E.64). For the following reasons, it is respectfully recommended that the documents identified by defendants remain under seal but that all other sealed documents be unsealed, and that a modified confidentiality order be entered.

I. BACKGROUND

On August 5, 2008, defendant Grand China Shipping (Hong Kong) Co., LTD (“GCS”) entered into an agreement with Korea Line Corporation (“KLC”) to time charter the vessel

M/V K Daphne (“Daphne”). (D.E. 1, at 3). GCS later sub-chartered the Daphne to plaintiff Oldendorff on December 20, 2010. *Id.* Pursuant to the sub-charter, Oldendorff then instructed the vessel to proceed to Narvik, Norway on February 9, 2011 in order to fulfill a freighting contract with a Saudi corporation. *Id.*

Before the Daphne was able to execute Oldendorff’s orders, however, KLC determined that GCS breached their charter contract by failing to make hire payments. *Id.* On February 23, 2011, KLC withdrew the Daphne from GCS’s service and Oldendorff was no longer able to use the vessel. *Id.* As a consequence, Oldendorff was forced to arrange for a replacement vessel to complete the cargo shipping order at a cost of \$1,044,503.00. *Id.* at 4. At that time, GCS owed Oldendorff an additional \$1,665,916.04 for other non-reimbursed expenses and charges. *Id.*

On July 6, 2011, Oldendorff commenced an arbitration proceeding against GCS in London pursuant to the terms of their sub-charter contract. *Id.* at 5. In order to obtain security for that proceeding, Oldendorff instituted this action against GCS on March 7, 2012, pursuant to Supplemental Rule B of the Federal Rules of Civil Procedure as well as the Federal Arbitration Act, 9 U.S.C. §§ 4, 8, in aid of maritime arbitration. *Id.* Oldendorff claims that GCS breached their sub-charter contract by failing to meet its contractual obligations to KLC. *Id.* at 4, 17. After including interest and attorney fees, the complaint asserted a recoverable amount totaling \$3,470,551.95. *Id.* at 5, 14. Oldendorff also sought to hold Grand China Logistics Holding (Group) Company Limited (“GCL”), OHT, and OHT Eagle liable for GCS’s breach on the basis that an alter ego relationship existed between each of these corporations. *Id.* at 10–12.

Simultaneously, Oldendorff submitted a motion to seize the OHT Eagle, which was then within the territorial jurisdiction of this Court. (D.E.3). This motion was granted on March 8, 2012 and the OHT Eagle was seized. (D.E.7). OHT posted bond on March 15, 2012, (D.E.16), and plaintiff consented to the release of the vessel. (D.E.17).

*2 On April 19, 2012, OHT and OHT Eagle filed an unopposed motion for a confidentiality order regarding certain proprietary information, (D.E.25), which was granted on April 20, 2012. (D.E.26). At a hearing held on March 19, 2013, this Court ordered defendants to file an advisory regarding which documents should remain under seal. OHT

and OHT Eagle filed their advisory on March 29, 2013. (D.E.64).

II. DISCUSSION

Defendants concede that they are “not opposed to unsealing most of the documents” that have been filed as sealed throughout this litigation. (D.E. 64, at 2). However, they have identified several documents that they contend should be kept sealed, including the following:

- (1) the Shareholders' Agreement, (D.E. 27–1, at 8–82; D.E. 51, at 6–79; D.E. 56–1, at 8–82; D.E. 56–2, at 7–34);
- (2) the Declaration of Adherence, (D.E. 27–1, at 83; D.E. 56–1, at 83; D.E. 56–2, at 111);
- (3) the Declaration of Erik Ostbye, (D.E.40–1);
- (4) the Arbitration Demand Letter, (D.E. 40–2; D.E. 56–2, at 130–32);
- (5) an email from Tom E. Jebsen, (D.E. 51–3, at 31–34);
- (6) OHT Board Minutes, (D.E. 51–4, at 85–86; D.E. 51–5, at 8–12);
- (7) the Security Agreement, (D.E. 51–5, at 1–6; D.E. 56–2, at 127–29);
- (8) the Pledge Agreement, (D.E. 51–5, at 13–24; D.E. 56–2, at 115–125);
- (9) the Share Purchase Agreement, (D.E. 51–5, at 25–35; D.E. 56–2, at 7–34);
- (10) the Deposition Testimony of Arne Blystad, (D.E. 56–3; D.E. 58–1, at 5–129);
- (11) a letter from Jon Christian Syvertsen, (D.E. 58–1, at 138–41); and
- (12) a letter on behalf of Credit Agricole Corporate and Investment Bank, (D.E.62–1).

Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, upon motion of a party “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” by specifying and limiting the terms of disclosure. “[T]he burden is upon [the party seeking the protective order]

to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.’ ” *M-I LLC v. Stelly*, 733 F.Supp.2d 759, 801 (S.D.Tex.2010) (quoting *Sanchez v. Property & Cas.*, No. H–09–1736, 2010 WL 107606, at *1 (S.D.Tex. Jan.7, 2010) (unpublished)); accord *In re Terra Int'l*, 134 F.3d 302, 306 (5th Cir.1998) (per curiam).

Here, the parties were granted a confidentiality order limiting disclosure of information they deem confidential. They have taken full advantage of this order, filing all pleadings related to dispositive motions under seal. A review of these pleadings as well as the attached documents suggests that they have designated information as confidential where it is inappropriate or unnecessary. At this juncture, it is unclear why such a broad order continues to be necessary.

A court retains discretion to modify a protective order once it has been entered. *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir.1990) (citation omitted); *In re United States' Motion to Modify Sealing Orders*, No. 5:03–MC–2, 2004 WL 5584146, at *2 (E.D.Tex. June 8, 2004) (unpublished) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)). Four factors should guide its consideration of whether a modification is appropriate, including: “(1) the nature of the protective order, (2) the foreseeability, at the time of issuance of the order, of the modification requested, (3) the parties' reliance on the order; and most significantly (4) whether good cause exists for the modification.” *Murata Mfg. Co. v. Bel Fuse, Inc.*, 234 F.R.D. 175, 179 (N.D.Ill.2006) (citation omitted); accord *In re Enron Corp. Secs., Derivative & ERISA Litig.*, No. MDL–1446, 2009 WL 3247432, at *3 (S.D.Tex. Sep.29, 2009) (unpublished); *Bayer AG and Miles, Inc. v. Barr Labs., Inc.*, 162 F.R.D. 456, 458 (S.D.N.Y.1995). A careful application of these factors reveals that while most of the specific documents identified by defendants warrant confidentiality, the remaining sealed documents do not.

A. The Nature Of The Confidentiality Order.

*3 First, relevant to the nature of a confidentiality order is “its scope and whether it was court imposed or stipulated to by the parties.’ ” *Murata*, 234 F.R.D. at 179 (quoting *Bayer*, 162 F.R.D. at 465) (citation omitted). Generally, courts should be more hesitant to modify narrowly defined orders that pertain to “a specific type of identified information,” as opposed to blanket confidentiality orders. *Id.*

Here, the scope of the protective order is quite broad based on the parties' request. Specifically, pursuant to the unopposed motion, the order limits disclosure of "Confidential Information," which it defines as:

[A]ll information, whether or not embodied in a document or other physical medium, which the Producing Party believes in good faith is confidential, private or personal information relating to, among other things, any one of the Parties, their business or activities, or employees or former employees of one of the Parties, which the Producing Party would not normally reveal to third parties except in confidence, or has undertaken to maintain in confidence.

(D.E. 26, at 2). Based on this broad definition, the parties have found it appropriate to seal all dispositive motions and corresponding pleadings. In essence, the confidentiality order has permitted the parties to litigate in secret. Accordingly, its sweeping scope weighs toward modification.

B. Foreseeability Of Modification.

Second, regarding the foreseeability factor, the relevant inquiry is "whether the need for modification of the order was foreseeable at the time the parties negotiated the original stipulated protective order." *Murata*, 234 F.R.D. at 180 (quoting *Bayer*, 162 F.R.D. at 466). "[A] party's oversight in not negotiating a provision in a protective order considering a matter which should have been reasonably foreseeable at the time of the agreement has been held not to constitute good cause for relief from the protective order." *Id.* (quoting *Jochims v. Isuzu Motors Ltd.*, 145 F.R.D. 499, 502 (S.D.Iowa 1992)). Here, this factor has little bearing on the modification analysis because no party seeks modification. However, as a practical matter, it should be foreseeable that an overly-liberal interpretation of a confidentiality order that results in excessive and unnecessary sealing may result in modification of that order.

C. The Parties' Reliance On The Confidentiality Order.

Third, in evaluating the reliance factor, the court should consider "the extent to which a party resisting modification relied on the protective order in affording access to discovered

materials." *Id.* (quoting *Bayer*, 162 F.R.D. at 467). It is "presumptively unfair ... to modify protective orders which assure confidentiality and upon which the parties have reasonably relied." *AT & T Corp. v. Sprint Corp.*, 407 F.3d 560, 562 (2d Cir.2005) (quoting *S.E.C. v. TheStreet.com*, 273 F.3d 222, 230 (2d Cir.2001)). Specifically pertaining to reliance, defendants argue that Mr. Blystad's deposition testimony, in particular, should remain sealed because "the parties relied upon the confidentiality of the deposition when participating and answering questions posed by opposing counsel." (D.E. 64, at 7). In addition, they indicate that the parties relied on the confidentiality order in proceeding with litigation. (D.E. 64, at 2 n. 2). Accordingly, this reliance weighs against unsealing the documents identified by defendants in their advisory, including, in particular, Mr. Blystad's deposition testimony.

D. Good Cause For Modification.

*4 Fourth, in evaluating whether good cause for modification exists, "the court must weigh [the] need for modification against [the] need for protection, and ought to factor in the availability of alternatives to better achieve both ... goals." *Murata*, 234 F.R.D. at 180 (citations omitted). In the case of a blanket confidentiality order, "the burden of showing good cause is on the party seeking continued confidentiality protection." *In re Enron Corp.*, 2009 WL 3247432, at *3 (quoting *Holland v. Summit Autonomous, Inc.*, No. Civ. A. 00-2313, 2001 WL 930879, at *2-3 (E.D.La. Aug.14, 2001) (unpublished)).

Here, the need for modification is apparent in light of the parties' tendency to seal documents that do not appear to contain confidential information. This practice flies in the face of the common law right to access and inspect judicial records. *See Macias v. Aaron Rents, Inc.*, 288 F. App'x 913, 915 (5th Cir.2008) (unpublished); *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 849-50 (5th Cir.1993) ("Public access [to judicial records] serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.") (citations omitted). Defendants concede that many of the materials they have filed could be unsealed. However, they contend that there is good cause to maintain the confidentiality of certain documents that fall into four different categories: (1) confidential and proprietary financial agreements; (2) confidential board minutes and board communications; (3) documents related to exercise

of financial options; and (4) deposition testimony regarding OHT's operations.

First, defendants argue that materials consisting of confidential and proprietary financial agreements should remain sealed because several of the documents are agreements that contain specific confidentiality clauses upon which OHT, as well as third parties, relied when entering into them. In addition, release of the exhibits, which contain information relating to “company ownership, exercise of financial options, business plans, corporate decision guides, and corporate governance policies,” would place OHT at a disadvantage to its competitors in the highly competitive international shipping industry. (D.E. 64, at 5–6). Although defendants reference various “documents” that fall within this category, it only specifically identifies the Shareholders Agreement. *Id.* Presumably, it meant to include in this category the Share Purchase Agreement, which also contains a confidentiality clause, as well as the Declaration of Adherence to the Shareholders Agreement; the Security Agreement, the Pledge Agreement, and the Share Purchase Agreement. (D.E. 56–2, at 26). Given OHT's reliance on the confidential nature of these agreements, as well as the possibility that disclosure would potentially harm its competitive standing in the shipping industry, defendants have established good cause to maintain seal over the documents. *See Nixon*, 435 U.S. at 598 (noting that courts have denied access to court records when they might be used “as sources of business information that might harm a litigant's competitive standing”) (citations omitted).

*5 Second, defendants submit that documents related to its confidential board minutes and board communications should remain under seal because they contain “confidential, attorney-client and trade secret information,” including discussions regarding “various financial plans, corporate strategies, potential implications stemming from those decisions, strategies on handling ongoing legal matters, and further information related to internal, corporate operations.” (D.E. 64, at 6). Presumably included in this category are the Arbitration Demand Letter; the OHT Board Minutes; the letter from Mr. Syvertsen; and the letter on behalf of Credit Agricole Bank. In addition to these documents, defendants specifically urge that confidentiality be maintained for three related exhibits: (1) Mr. Blystad's deposition testimony; (2) a subpoena to testify at a deposition or to produce documents served upon defendant GCL in January 2013; and (3) Mr. Jebsen's email regarding OHT's financial circumstances between

its board of directors from May 2012. (D.E.58–1). Of these three exhibits, it is unclear why the subpoena is included.¹ Although it seeks disclosure of documents related to transactions described in various declarations and deposition, (D.E. 58–1, at 135–37), it contains little specific information revealing financial arrangements or strategies. To the extent it does refer to specific information, these details are publicly available through the memorandum and recommendations that have been issued by this Court. Accordingly, defendants have failed to show good cause for continued sealing of the subpoena. However, the minutes from board meetings, Mr. Blystad's deposition testimony, and the communications between OHT board members do contain sensitive information that, if revealed to competitors, could be disadvantageous to OHT's business. Therefore, there is good cause to keep these exhibits sealed.

Third, defendants contend that documents related to the exercise of financial options outlined in the Shareholder Agreement and other agreements should remain sealed because they reveal sensitive information contained in the Shareholders Agreement and “represent significant and confidential financial dealings involving [OHT].” (D.E. 64, at 7). In addition, they explain that “at least one of these exhibits”—although it does not reveal which one—“implicate [s] confidential information regarding loan agreements” to which it was a party. *Id.* Presumably, defendants include in this category the Pledge Agreement, the Arbitration Demand Letter, the Share Purchase Agreement, the letter from Mr. Syvertsen, and the letter from Credit Agricole Bank. (D.E. 51; D.E. 56). Because these documents relate to confidential information contained in the Shareholders' Agreement, the disclosure of which could potentially place OHT at a disadvantage to its competitors, defendants have shown good cause to maintain these documents under seal.

Lastly, defendants seek to maintain seal of the deposition testimony by Mr. Blystad because it contains information regarding confidential documents as well as OHT's internal operations and financial status. They argue that this information is the type sought by competitors seeking to gain an advantage in the international shipping industry, and that the parties conducted the deposition under the impression that it would remain confidential. Given the possibility that Mr. Blystad's deposition could place OHT at a disadvantage to its competitors, as well as the fact that the parties relied on its confidentiality, defendants have shown good cause to maintain these records under seal.

III. RECOMMENDATION

*6 In light of the foregoing, it is respectfully recommended that the documents identified in defendants' advisory, with the exception of the subpoena duces tecum, remain sealed going forward in this litigation. However, in the interest of promoting access to judicial records and absent any other overriding interest, it is respectfully recommended that the remaining documents that have been filed under seal be unsealed.

It is respectfully recommended that defendants have established good cause to maintain seal over the following documents:

- (1) the Shareholders' Agreement, (D.E. 27-1, at 8-82; D.E. 51, at 6-79; D.E. 56-1, at 8-82; D.E. 56-2, at 7-34);
- (2) the Declaration of Adherence, (D.E. 27-1, at 83; D.E. 56-1, at 83; D.E. 56-2, at 111);
- (3) the Declaration of Erik Ostbye, (D.E.40-1);
- (4) the Arbitration Demand Letter, (D.E. 40-2; D.E. 56-2, at 130-32);

- (5) an email from Tom E. Jebsen, (D.E. 51-3, at 31-34);
- (6) OHT Board Minutes, (D.E. 51-4, at 85-86; D.E. 51-5, at 8-12);
- (7) the Security Agreement, (D.E. 51-5, at 1-6; D.E. 56-2, at 127-29);
- (8) the Pledge Agreement, (D.E. 51-5, at 13-24; D.E. 56-2, at 115-125);
- (9) the Share Purchase Agreement, (D.E. 51-5, at 25-35; D.E. 56-2, at 7-34);
- (10) the Deposition Testimony of Arne Blystad, (D.E. 56-3; D.E. 58-1, at 5-129);
- (11) a letter from Jon Christian Syvertsen, (D.E. 58-1, at 138-41); and
- (12) a letter on behalf of Credit Agricole Corporate and Investment Bank, (D.E.62-1).

In addition, it is respectfully recommended that all other documents that have been filed under seal be unsealed going forward in this litigation.

Footnotes

- 1 Indeed, defendants did not identify the subpoena as an exhibit they seek to maintain as sealed elsewhere in their brief. (D.E. 64, at 3).

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

2012 WL 4625679

Only the Westlaw citation is currently available.

United States District Court,
S.D. Texas,
Victoria Division.

GATE GUARD SERVICES L.P. et
al., Plaintiffs/Counter-Defendants,

v.

Hilda SOLIS, Secretary of Labor, United States
Dept. of Labor, Defendant/Counter-Plaintiff.

Civil Action No. V-10-91. | Sept. 30, 2012.

Attorneys and Law Firms

Annette A. Idalski, Chamberlain Hrdlicka et al, Atlanta, GA, Daniel Douglas Pipitone, Chamberlain Hrdlicka et al, Houston, TX, Kelly E. Campanella, Chamberlain Hrdlicka White Williams Martin, Atlanta, GA, for Plaintiffs/Counter-Defendants.

Colleen Backus Nabhan, Richard M. Moyed, U.S. Department of Labor, Jennifer J. Johnson, The United States Department of Labor, Dallas, TX, John Albert Smith, III, Lawrence McKinley Ludka, Office of the U.S. Attorney, Corpus Christi, TX, for Defendant/Counter-Plaintiff.

Opinion

MEMORANDUM OPINION AND ORDER

JOHN D. RAINEY, Senior District Judge.

*1 Pending before the Court is Plaintiff/Counter-Defendant Gate Guard Services, L.P.'s ("Gate Guard") Amended Motion to Seal Portions of the Deposition Transcripts of Bert Steindorf and Sidney L. Smith and Motion for Protective Order (Dkt. No. 96), to which Defendant/Counter-Plaintiff Hilda Solis, Secretary of Labor, United States Department of Labor ("the Secretary") has responded (Dkt. No. 98) and Gate Guard has replied (Dkt. No. 106, Ex. A).¹ Having considered the motion, response, reply, record, and applicable law, the Court is of the opinion that Gate Guard's motion should be **GRANTED** in part and **DENIED** in part.

I. Background

Gate Guard is in the business of providing gate attendant services to oil companies. After the Secretary issued a determination that Gate Guard's gate attendants are employees rather than independent contractors and that Gate Guard is therefore subject to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), Gate Guard filed the present action seeking a declaratory judgment that it is in compliance with the FLSA.

On October 20, 2011, counsel for the Secretary took the deposition of Gate Guard's owner, Bert Steindorf ("Steindorf"). During that deposition, Steindorf testified in response to questioning concerning what Gate Guard characterizes as confidential business information and trade secrets, including confidential information about customer identities, client development methods, and marketing strategies. The following day, counsel for the Secretary took the deposition of Gate Guard manager Sidney L. Smith ("Smith"). Like Steindorf, Smith testified regarding what Gate Guard characterizes as confidential company information and trade secrets, including marketing practices.

In its motion to seal and for protective order, Gate Guard now seeks two forms of relief: (1) an order sealing specific portions of the deposition transcripts and exhibits that will be filed with the Court; and (2) a protective order preserving the confidentiality of the deposition transcripts and exhibits throughout discovery. Gate Guard's original motion argued that 156 pages of Steindorf's deposition, 65 pages of Smith's deposition, and 11 deposition exhibits should be filed under seal and treated as confidential. Gate Guard has since limited its request to 15 pages of Steindorf's deposition, 1 page of Smith's deposition, and 1 exhibit. Specifically, Gate Guard now requests to seal: Steindorf Deposition pages 75-78, 138-39, 165, 185-86, 203-04, 265-66, and 347-48; Smith Deposition page 63; and Exhibit 8 to Steindorf's Deposition. These documents discuss Gate Guard's client identities and marketing strategies, which Gate Guard argues are confidential "trade secrets," as both are used for competitive advantage and are kept "secret" so that they are not readily ascertainable by the public.

II. Legal Standard

When a deposition transcript or other piece of evidence is filed with the court, it is considered a "judicial record." Our courts have recognized that the public has a common law right to inspect and copy judicial records. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978); *Belo Broadcasting Corp. v. Clark*,

654 F.2d 423, 429 (5th Cir.1981). The public's common law right, however, is not absolute and access may be denied "where court files might have become a vehicle for improper purposes." *Nixon*, 435 U.S. at 598; *see Belo*, 654 F.2d at 430. Even though not absolute, the public's common law right of access to judicial papers establishes a presumption in favor of open records. *Belo*, 654 F.2d at 434; *see also Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3rd Cir.1988). Accordingly, "the district court's discretion to seal the record of judicial proceedings is to be exercised charily." *Federal Savings and Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir.1987).

*2 In addition to ordering that certain portions of the judicial record be filed under seal, courts may also enter protective orders "restrict[ing] use of discovery materials to the [opposing party], their representatives, their counsel, and their experts or consultants" under a showing of "good cause." *Scott v. Monsanto Co.*, 868 F.2d 786, 792 (5th Cir.1989). Under Rule 26, a court:

may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including ... requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.

FED. R. CIV. P. 26(c)(1)(G).

Under Texas law, "a trade secret is 'any formula, pattern, device or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not know or use it.'" *In re Bass*, 113 S.W.3d 735, 739 (Tex.2003) (quoting *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex.1996)). Customer lists, client information, and marketing strategies have been recognized as trade secrets by Texas courts. *See Global Water Group, Inc. v. Atchley*, 244 S.W.3d 924, 928 (Tex.App.-Dallas 2008, pet. denied) (citing *T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 22 (Tex.App.-Houston [1st Dist.] 1998, no pet.)).

III. Analysis

A. Client Identities

With respect to its client identities, Gate Guard has offered evidence that it has taken affirmative steps to keep its client list confidential. Specifically, Gate Guard: does not publicize its client list; does not divulge to outside parties any information pertaining to the parties' contractual relationship or Gate Guard's performance of services; maintains its Master Service Agreements (MSAs) with clients in a locked room; and password protects the MSAs on its computer's server. Gate Guard has submitted further evidence that it has represented to its clients that it will not publicly disclose their names or information concerning the work it performs for them.

The Court finds that the identities of Gate Guard's clients have no bearing on the central issue in this case, which is whether Gate Guard's gate attendants are employees or independent contractors. The Court further finds that Gate Guard has made a sufficient showing that the interests favoring nondisclosure outweigh the public's common law right of access with respect to its client list. Thus, if Gate Guard had moved to seal a copy of its client list, the Court would grant such a request. *See Hal Wagner Studios v. Elliott*, 2009 WL 854676, at *3 (S.D.Ill. Mar.30, 2009) (granting motion to seal customer lists); *U.S. ex rel. Greg Westfall v. Axiom Worldwide, Inc.*, 2008 WL 5341140, at *4 (M.D.Fla. Dec.19, 2008) (holding that sealing customer lists attached to the complaint was necessary to "protect confidential information about innocent third parties").

*3 However, that does not mean that every document in this case that contains the name of a Gate Guard client must be filed under seal.² Instead, the Court finds that the identities of Gate Guard's clients can be sufficiently protected by merely redacting this information from any exhibits before filing them with the Court.

2. Marketing Strategy

A review of Steindorf and Smith's deposition transcripts shows that both individuals testified in some detail as to two specific "marketing tools" that Gate Guard uses in order to attract new clients. Although it is not clear how valuable these marketing strategies may be to Gate Guard's competitors, how much it cost Gate Guard to develop them, or how much it would cost Gate Guard's competitors to acquire or duplicate them, many Texas courts recognize that marketing strategies and tools are generally protected as trade secrets. *See Bayco Prods., Inc. v. Lynch*, 2011 WL 1602571, *4 (N.D.Tex. Apr.28, 2011) (citing *Tex. Integrated Conveyor Sys., Inc. v.*

Innovative Conveyor Concepts, Inc., 300 S.W.3d 348, 367 (Tex.App.2009, pet.denied); *Global Water Grp.*, 244 S.W.3d at 928 (Tex.App.2008, pet.denied); *T-N-T Motorsports*, 965 S.W.2d at 22; *Grand Time Corp. v. Watch Factory, Inc.*, 2010 WL 92319, at *4 (N.D.Tex. Jan.6, 2010) (Kinkeade, J.).

The Court finds that Gate Guard has “plausibly pleaded that the marketing ‘know-how’ on which it relies qualifies as a trade secret under Texas law.” *Bayco*, 2011 WL 1602571, at *4. Because the Fifth Circuit has held that using or disclosing even one trade secret may create a substantial threat of irreparable injury, *Union Carbide Corp. v. UGI Corp.*, 731 F.2d 1186, 1191–92 (5th Cir.1984), good cause exists for sealing any deposition testimony that discusses Gate Guard’s marketing strategies and issuing a protective order limiting the disclosure of the same. *See Thermotek, Inc. v. WMI Ents., LLC*, 2011 WL 1485421, at * 9 (N.D.Tex. Apr.19, 2011) (granting motion to seal exhibits containing trade secrets).

IV. Conclusion

For the aforementioned reasons, it is hereby **ORDERED** that Gate Guard’s Amended Motion to Seal Portions of the Deposition Transcripts of Bert Steindorf and Sidney L. Smith

and Motion for Protective Order (Dkt. No. 96) is **GRANTED** in part and **DENIED** in part, as follows:

- (1) Gate Guard’s motion to seal Exhibit 8 to Steindorf’s Deposition is **DENIED**;
- (2) The Parties shall **REDACT** the names of any Gate Guard clients from all filings in this case;
- (3) To the extent that any of the following documents discussing Gate Guard’s marketing strategies are filed as evidence in this case, the Parties are directed to file these Protected Materials **UNDER SEAL**: Steindorf Dep. pages 75–78, 138–39, 165, 185–86, 202, 265–66, 347–48; and Smith Dep. page 63; and
- (4) The aforementioned Protected Materials shall be **RESTRICTED** to: counsel for Gate Guard and the Secretary, Court staff, retained expert witnesses, trial witnesses, jury members, copy services and graphic consultants used to duplicate documents and create demonstrative exhibits, persons engaged by the Parties for the purpose of alternative dispute resolution, and officers and employees of the Parties, on a need-to-know basis.

Footnotes

- 1 On December 20, 2011, Gate Guard filed a Motion for Leave to File Reply in Support of Its Amended Motion to Seal Deposition Transcripts (Dkt. No. 106). The motion is **GRANTED** as unopposed because the submission date has passed, and the Secretary has not filed a response. *See* S.D. TEX. LOCAL R. 7.3, 7.4 (providing that opposed motions will be submitted to the judge for ruling 21 days from filing, responses must be filed by the submission date, and failure to respond will be taken as a representation of no opposition). The deadline for the Secretary’s response was January 10, 2012. To date, the Secretary has not responded to Gate Guard’s motion.
- 2 Exhibit 8, for example, is relevant to Gate Guard’s exercise of control over the gate attendants and the gate attendants’ duties and responsibilities, both of which are relevant to the issue of whether the gate attendants are employees or independent contractors.

2013 WL 163779

Only the Westlaw citation is currently available.
United States District Court, N.D. California,
San Jose Division.

In re HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION.

This Document Relates to: All Actions.

No. 11-CV-02509-LHK. | Jan. 15, 2013.

Opinion

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO SEAL

LUCY H. KOH, District Judge.

*1 Before the Court are numerous administrative motions to seal related to Plaintiffs' Motion for Class Certification. *See* ECF Nos. 186, 211, 246, 252, and 254 (“Sealing Motions”). For the reasons stated herein, the Court GRANTS in part and DENIES in part the parties' administrative motions to seal.

I. Legal Standard

Historically, courts have recognized a “general right to inspect and copy public records and documents, including judicial records.” *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.” *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.2003)).

In order to overcome this strong presumption, a party seeking to seal a judicial record must articulate “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–79 (internal quotation marks and citations omitted). “In general, ‘compelling reasons’ ... exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (citing *Nixon*, 435 U.S. at 598). “The mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel

the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136).

However, the Ninth Circuit has “carved out an exception to the presumption of access to judicial records ... [that is] expressly limited to judicial records filed under seal when attached to a *non-dispositive* motion.” *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litigation*, 686 F.3d 1115, 1119 (9th Cir.2012) (per curiam) (internal quotation marks and citation omitted) (emphasis in original); *see also Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir.2010) (applying a “good cause” standard to all non-dispositive motions because such motions “are often unrelated, or only tangentially related, to the underlying cause of action”) (internal quotation marks and citation omitted). Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, a trial court has broad discretion to permit sealing of court documents for, inter alia, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed.R.Civ.P. 26(c)(1)(G). The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir.1972) (quoting *Restatement of Torts* § 757, cmt. b). “Generally it relates to the production of goods.... It may, however, relate to the sale of goods or to other operations in the business....” *Id.* In addition, the Supreme Court has recognized that sealing may be justified to prevent judicial documents from being used “as sources of business information that might harm a litigant's competitive standing.” *Nixon*, 435 U.S. at 598.

*2 Even under the “good cause” standard of Rule 26(c), however, a party must make a “particularized showing” with respect to any individual document in order to justify sealing the relevant document. *Kamakana*, 447 F.3d at 1180; *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist.*, 187 F.3d 1096, 1103 (9th Cir.1999). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir.1992) (internal quotation marks and citation omitted).

II. Litigants' Administrative Motions to Seal

Here, the parties seek to seal portions of: (1) Plaintiffs' Motion for Class Certification, *see* ECF No. 187 (“Motion for

Class Certification” or “Mot.”); (2) Defendants' Opposition to Plaintiffs' Motion for Class Certification, *see* ECF No. 209 (“Opposition” or “Opp'n”); (3) Defendants' Motion to Strike the Report of Dr. Edward E. Leamer, *see* ECF No. 210 (“Motion to Strike” or “Mot. to Strike”); (4) Plaintiffs' Consolidated Reply in Support of Motion for Class Certification and Opposition to Defendants' Motion to Strike the Report of Dr. Edward E. Leamer, *see* ECF No. 247 (“Reply”); and (5) a letter regarding a correction to the Reply, *see* ECF No. 253 (“Glackin Letter”), as well as various declarations, reports, and exhibits offered in support of these documents. Plaintiffs' Motion for Class Certification is a non-dispositive motion.¹ Therefore, the parties need only demonstrate “good cause” in order to support their requests to seal. *Pintos*, 605 F.3d at 678 (applying “good cause” standard to all non-dispositive motions). The Court will address its ruling with respect to each motion to seal below.

A. Plaintiffs' Administrative Motion to Seal Documents Related to its Motion for Class Certification

On October 1, 2012, Plaintiffs filed an administrative motion for a sealing order, ECF No. 186, pursuant to Northern District Civil Local Rule 79–5(d), and lodged under seal certain information contained in: (a) Plaintiffs' Motion for Class Certification; (b) Exhibits 1–5, 11–55, 58–68, and 70 to the Declaration of Anne B. Shaver in Support of Plaintiffs' Motion for Class Certification, *see* ECF No. 188 (“Shaver Decl.”); (c) the Declaration of Edward T. Colligan and Exhibits A and B thereto, ECF No. 189 (“Colligan Decl.”); and (d) the Expert Report of Edward R. Leamer, Ph. D., *see* ECF No. 190 (“Leamer Report”).² Plaintiffs also filed redacted versions of these documents. *See* ECF Nos. 187, 188, 189, 190.

For the reasons stated below, the Court DENIES Plaintiffs' request to file portions of the Colligan Declaration and the two exhibits attached to this declaration under seal. The Court GRANTS in part, and DENIES in part, the request to file under seal portions of the Motion for Class Certification and exhibits in support thereof that Defendants designated either “Confidential” or “Confidential—Attorneys' Eyes Only” under the Stipulated Protective Order, as modified by the Court, at ECF No. 107.

1. Plaintiffs' Request to Maintain the Confidentiality of Certain Third-Party Materials

***3** In support of Plaintiffs' motion to seal portions of the Colligan Declaration and the two attached exhibits, Plaintiffs filed redacted versions of the declaration and exhibits, *see* ECF No. 189 (redacting part of the first sentence in paragraph 5, all of paragraphs 6 through 8, and all of Exhibits A and B), as well as a Declaration from Robert H. Booth, the Chief Litigation Counsel of non-party Palm, Inc., explaining why Palm, Inc. seeks to maintain the confidentiality of the information contained within these documents, *see* ECF No. 192 (“Booth Decl.”).

According to Mr. Booth, “[t]he documents attached to the declaration of Mr. Colligan consist of, cite to, and/or identify confidential, nonpublic, and proprietary business information of Palm, including information regarding Palm's intellectual property portfolio and competitive position.” Booth Decl. ¶ 5. In addition, the Colligan Declaration “references and describes the same documents.” *Id.* Booth also declares that “Palm has taken reasonable steps to preserve the confidentiality of information of the type contained in the exhibits to Mr. Colligan's declaration and the redacted portion of Mr. Colligan's declaration,” *Id.* ¶ 6, and that “[p]ublic disclosure of this information presents a risk of placing Palm at a competitive disadvantage.” *Id.* ¶ 5.

The Court finds that Plaintiffs' have not made a particularized showing with respect to these documents. *See Kamakana*, 447 F.3d at 1180; *San Jose Mercury News, Inc.*, 187 F.3d at 1103. Plaintiffs do not explain why the information contained in these documents is “confidential” given that the materials relate to communications between the former Chief Executive Office of Palm and Steve Jobs of Apple. If Palm and Apple had a non-disclosure agreement, then Palm's declaration in support of sealing should so state. Moreover, only a small portion of these communications referenced “Palm's intellectual property portfolio and competitive position.” Booth Decl. ¶ 5. Furthermore, Palm has not explained how “[p]ublic disclosure of th[e] information” contained in the relevant documents “presents a risk of placing Palm at a competitive disadvantage” given that Hewlett Packard acquired Palm in 2011, and these documents were created in 2007, nearly six years ago. Accordingly, the Court DENIES Plaintiffs' motion to seal portions of the Colligan Declaration and Exhibits A and B attached thereto.

2. Defendants' Request to Maintain the Confidentiality of Certain Defendant-Related Company Materials

As part of Plaintiffs' administrative motion, Plaintiffs also submitted under seal portions of the Motion for

Class Certification and exhibits in support thereof that Defendants designated either “Confidential” or “Confidential—Attorneys' Eyes Only” under the modified Stipulated Protective Order. Civil Local Rule 79–5(d) governs motions to seal documents designated as confidential by another party. This rule requires “the designating party ... [to] file with the Court and serve a declaration establishing that the designated information is sealable” within seven days of the motion. N.D. Cal. Civ. L.R. 79–5(d).

*4 Here, in compliance with Civil Local Rule 79–5(d), Defendants submitted timely declarations on behalf of each Defendant in support of Plaintiffs' motion to seal various portions of Plaintiffs' Motion for Class Certification and the exhibits filed in support thereof:

- (1) Defendant Adobe Systems, Inc. filed a Declaration of Donna Morris, ECF No. 196 (“Morris Decl.”);
- (2) Defendant Intuit Inc. filed a Declaration of Lisa Borgeson, ECF No. 197 (“Borgeson Decl.”);
- (3) Defendant Lucasfilm Ltd. filed a Declaration of David Anderman, ECF No. 199 (“Anderman Decl.”);
- (4) Defendant Google, Inc. filed a Declaration of Alan Eustace, ECF No. 200 (“Eustace Decl.”);
- (5) Defendant Google, Inc. filed a Declaration of Frank Wagner, ECF No. 201 (“Wagner Decl.”);
- (6) Defendant Pixar filed a Declaration of James M. Kennedy, ECF No. 202 (“Kennedy Decl.”);
- (7) Defendant Intel Corp. filed a Declaration of Tine M. Evangelista, ECF No. 203 (“Evangelista Decl.”);
- (8) Defendant Apple Inc. filed a Declaration of Mark Bentley, ECF No. 204 (“Bentley Decl.”).

In addition, Defendants filed a Joint Response to Plaintiffs' Administrative Motion to Seal in which Defendants explained their justification for seeking to maintain the confidentiality of certain exhibits and portions of the Motion for Class Certification. *See* ECF No. 195 (“Joint Response”). Specifically, Defendants contend that the materials that they seek to preserve under seal “contain confidential and commercially sensitive information about employee compensation, including Defendants' compensation data,” in addition to “information that reflects certain Defendants' internal decision-making regarding their business strategies

related to compensation and internal assessments of their and other employers' competitive position in the labor market.” Joint Response at 3. “Defendants also seek to keep under seal those materials that reflect compensation practices, strategies, and policies; recruiting and hiring data, practices, strategies, and policies; and personal identifying information of employees or candidates.” *Id.*

Defendants maintain that they “keep the sealed information confidential and the public disclosure of this information would cause each Defendant harm by giving third-parties (including individuals responsible for competitive decision-making) insights into confidential and sensitive aspects of each of the Defendants' strategies, competitive positions, and business operations, allowing these third-parties to potentially gain an unfair advantage in dealings with and against each of the Defendants.” Joint Response at 3. The declarations filed by representatives from each Defendant also explain why each individual Defendant seeks to maintain the confidentiality of specific information contained in particular exhibits and portions of the motion under seal, as well as the harm that would flow to the company from public disclosure.

*5 In light of Defendants' joint and separate declarations, the Court finds that Defendants have made a particularized showing with respect to sealing the following portions of the Motion for Class Certification: page 17, lines 16–17; page 18, lines 1–3 and 8–10; page 18, line 21, to page 19, line 2; page 19, lines 13–14; page 20, lines 20–23; page 20, line 24, to page 21, line 5; page 21, lines 13–28; and page 22, lines 1–3. In addition, the Court finds that Defendants have made a particularized showing with respect to sealing the following exhibits to the Shaver Declaration in their entirety: Exhibit 15, Exhibits 43–49, Exhibit 54, and Exhibit 59. The Court also finds that Defendants have made a particularized showing with respect to the redacted portions of the following exhibits to the Shaver Declaration: Exhibit 4, Exhibit 21, Exhibit 24, Exhibit 25, Exhibit 29, Exhibit 32, Exhibit 34, Exhibit 37, Exhibit 39, Exhibit 40, Exhibit 42, Exhibits 62–63, and Exhibits 67–68.

The Court finds that the portions of the Motion for Class Certification and the exhibits identified above include confidential information regarding Defendants' compensation and recruiting strategies, policies, and procedures, including quantitative data concerning those topics, and that the disclosure of this information could cause Defendants' competitive harm. Additionally, some of the materials include

personal information of non-parties. The Court also finds that Defendants' requests are sufficiently specific as to the sealed materials and that Defendants have plausibly articulated the need for maintaining their confidentiality given the potential harm that may come from public disclosure. Consequently, the Court finds good cause to GRANT the motion to maintain these documents under seal.

However, the Court finds that Defendants have not made a particularized showing of good cause for sealing with respect to the following portions of Plaintiffs' Motion for Class Certification: page 2, line 4; page 3, lines 10–12 and 25–26; page 8, lines 20–25; page 13, lines 26–27; page 14, line 11, to page 15, line 3; page 17, lines 10–16; page 18, lines 5–8, 14–15; page 19, lines 5–8; and page 24, lines 20–21. In addition, the Court finds that Defendants have not made a particularized showing of good cause for sealing

the following exhibits to the Shaver Declaration: Exhibit 14, Exhibit 22, Exhibits 60–61, and Exhibit 70. As to these exhibits and portions of the Motion, the Court finds that Defendants have not made a particularized showing that these materials contain confidential information. Furthermore, to the extent Defendants contend that disclosure of these materials would cause Defendants' competitive harm, the Court finds that Defendants have not supported their assertions with sufficiently particularized facts. Therefore, the Court DENIES these requests without prejudice.

3. The Court's Ruling on Plaintiffs' Administrative Motion to Seal Documents Related to Plaintiffs' Motion for Class Certification

*6 In summary, for the Motion for Class Certification, the Court rules as follows:

Pages/Lines to be sealed

Ruling

Page 2, line 4

DENIED. Pixar states that the information contained in this excerpt is “confidential and competitively sensitive” and relates to “business strategy of [The Walt Disney Company] and its subsidiaries.” See Kennedy ¶ 5(a). This excerpt quotes portions of Exhibit 61, which as set forth above, the Court has declined to seal. Having reviewed this excerpt, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” *Id.*

Page 3, lines 10–12 and 25–26

DENIED. Pixar states that the information contained in these excerpts is “confidential and competitively sensitive” and relates to “business strategy of [The Walt Disney Company] and its subsidiaries.” See Kennedy ¶ 5(a). These excerpts quote portions of Exhibit 61, which as set forth above the Court has declined to seal. Having reviewed these excerpts, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” *Id.*

Page 8, lines 20–25

DENIED. Pixar states that the information contained in this excerpt is “confidential and competitively sensitive” and relates to “business strategy of [The Walt Disney Company] and its subsidiaries.” See Kennedy ¶ 5(a). This excerpt quote portions of Exhibit 61, which as set forth above the Court has declined to seal. Having reviewed this excerpt, the Court finds that

Pixar has not made a particularized showing that the information contained therein is “confidential.” *Id.*

Page 13, lines 26–27

DENIED. Pixar states that this excerpt “contains confidential and competitively sensitive information regarding Pixar’s practices and strategy with respect to compensation, benefits, and [Pixar’s] long-term incentive program.” See Kennedy ¶ 5(c). This excerpt quotes portions of Exhibit 70, which as set forth above the Court has declined to seal. Having reviewed this excerpt, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” *Id.*

Page 14, line

DENIED. This excerpt references and quotes portions of the Colligan

11, to Page 15, line 3

Declaration and the exhibits to the Colligan Declaration. Palm’s request to seal this excerpt is denied for the same reasons as set forth above in connection with the Colligan Declaration. See Booth Decl. ¶¶ 3–6.

Page 17, lines 10–16

GRANTED as to lines 16–17.

DENIED as to lines 10–16. This excerpt references and quotes portions of Exhibit 14. Adobe states that Exhibit 14 “contains confidential information regarding recruiting and hiring data, practices, strategies, and policies....” See Morris Decl. ¶¶ 3–7. As set forth above, the Court has found that Adobe has not made a particularized showing as to why Exhibit 14 should be sealed in its entirety. Accordingly, the Court denies Adobe’s request to seal the portions of that exhibit quoted on Page 17.

Page 18, lines 1–3, 5–10, and 14–15

GRANTED as to lines 1–3, 8–10. See Wagner Decl. ¶ 10; Evangelista Decl. ¶¶ 7–9; Kennedy Decl. ¶ 5(a).

DENIED as to lines 5–8, 14–15. Pixar states that the information contained in these excerpts is “confidential and competitively sensitive” and relates to “business strategy of [The Walt Disney Company] and its subsidiaries.” See Kennedy ¶ 5(a). These excerpts quote portions of Exhibit 61, which as set forth above the Court has declined to seal. Having reviewed these excerpts, the Court finds that Pixar has not made a

particularized showing that the information contained therein is “confidential.” *Id.*

Page 18, line 21, to page 19, line 2

GRANTED. See Wagner Decl. ¶ 10; Morris Decl. ¶¶ 3–7.

Page 19, lines 5–8 and 13–14

GRANTED as to lines 13–14. See Wagner Decl. ¶ 10.

DENIED as to lines 5–8. Google contends that this excerpt “quotes and references Exhibits 46, 48, and 49, which Google [also seeks] ... to seal.” See Wagner Decl. ¶ 10. Google further states that “this excerpt contains confidential and highly sensitive details about Google’s compensation of its employees and its compensation philosophy.” See Wagner Decl. ¶ 10. While the Court has sealed Exhibits 46, 48, and 49, the particular fact disclosed in this excerpt does not appear to be confidential. Accordingly, the Court finds that Google has not made a particularized showing why this excerpt should be sealed.

Page 20, lines 20–23

GRANTED. See Wagner Decl. ¶ 10; Morris Dec. ¶¶ 3–7.

Page 20, line 24, to page 21, line 5

GRANTED. See Wagner Decl. ¶ 10; Morris Dec. ¶¶ 3–7.

Page 21, lines 13–28

GRANTED. See Wagner Decl. ¶ 10.

Page 22, lines 1–3, lines 10–12

GRANTED as to lines 1–3. See Wagner Decl. ¶ 10; Morris Dec. ¶¶ 3–7.

DENIED as to lines 10–12. Dr. Leamer’s findings may be derived in part from confidential information. However, the particular finding reflected in this this portion of the Motion does not reveal any confidential information about any particular Defendant. Defendants have not explained how disclosure of this particular finding would reveal confidential and sensitive information regarding Defendants’ compensation strategy.

Page 24, lines 20–21

DENIED. Pixar states that the information contained in this excerpt is “confidential and competitively sensitive” and relates to “business strategy of [The Walt Disney Company] and its subsidiaries.” See Kennedy ¶ 5(a). This excerpt quotes portions of Exhibit 61, which as set forth above

the Court has declined to seal. Having reviewed this excerpt, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” *Id.*

*7 Regarding the proposed redactions for the Exhibits to the Declaration of Ann B. Shaver, the Court rules as follows:

Exhibits	Ruling
4	GRANTED as to the redacted portions identified by Defendants. See Morris Decl. ¶¶ 3–7.
14	DENIED. See Morris Decl. ¶¶ 3–7. Adobe states that this document, which is a presentation regarding Adobe's recruiting strategies, “contains confidential information regarding recruiting and hiring data, practices, strategies, and policies....” While portions of this document may be sealable, the Court finds that Adobe has not made a particularized showing as to why the entire document should be sealed.
15	GRANTED. See Morris Decl. ¶¶ 3–7.
21	GRANTED as to the redacted portions identified by Defendants. See Bentley Decl. ¶ 6.
22	DENIED. Apple states that this document contains “confidential and competitively sensitive information regarding Apple's business and recruiting strategies.” See Bentley Decl. ¶ 5. Having reviewed this document, the Court is not persuaded that the information contained therein is confidential.
24	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
25	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
29	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
32	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
34	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 7–8.
37	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
39	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.
40	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 9.

42	GRANTED as to the redacted portions identified by Defendants. See Wagner Decl. ¶ 7–8.
43	GRANTED. See Wagner Decl. ¶¶ 5–6.
44	GRANTED. See Wagner Decl. ¶¶ 5–6.
45	GRANTED. See Wagner Decl. ¶¶ 5–6.
46	GRANTED. See Wagner Decl. ¶¶ 5–6.
47–48	GRANTED. See Wagner Decl. ¶¶ 5–6.
49	GRANTED. See Wagner Decl. ¶¶ 5–6.
54	GRANTED. See Evangelista Dec. ¶¶ 3–6.
59	GRANTED. See Eustace ¶¶ 3–5; Borgeson ¶ 6.
60	DENIED. Lucasfilm states that this document contains information regarding Lucasfilm's "confidential business practices, particularly [Lucasfilm's] recruiting practices." See Anderman ¶¶ 5–6. Lucasfilm states that disclosure of this information might provide Lucasfilm's competitors with an "unfair advantage" by providing Lucasfilm's competitors with "information regarding the specific manner in which Lucasfilm recruits potential employees and makes employment offers." <i>Id.</i> Having reviewed this document, the Court finds that Lucasfilm has not made a particularized showing that the information contained therein is "confidential" or that disclosure of this information would provide Lucasfilm's competitors with an unfair advantage. <i>Id.</i>
61	DENIED. Pixar states that the information contained in this document is "confidential and competitively sensitive" and relates to "business strategy of [The Walt Disney Company] and its subsidiaries." See Kennedy ¶ 5(a). Having reviewed this document, the Court finds that Pixar has not made a particularized showing that the information contained therein is "confidential." <i>Id.</i>
62–63	GRANTED as to the redacted portions identified by Defendants. See Kennedy ¶ 5(b).
67–68	GRANTED as to the redacted portions identified by Defendants. See Kennedy ¶ 5(b).
70	DENIED. Pixar states that this document "contains confidential and competitively sensitive information regarding Pixar's practices and strategy with respect to compensation, benefits, and [Pixar's] long-term incentive program." See Kennedy ¶ 5(c). Having reviewed this document, the Court finds that Pixar has not made a particularized showing that the information contained therein is "confidential." <i>Id.</i>

B. Defendants' Motion to Seal Documents Related to its Opposition to Plaintiffs' Motion for Class Certification

*8 In connection with Defendants' Opposition to Plaintiffs' Motion for Class Certification, Defendants seek to file under seal: (1) portions of Defendants' Opposition; (2) all or portions of Exhibits 1–6, 8–23, 25–27 to the Declaration of Christina Brown filed in support of Defendants' Opposition, *see* ECF No. 215 (“Brown Decl. Supp. Opp'n”); (3) Defendants' Motion to Strike the Report of Dr. Edward E. Leamer, ECF No. 210; (4) Exhibits A–H to the Declaration of Susan Welch in Support of Defendants' Motion to Strike, *see* ECF No. 210; and (5) portions of the Expert Report of Kevin Murphy, *see* ECF No. 230.³ Defendants note that the information contained in these documents has been designated “Confidential” or “Attorneys–Eyes Only” under the modified Stipulated Protective Order. Defendants also filed declarations on behalf of each Defendant in support of their respective sealing requests. *See* ECF Nos. 214, 217–222.

In addition, Defendants seek to seal certain portions of the Opposition; Exhibits 2–6 and 9–13 to the Brown Declaration in Support of Defendants' Opposition; and Exhibits B, C, and D to the Welch Declaration, each of which reflect portions of deposition transcripts of Plaintiffs and their expert that Plaintiffs designated “Confidential” or “Attorneys' Eyes Only” under the modified Stipulated Protective Order.

1. Plaintiffs' Request to Maintain the Confidentiality of Certain Plaintiff–Specific Job Information

In compliance with Civil Local Rule 79–5, Plaintiffs filed a timely declaration in support of maintaining portions of the Opposition, exhibits to the Brown Declaration in Support of Defendants' Opposition, and exhibits to Welch Declaration under seal. *See* Declaration of Joseph P. Forderer In Support of Defendants' Joint Administrative Motion to Seal as to Information Designated by Plaintiffs, ECF No. 240 (“Forderer Decl.”).

After having reviewed all of the material from the Opposition for Class Certification that Plaintiffs seek to seal, the Court finds that good cause exists to seal the following pages and lines of the Opposition: page 8, line 28; page 9, lines 1–3 and 11–12; page 10, lines 6–7; and page 14, lines 3–5. In addition, the Court finds that Plaintiffs have made a particularized showing with respect to sealing portions of Exhibits 2–6 and 9–13 to the Brown Declaration. Finally, the Court finds that Defendants have made a particularized showing with respect

to redacted portions of Exhibits B, C, and D, which were filed in connection with the Welch Declaration.

The Court finds that good cause exists to file the requested material under seal because some of the excerpts contain “Plaintiffs' confidential compensation information such as salaries, stock options, and other benefits.” *See* Forderer Decl. ¶ 6. In addition, some of the materials “contain Plaintiffs' confidential information regarding job applications to non-Defendants, including the identities of associated non-parties such as individuals who acted as Plaintiffs' references.” *Id.* ¶ 7. Accordingly, the Court GRANTS the motion to seal these documents.

*9 However, the Court does not find that Plaintiffs have set forth good cause to maintain under seal page 9, lines 9–10, of the Opposition. *See* Forderer Decl. ¶ 7. Although Plaintiffs allege that the information contained within this sentence includes Mr. Marshall's “confidential information regarding job applications to non-Defendants, including the identities of associated non-parties such as individuals who acted as Plaintiff[']s references,” the information Plaintiffs propose to seal does not actually appear to involve any information of this nature. Therefore, Plaintiffs have not established why this information is confidential. Accordingly, the Court DENIES the request to maintain this sentence under seal.

2. Defendants' Request to Maintain the Confidentiality of Certain Defendant–Related Company Materials

In support of Defendants' request to seal, Defendants filed a joint administrative motion, *see* ECF No. 211 (“Joint Mot. to Seal Opp'n”), as well as declarations on behalf of each Defendant:

- (1) Defendant Intuit Inc. filed a Declaration of Catherine T. Zeng, ECF No. 214 (“Zeng Opp'n Decl.”);
- (2) Defendant Adobe Systems, Inc. filed a Declaration of Lin Kahn, ECF No. 217 (“Kahn Opp'n Decl.”);
- (3) Defendant Pixar filed a Declaration of James M. Kennedy, ECF No. 218 (“Kennedy Opp'n Decl.”);
- (4) Defendant Lucasfilm Ltd. filed a Declaration of Justina Sessions, ECF No. 219 (“Sessions Opp'n Decl.”);
- (5) Defendant Intel Corp. filed a Declaration of Frank Busch, ECF No. 220 (“Busch Opp'n Decl.”);

(6) Defendant Google, Inc. filed a Declaration of Frank Wagner, ECF No. 221 (“Wagner Opp’n Decl.”);

(7) Defendant Apple Inc. filed a Declaration of Christina Brown, ECF No. 222 (“Brown Opp’n Decl.”).

As with Defendants’ requests in connection with the Motion for Class Certification, Defendants contend that the redacted portions of the Opposition; Exhibits 1, 8, 14–23, and 25–27 to the Brown Declaration; portions of the Motion to Strike; and the declarations filed in support of these documents contain “confidential and commercially sensitive information about employee compensation, including Defendants’ compensation data,” as well as “information that reflects certain Defendants’ compensation data as well as information that reflects certain Defendants’ internal decision-making regarding their business strategies related to compensation and internal assessments of their and other employers’ competitive position in the labor market.” Joint Mot. to Seal Opp’n at 3. “Defendants also seek to keep under seal those materials that reflect compensation practices, strategies and policies; recruiting and hiring data, practices, strategies and policies; and personal identifying information of employees or candidates.” *Id.*

Defendants raise concerns that “public disclosure of this information,” which the Defendants keep confidential, “would cause each Defendant harm by giving third-parties (including individuals responsible for competitive decisionmaking) insights into confidential and sensitive aspects of each of the Defendants’ strategies, competitive positions, and business operations, allowing these third-parties to potentially gain an unfair advantage in dealings with and against each of the Defendants.” *Id.* After reviewing Defendants’ joint and separate declarations, the relevant case law, and each of the documents that Defendants seek to maintain under seal, the Court finds that Defendants have made a particularized showing with respect to sealing the following portions of the Opposition to the Class Certification Motion: page 6, lines 22–23; page 6, footnote 2; page 7, line 1; page 7, lines 5–7, 8–9, 9–10, and 12–15; page 7, lines 18–20; page 7, lines 20–21; page 7, lines 22–23; page 7, lines 23–25; page 7, lines 25–26; page 7, line 26 through page 8, line 1; page 8, lines 6–8; page 8, lines 9–14; page 8, lines 20–22; page 18, lines 3–10; page 18, lines 23–24; and page 19, lines 1–5. The Court is persuaded that Defendants’ requests are sufficiently specific and that Defendants have plausibly articulated the need for maintaining the confidentiality of this

information given the potential harm that may come from public disclosure.

*10 In addition, the Court finds that Defendants have made a particularized showing with respect to sealing the following exhibits and portions of exhibits to the Brown Declaration in Support of Defendants’ Opposition:

- Exhibit 1: page 60, lines 23–25; page 79, lines 19–21; page 80, lines 7–23; page 92, line 20, through page 93, line 24; page 163, lines 3–6, 10, and 13–24; page 456, lines 3–17; page 460, lines 19–22; page 467, lines 5–10, and page 467, line 21 through page 469; page 470, lines 7–21.
- Exhibit 17: paragraphs 3–16 and Exhibits A–F;
- Exhibit 18: paragraphs 3–5 and 7–10, as well as Exhibits F, G, and H; and
- Exhibit 23: page 2, lines 4–8, 11–17, 20–24, and 26–27, and page 4, lines 6–7, as well as Exhibit 1.

The Court finds that Defendants’ requests to seal these exhibits and portions thereof are sufficiently specific and that Defendants have plausibly articulated the need for maintaining their confidentiality given the potential harm that may come from public disclosure.

Finally, the Court finds that Defendants have made a particularized showing with respect to sealing the following portions of Defendants’ Motion to Strike: page 7, lines 4–7; page 11, lines 1–2; page 15, lines 1–2; page 17, footnote 13, lines 2–3; page 19, footnote 16; pages 20–21, Figure 16; and page 21, lines 9–10. In addition, the Court finds that Defendants have set forth good cause to file under seal the following exhibits to the Welch Declaration in support of Defendants’ Motion to Strike: Exhibit A (as to page 76, lines 2–25; page 90, lines 19–23; page 106, lines 18–23; page 163, lines 3–6, 10, 13–24; page 261, lines 14–23; page 262, line 3, through page 263, line 25; page 400, lines 11–13, 16; page 435, lines 4–5; and page 468, line 5, through page 469, line 25); and Exhibit B (page 65, lines 5–21). Consequently, the Court finds good cause to GRANT the motion to maintain these documents under seal.

However, the Court is not convinced that Defendants have set forth good cause to maintain under seal page 18, lines 20, to page 20, line 12, of the Opposition, as requested by Defendant Google, or lines 21–23 of page 19, as requested by Defendant Pixar. In addition, the Court finds that Defendants

have not made a particularized showing with respect to sealing the following exhibits to the Brown Declaration: Exhibits 14–16; Exhibits 19–22; and Exhibit 25. Finally, the Court finds that Defendants have failed to sufficiently justify the need to maintain under seal lines 2 through 4 of page 13 of Defendants' Motion to Strike. Accordingly, the Court DENIES without prejudice Defendants' request to maintain these materials under seal.

3. The Court's Ruling on Defendants' Administrative Motion to Seal Documents Related to its Opposition to the Motion for Class Certification

In summary, for the Opposition to the Class Certification Motion, the Court rules as follows:

Pages/Lines to be Sealed	Ruling
Page 6, lines 22–23	GRANTED. Zeng Opp'n Decl. ¶ 7; Brown Decl. ¶ 3; Kahn Opp'n Decl. ¶ 7(b).
Page 6, footnote 2	GRANTED. See Sessions Opp'n Decl. ¶ 3(i); Brown Opp'n Decl. ¶ 3; Wagner Opp'n Decl. ¶ 2(a); Busch Opp'n Decl. ¶ 8; Zeng Opp'n Decl. ¶ 7; Kahn Opp'n Decl. ¶ 7(a).
.....	
Page 7, line 1	GRANTED. See Brown Opp'n Decl. ¶ 3.
Page 7, lines 5–7, 8–9, 9–10, 12–15	GRANTED. See Zeng Opp'n Decl. ¶ 7; Kahn Opp'n Decl. ¶ 7(c); Brown Opp'n Decl. ¶ 3.
.....	
Page 7, lines 18–20	GRANTED. See Kennedy Opp'n Decl. ¶ 5(a).
.....	
Page 7, lines 20–21	GRANTED. See Busch Opp'n Decl. ¶ 8.
Page 7, lines 22–23	GRANTED. See Brown Opp'n Decl. ¶ 3.
Page 7, lines 23–25	GRANTED. See Wagner Opp'n Decl. ¶ 2(b).
Page 7, lines 25–26	GRANTED. See Kahn Opp'n Decl. ¶ 7(d).
Page 7, line 26, through page 8, line 1	GRANTED. See Zeng Opp'n Decl. ¶ 7.
Page 8, lines 6–8	GRANTED. See Wagner Opp'n Decl. ¶ 2(c).
Page 8, lines 9–14	GRANTED. See Zeng Opp'n Decl. ¶ 7; see <i>a/so</i> Kahn Opp'n Decl. ¶ 7(e); Busch Opp'n Decl. ¶ 8.
.....	
Page 8, lines 20–22	GRANTED. See Sessions Opp'n Decl. ¶ 3.
Page 8, line 28	GRANTED. See Forderer Decl. ¶ 7.
Page 9, lines 1–3, 9–10, 11–12	GRANTED as to lines 1–3 and 11–12. See Forderer Decl. ¶ 7.

DENIED as to lines 9–10. See Forderer Decl. ¶ 7. Although Plaintiffs allege that the information contained within this sentence includes Mr. Marshall's "confidential information regarding job applications to non-Defendants, including the identities of associated non-parties such as individuals who acted as Plaintiff[']s references," the information Plaintiffs propose to maintain under seal does not actually appear to involve information of this nature. Therefore, Plaintiffs have not established why this information is confidential, and the Court declines to find good cause to grant Plaintiffs' request to maintain this sentence under seal.

Page 10, lines 6–7	GRANTED. See Forderer Decl. ¶ 7.
Page 14, lines 3–5	GRANTED. See Forderer Decl. ¶ 7.
Page 18, lines 3–10	GRANTED. See Brown Opp'n Decl. ¶ 3; Sessions Opp'n Decl. ¶ 3; Zeng Opp'n Decl. ¶ 8; Kahn Opp'n Decl. ¶ 7(f).
Page 18, lines 23–24	GRANTED. See Zeng Opp'n Decl. ¶ 7.
Page 19, Lines 1–5	GRANTED. See Busch Opp'n Decl. ¶ 8.
Page 19, Lines 21–23	DENIED. Defendant Pixar contends that "[t]hese portions of Defendants' Opposition refer to and quote from a Pixar document that has been designated confidential. The document contains confidential and competitively sensitive information regarding business strategy and internal compensation and recruiting practices of the Walt Disney Company, Pixar, and ImageMovers Digital." See Kennedy Opp'n Decl. ¶ 5(c). These excerpts quote portions of Exhibit 61 of the Shaver Declaration, which as set forth above the Court has declined to seal. Having reviewed these excerpts, the Court finds that Pixar has not sufficiently alleged good cause to keep this sentence under seal.
<hr/>	
Page 18, line 20, to page 20, line 12	DENIED. See Wagner Opp'n Decl. ¶ 2(d). Defendant Google seeks to seal portions of Defendants' Opposition because it "quotes and references documents that contain confidential and highly sensitive details about Google's compensation of its employees and its compensation philosophy." Wagner Decl.

¶ 2(d). The Court does not find Defendant Google's request to be particularized. Consequently, the Court declines to find that Defendant Google has sufficiently set forth good cause to maintain all of the proposed redactions within these two *pages under seal*.

*11 Regarding the proposed redactions to the Exhibits to the Brown Declaration in Support of Defendants' Opposition, the Court rules as follows:

Exhibits	Ruling
1	GRANTED as to page 60, lines 23–25; page 79, lines 19–21; page 80, lines 7–23; page 92, line 20 through page 93, line 24; page 163, lines 3–6, 10, and 13–24; page 456, lines 3–17; page 460, lines 19–22; page 467, lines 5–10, and line 21 through page 469, line 25; page 470, line 7–21. See Kahn Opp'n Decl. ¶ 7(u); Busch Opp'n Decl. ¶ 8; Brown Decl. Opp'n ¶ 4.
2	GRANTED as to page 97, lines 22–24; page 98, lines 24–25; page 132, lines 24–25; page 135, lines 20–25; page 136, lines 1–12; page 137, lines 21, 23–24; page 142, lines 203. See Forderer Decl. ¶ 7.
3	GRANTED as to page 125, lines 16–17; page 126, lines 11–12; page 197, lines 1–2, 7. See Forderer Decl. ¶ 7.
4	GRANTED as to page 80, lines 1–12; page 80, lines 13–25; page 81, lines 1–25; page 82, lines 1–23; page 87, lines 8–9, 13, 21–22; page 88, lines 2–7, 13–15; page 90, lines 7–25; page 91, lines 1–25; page 125: lines 22–23; page 138, lines 1–2, 11–12; page 175, lines 22–25. See Forderer Decl. ¶ 7.
.....	
5	GRANTED as to page 138, lines 3–6; page 155, lines 9–25; 156, lines 1–25; 157, lines 1–25; 182, lines 3, 16–25; 183, lines 1–25; 184, lines 1–25; 202, lines 1–25; 203, lines 1–25; 204, lines 1–4; page 204, lines 12–25; page 337, lines 4–8. See Forderer Decl. ¶ 7.
.....	
6	GRANTED as to pages 105, lines 1–25; 106, lines 24–25; 107, lines 1–25; 108, lines 1–25; 113, lines 1–25; page 220, line 25. See Forderer Decl. ¶ 7.
9	GRANTED as to page 5, lines 10, 14, 19–20, 25; page 6, lines 1, 5–6, 10, 14–15, 20, 27–28; page 7, lines 1, 6, 10, 14–15, 20, 27–28; page 8, lines 8–9, 12–13; page 9, lines 14–16. See Forderer Decl. ¶ 7.
10	GRANTED as to page 5, lines 10, 15–16, 20, 25; page 6, lines 19–22; page 7, lines 1, 18–20; page 8, lines 9–18; page 9, lines 3–6. See Forderer Decl. ¶ 7.

11 GRANTED as to page 5, lines 13–15, 19, 25–26; page 6, lines 4–6; page 6, lines 25–28; page 7, lines 1–5. See Forderer Decl. ¶ 7.

12 GRANTED as to page 5, lines 16, 21, 26; page 6, lines 8–9, 14, 17, 21; page 7, lines 5,9, 14–15, 20–23, 26–27; page 9, lines 2–3. See Forderer Decl. ¶ 7.

13 GRANTED as to page 5, lines 10, 15, 20, 25; page 6, lines 2–3, 19. See Forderer Decl. ¶ 7.

14 DENIED. Defendant Adobe seeks to maintain under seal Exhibit 14, which is a copy of the Declaration of Donna Morris of Adobe Systems, Inc. in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification. See Kahn Opp'n Decl. ¶ 7(v). Adobe contends that this declaration “establishes that Adobe's compensation data, practices, strategies and policies, as well as its recruiting data, practices, strategies and policies are confidential and commercially sensitive.” *Id.* ¶ 3. While the Court finds that Defendant Adobe has established good cause to maintain much of the substance of this declaration under seal, the Court is not convinced that Adobe's request—which includes at least 100 pages worth of power point slides—is sufficiently particularized. Therefore, the Court DENIES Adobe's request to seal Ms. Morris's declaration in its entirety, with leave to amend.

.....

15 DENIED. Defendant Adobe also seeks to maintain under seal Exhibit 15, which is a copy of the Declaration of Jeff Vjungco of Adobe Systems, Inc. in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification. See Kahn Opp'n Decl. ¶ 7(w). Defendant Adobe contends that paragraph 3 of this declaration “established that Adobe's recruiting and hiring date, policies and strategies are confidential and that public dissemination of that information could cause Adobe competitive harm .” *Id.* ¶ 6. While the Court finds that Adobe has established good cause to maintain some of this exhibit under seal, the Court is not convinced that Defendant Adobe's request is particularized.

.....

16 DENIED.

.....

Defendant Apple seeks to maintain under seal all of Exhibit 16, which is a copy of the Declaration of Steven Burmeister in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification, as well as attached exhibits B & C. Brown Opp'n Decl. ¶ 5. Steven Burmeister contends in his declaration, that “[t]he information contained in this declaration and the attached Exhibits B and C is extremely sensitive, and Apple considers it to be, and treats it as, confidential, proprietary, and competitively sensitive. Public disclosure of this information would give Apple's competitors insight into its confidential and proprietary employee compensation practices and strategies, deprive Apple of its

investment in developing these strategies, and put Apple at a significant disadvantage with respect to recruiting, hiring, and compensating its employees.” Burmeister Decl. ¶ 11; see also Brown Opp'n Decl. ¶ 5 (stating that the information in this exhibit, as well as the attached exhibits B and C, “contain and reflect Apple's highly confidential and competitively sensitive compensation data and strategies.”). While the Court finds that Defendant Apple has established good cause to maintain some of this exhibit under seal, the Court is not persuaded that Defendant Apple's request is particularized.

.....

17 GRANTED as to paragraphs 3–16 and Exhibits A–F. See Busch Opp'n Decl. ¶ 8.

.....

18 GRANTED as to paragraphs 3–5 and 7–10, as well as Exhibits F, G, and H. See Busch Opp'n Decl. ¶ 8.

.....

19 DENIED. Defendant Intuit seeks to maintain under seal Exhibit 19, which is a copy of the Declaration of Mason Stubblefield in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification, as well as the attached exhibits. See Zeng Opp'n Decl. ¶ 5. Zeng's declaration asserts that paragraph 3 of the Declaration of Mason Stubblefield and accompanying exhibits ... establishes that Intuit's salary and compensation data and methodologies is confidential and that public dissemination of that information could cause Intuit competitive harm.” See *Id.* ¶¶ 5, 7; see also Stubblefield Decl. ¶ 3. Having reviewed this document, the Court finds that Intuit has not made a particularized showing that all of the information contained therein is “confidential.” *Id.*

.....

20 DENIED. Defendant Intuit also seeks to maintain under seal Exhibit 20, which is a copy of the Declaration of Chris Galy in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification, as well as the attached exhibits. See Zeng Opp'n Decl. ¶ 6. Zeng's declaration asserts that paragraph 2 of the Declaration of Chris Galy “establishes that information pertaining to Intuit's recruiting methods, strategies, practices, and data is confidential and that public dissemination of that information could cause Intuit competitive harm.” *Id.*; see Galy Decl. ¶ 2. Having reviewed this exhibit, the Court finds that Intuit has not made a particularized showing that all of the information contained therein is “confidential.” *Id.*

21 DENIED. Defendant Google seeks to maintain under seal Exhibit 21, which is a copy of the Declaration of Frank Wagner in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification, as well as the attached exhibits. See Wagner Opp'n Decl. ¶ 4. According to Wagner, the information in this declaration is “confidential and highly sensitive” and “Google

derives economic benefit by maintaining its confidentiality.” *Id.* ¶ 6. Attached to this declaration are three exhibits that also “contain highly confidential information about Google’s compensation and recruiting practices,” Wagner Sealing Decl. ¶ 7, which “Google does not disclose ... to its competitors, customers or the general public,” *id.* ¶ 8. While the Court finds that Defendant Google has established good cause to maintain some of this exhibit under seal, the Court is not persuaded that Defendant Google’s request is sufficiently particularized.

22	DENIED. Defendant Lucasfilm seeks to maintain under seal Exhibit 22, which is a copy of the Declaration of Michelle Maupin in Support of Defendants’ Opposition to Plaintiffs’ Motion for Class Certification, as well as attached exhibits. Lucasfilm seeks to maintain the entire declaration and accompanying exhibits under seal.” Sessions Opp’n Decl. ¶ 5. Having reviewed this exhibit and the attachments, the Court finds that Lucsfilm has not made a particularized showing that all of the information contained therein is “confidential.”
23	GRANTED as to lines 4–8, 11–17, 20–24, and 26–27 on page 2, and lines 6–7 on page 4 of the McAdams declaration, as well as Exhibit 1. See Kennedy Opp’n Decl. ¶ 5(a).
25	DENIED. Defendant Google also seeks to maintain under seal Exhibit 25, which is a “confidential presentation related to Google’s compensation practices and philosophy.” Wagner Opp’n Decl. ¶ 10. According to Wagner, this document “contains highly sensitive and confidential information about Google’s compensation program, including its bonus targets, the disclosure of which would likely cause competitive harm to Google by giving third parties (including Google’s competitors in the labor market) direct insight into highly confidential and competitively sensitive aspects of Google’s internal decision-making processes related to its business operations.” <i>Id.</i> While the Court finds that Defendant Google has established good cause to maintain some of this exhibit under seal, the Court is not persuaded that Defendant Google’s request is sufficiently particularized.

*12 For portions of Defendants’ Motion to Strike, the Court rules as follows:

Paragraphs	Ruling
Page 7, lines 4–7	GRANTED. See Busch Opp’n Decl. ¶ 8.
Page 11, lines 1–2	GRANTED. See Kennedy Opp’n Decl. ¶ 5(e).
Page 13	DENIED. Although Defendant Google appears to contend that lines 2 through 4 of this page “contain[] a confidential and highly sensitive discussion of Google’s compensation data in the context of analyzing the findings of Professor Leamer,” Wagner Opp’n Decl. ¶ 9(a), it is unclear

from either the text of this Motion to Strike or the referenced deposition testimony of Professor Leamer how this sentence reveals anything confidential or potentially harmful to Defendants.

Page 15, lines 1–2	GRANTED. See Brown Opp'n Decl. ¶ 7.
Page 17, footnote 13, lines 2–3	GRANTED. See Kennedy Opp'n Decl. ¶ 5(e); Wagner Opp'n Decl. ¶ 9(b).
Page 19, footnote 16	GRANTED. Brown Opp'n Decl. ¶ 7
Pages 20–21, Fig. 16	GRANTED. See Wagner Opp'n Decl. ¶ 9(c).
Page 21, lines 9–10	GRANTED. Brown Opp'n Decl. ¶ 7.

For the Exhibits to the Welch Declaration in support of the Motion to Strike, the Court rules as follows:

Exhibits	Ruling
A	GRANTED as to page 76, lines 2–25; page 90, lines 19–23; page 106, lines 18–23; page 163, lines 3–6, 10, 13–24; page 261, lines 14–23; page 262, line 3 through page 263, line 25; page 400, lines 11–13, 16; page 435, lines 4–5; and page 468, line 5, through page 469, line 25. See Kahn Opp'n Decl. ¶ 7(x); Kennedy Opp'n Decl. ¶ 5(a); Busch Opp'n Decl. ¶ 8; Brown Opp'n Decl. ¶ 8.
B	GRANTED as to page 65, lines 5–21, and page 197, lines 1–2, 7. See Busch Opp'n Decl. ¶ 8; Forderer Decl. ¶ 7.
C	GRANTED as to page 181, lines 18, 22–25. See Forderer Decl. ¶ 7.
D	GRANTED as to page 97, lines 22–25. See Forderer Decl. ¶ 7

C. Plaintiffs' Motion to Seal Documents Related to the Consolidated Reply in Support of its Motion for Class Certification and in Opposition to Defendants' Motion to Strike

Finally, in connection with Plaintiffs' Reply in Support of its Motion for Class Certification and in Opposition to Defendants' Motion to Strike, Plaintiffs filed an administrative motion for a sealing order, ECF No. 246, and lodged under seal certain information contained in: (a) Plaintiffs' Reply, *see* ECF No. 247; (b) Exhibits 1–6, 9–10, and 12–30 to the Declaration of Dean M. Harvey in Support of Plaintiffs' Consolidated Reply, *see* ECF Nos. 248 (“Harvey Decl.”); and (c) the Reply Expert Report of Edward R. Leamer, Ph.D., *see* ECF No. 249.⁴ In addition, on December 12, 2012, Plaintiffs filed a letter from Brendan

Glackin regarding a Correction to the Reply, *see* ECF No. 253, indicating that portions of the letter be filed under seal because it refers to data that Defendants have designated as “Confidential—Attorneys' Eyes Only” under the Stipulated Protective Order. *See* ECF No. 252.

*13 For the reasons stated herein, the Court GRANTS the request to file under seal portions of the Reply and exhibits in support thereof that Defendants designated either “Confidential” or “Confidential—Attorneys' Eyes Only,” under the modified Stipulated Protective Order. The Court also GRANTS the request to file the designated portion of the Glackin Letter under seal.

1. Defendants' Request to Maintain the Confidentiality of Certain Defendants–Related Company Materials

In compliance with Civil Local Rule 79–5(d), Defendants have submitted timely declarations on behalf of each Defendant in support of Plaintiffs' Reply and the exhibits filed in support thereof:

- (1) Defendant Intel Corp. filed a Declaration of Susan J. Welch, *see* ECF No. 255 (“Welch Reply Decl.”);
- (2) Defendant Intuit Inc. filed a Declaration of Catherine T. Zeng, *see* ECF No. 256 (“Zeng Reply Decl.”);
- (3) Defendant Adobe Systems, Inc. filed a Declaration of Lin W. Kahn, *see* ECF No. 257 (“Kahn Reply Decl.”);
- (4) Defendant Apple Inc. filed a Declaration of Christina, *see* ECF No. 258 (“Brown Reply Decl.”);
- (5) Defendant Pixar Filed a Declaration of James M. Kennedy, *see* ECF No. 259 (“Kennedy Reply Decl.”);
- (6) Defendant Lucasfilm Ltd. filed a Declaration of Justina K. Sessions, *see* ECF No. 260 (“Sessions Reply Decl.”);
- (7) Defendant Google Inc. filed a Declaration of Frank Wagner, *see* ECF No. 261 (“Wagner Reply Decl.”).

Defendants also filed a Joint Administrative Motion to Seal and Motion to Remove Incorrectly Filed Document. *See* ECF No. 254. As with Defendants' prior declarations seeking to seal documents connected with Plaintiffs' Motion for Class Certification, Defendants contend that “redacted portions of the Reply [and] Exhibits 1, 2, 3, 6, 10, 13, 15–17, 19, 20, 22–27, 29, and 30 to the Harvey Declaration ... contain confidential and commercially sensitive information about employee compensation, including Defendants' compensation data,” in addition to “information that reflects certain Defendants' internal decision-making regarding their business strategies related to compensation and internal assessments of their and other employers' competitive position in the labor market.” ECF No. 254 at 2. Defendants further assert that they “seek to keep under seal those materials that reflect compensation practices, strategies and policies; recruiting and hiring data, practices, strategies and policies; and personal identifying information of employees or candidates” which Defendants designated as “Confidential” or “Attorneys' Eyes Only” under the modified Stipulated Protective Order. *Id.*

Defendants assert that “public disclosure of this information,” which the Defendants keep confidential, “would cause each Defendant harm by giving third-parties (including

individuals responsible for competitive decision-marking) insights into confidential and sensitive aspects of each of the Defendants' strategies, competitive positions, and business operations, allowing these third-parties to potentially gain an unfair advantage in dealings with and against each of the Defendants.” *Id.*

***14** After reviewing Defendants' joint and separate declarations, the relevant case law, and each of the documents that Defendants seek to maintain under seal, the Court finds that Defendants have made a particularized showing with respect to sealing the following portions of the Reply: i, Headings II I.B. 1, III. B.2, III.C, and III. D; page 3, lines 18–25; page 11, lines 15–16; page 12, lines 18–21; page 13, line 23, through page 14, line 12; page 14, footnote 10; page 16, lines 11–12; page 16, lines 18–19; page 17, lines 13–22; page 17, line 27, through page 18, line 11; page 18, lines 14–28; page 19, lines 5–9; page 19, lines 14–16; page 19, lines 17–27; page 20, lines 3–26; page 21, lines 5–7; page 21, lines 7–13; page 21, lines 13–14; page 21, footnote 13; page 22, lines 5–7; page 23, footnote 14, second sentence; page 24, lines 14–21; page 25, lines 1–6. The Court is persuaded that Defendants' requests are sufficiently specific and that Defendants have plausibly articulated the need for maintaining the confidentiality of this information given the potential harm that may come from public disclosure.

In addition, the Court finds that Defendants have made a particularized showing with respect to sealing the following exhibits and portions of exhibits to the Harvey Declaration: Exhibit 1 (page 57, lines 6, through page 58, line 23; page 73, line 20 through page 74, line 3; page 74, line 18 through page 76, line 25); Exhibit 2 (page 244, line 1 through page 247, line 25); Exhibit 10 (page 327, line 17 through page 328, line 25); Exhibit 13 (pages 255–258; page 260, line 11–25, page 283, lines 7–25, page 284, lines 1–4, 12–20; page 294, lines 15–25; and page 295, line 22 through page 296, line 5); Exhibit 15; Exhibit 16; Exhibit 17; Exhibit 18; Exhibit 19; Exhibit 20; Exhibit 22; Exhibit 23; Exhibit 24; Exhibit 25; and Exhibit 30. The Court finds that Defendants' requests are sufficiently specific as to these exhibits and that Defendants have plausibly articulated the need for maintaining their confidentiality given the potential harm that may come from public disclosure. Consequently, the Court finds good cause to GRANT the motion to maintain these documents under seal. Finally, the Court GRANTS the request to file portions of the Glackin letter under seal.

However, the Court finds that Defendants have not made a sufficiently particularized showing of good cause with respect to the following portions of Plaintiffs' Reply: page 13, lines 14–18; page 13, lines 22–23; and page 20, line 26, through page 21, line 4. In addition, the Court finds that Defendants have not made a particularized showing with respect to sealing the following exhibits to the Harvey Declaration: Exhibit 3, Exhibit 4, Exhibits 6, Exhibit 26, Exhibit 27, and Exhibit 29. Furthermore, to the extent Defendants contend that disclosure of these materials would cause Defendants'

competitive harm, the Court finds that Defendants have not supported their assertions with sufficiently particularized facts. Therefore, the Court DENIES these requests without prejudice.

2. The Court's Rulings on Plaintiffs' Administrative Motion to Seal Documents Related to its Reply

*15 In summary, for the Reply in Support of the Motion for Class Certification, the Court rules as follows:

Pages/Lines to be Sealed	Ruling
i, Headings III.B.1, III.B.2, III.C, and III.D	GRANTED. See Wagner Reply Decl. ¶ 2(a).
Page 3, lines 18–25	GRANTED. See Wagner Reply Decl. ¶ 2(b).
Page 11, lines 15–16	GRANTED. See Zeng Reply Decl. ¶ 7.
Page 12, lines 18–21	GRANTED. See Kahn Reply Decl. ¶ 7(a).
Page 13, lines 14–18	DENIED. This excerpt references and quotes portions of the Colligan Declaration and the exhibits to the Colligan Declaration. As the Court has denied Palm's request to seal this excerpt in connection with Plaintiffs' Motion for Class Certification, the same reasons apply to denying the request to seal here. See Booth Decl. ¶¶ 3–6; Zeng Reply Decl. 10.
Page 13, lines 22–23	DENIED. Pixar contends that good cause exists to file under seal this specific quotation from Exhibit 61 to the Shaver Declaration. See Kennedy Reply Decl. ¶ 5. This excerpt quotes a portion of Exhibit 61, which as set forth above the Court has declined to seal. Having reviewed this excerpt, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” <i>Id.</i>
Page 13, line 23 through page 14, line 12	GRANTED. See Wagner Reply Decl. ¶ 2(c).
Page 14, Footnote 10	GRANTED. See Welch Reply Decl. ¶ 8; Kahn Reply Decl. ¶ 7(b); Brown Reply Decl. ¶ 3; Wagner Reply Decl. ¶ 2(d).
.....	
Page 16, lines 11–12	GRANTED. See Wagner Reply Decl. ¶ 2(e).
Page 16, lines 18–19	GRANTED. See Wagner Reply Decl. ¶ 2(f).

Page 17, lines 13–22	GRANTED. See Brown Reply Decl. ¶ 3; Wagner Reply Decl. ¶ 2(g); Welch Reply Decl. ¶¶ 8, 9; Sessions Reply Decl. ¶ 4(i).
Page 17, line 27, through page 18, line 11	GRANTED. See Kahn Reply Decl. ¶ 7(c).
Page 18, lines 14–28	GRANTED. See Brown Reply Decl. ¶ 3; Wagner Reply Decl. ¶ 2(h); Welch Reply Decl. ¶¶ 8, 9.
Page 19, lines 5–9	GRANTED. See Zeng Reply Decl. ¶ 7; Sessions Reply Decl. ¶ 4(i).
Page 19, lines 14–16	GRANTED. See Kahn Reply Decl. ¶ 7(d).
Page 19, lines 17–27	GRANTED. See Kahn Reply Decl. ¶ 7(d).
Page 20, lines 3–26	GRANTED. See Wagner Reply Decl. ¶ 2(i).
Page 20, line 26 through page 21, line 4	DENIED. Pixar contends that good cause exists to file under seal this specific quotation from Exhibit 61 to the Shaver Declaration. See Kennedy Reply Decl. ¶ 5. As set forth above, the Court has declined to seal Exhibit 61. Thus, having reviewed these excerpts, the Court finds that Pixar has not made a particularized showing that the information contained therein is “confidential.” <i>Id.</i>
Page 21, lines 5–7	GRANTED. See Wagner Reply Decl. ¶ 2(j).
Page 21, lines 7–13	GRANTED. See Brown Reply Decl. ¶ 3.
Page 21, lines 13–14	GRANTED. See Welch Reply Decl. ¶¶ 8, 9; Zeng Reply Decl. ¶ 7.
Page 21, Footnote 13	GRANTED. See Zeng Reply Decl. ¶ 7; Sessions Reply Decl. ¶ 4.
Page 22, lines 5–7	GRANTED. See Brown Reply Dec. ¶ 3; Wagner Reply Decl. ¶ 2(k).
Page 23, footnote 14, second sentence	GRANTED. See Welch Reply Decl. ¶¶ 8, 9.
Page 24, lines 14–21	GRANTED. See Welch Reply Decl. ¶¶ 8, 9.
Page 25, lines 1–6	GRANTED. See Brown Reply Decl. ¶ 3.

*16 Regarding the proposed redactions to the exhibits to the Harvey Declaration in Support of Plaintiffs' Consolidated Reply, the Court rules as follows:

Exhibits	Ruling
----------	--------

-
- 1 GRANTED as to page 57, line 6, through page 58, line 23; page 73, line 20, through page 74, line 3; page 74, line 18, through page 76, line 25. See Kahn Reply Decl. ¶ 7(v).
-
- 2 GRANTED as to page 244, line 1 through page 247, line 25. See Kahn Reply Decl. ¶ 7(w).
-
- 3 DENIED. This exhibit involves excerpts from the deposition of Apple witness Mark Bentley, which allegedly reflect Apple's confidential recruiting practices and strategies. See Brown Reply Decl. ¶ 5. Having reviewed this document, the Court finds that Apple has not made a particularized showing that all of the information contained therein is "confidential."
-
- 4 DENIED. This exhibit contains "transcript excerpts from the deposition of Arnon Geshuri, dated August 17, 2012, and reflects confidential and highly sensitive details about Google's recruiting strategies and resources with respect to particular types of candidates." See Wagner Reply Decl. ¶ 4(a). Having reviewed this document, the Court finds that Google has not made a particularized showing that all of the information contained therein is "confidential."
-
- 6 DENIED. This exhibit contains excerpts from the deposition of Steven Burmeister which allegedly "reflect Apple's sources of highly confidential employee compensation data." See Brown Reply Decl. ¶ 5. Having reviewed this document, the Court finds that Apple has not made a particularized showing that all of the information contained therein is "confidential."
-
- 10 GRANTED as to page 327, line 17 through page 328, line 25. See Wagner Reply Decl. ¶ 4(b).
-
- 13 GRANTED as to pages 255–258; page 260, line 11–25; page 283, lines 7–25; page 284, lines 1–4, 12–20; page 294, lines 15–25; and page 295, line 22, through page 296, line 5. See Kahn Reply Decl. ¶ 7(x), Brown Reply Decl. ¶ 5, Wagner Reply Decl. ¶ 4(c).
-
-
- 15 GRANTED. See Kahn Reply Decl. ¶ 7(y).
-
- 16 GRANTED. See Kahn Reply Decl. ¶ 7(z).
-
- 17 GRANTED. See Kahn Reply Decl. ¶ 7(aa).
-
- 18 GRANTED. See Kahn Reply Decl. ¶ 7(bb).
-
- 19 GRANTED. See Brown Reply Decl. ¶ 5.
-
- 20 GRANTED. See Brown Reply Decl. ¶ 5.
-
- 22 GRANTED. See Wagner Reply Decl. ¶ 4(d).
-

23	GRANTED. See Wagner Reply Decl. ¶ 4(e).
24	GRANTED. See Wagner Reply Decl. ¶ 4(f).
25	GRANTED. See Wagner Reply Decl. ¶ 4(g).
26	DENIED. See Welch Decl. ¶ 3. Having reviewed this document, the Court finds that Intel has not made a particularized showing that all of the information contained therein is “confidential.”
27	DENIED. See Welch Decl. ¶ 3. Having reviewed this document, the Court finds that Intel has not made a particularized showing that all of the information contained therein is “confidential.”
29	DENIED. See Zeng Reply Decl. ¶ 8. Having reviewed this document, the Court finds that Intuit has not made a particularized showing that all of the information contained therein is “confidential.”
30	GRANTED. See Sessions Reply Decl. ¶¶ 4(i); 5.

*17 Finally, for the Glackin Letter, the Court rules as follows:

Exhibits	Ruling
Glackin Letter	GRANTED. See Welch Decl. ¶ 8.

III. Conclusion

For the foregoing reasons, the Court GRANTS-IN-PART and DENIES-IN-PART the parties' administrative motions to seal documents. For each motion and exhibit to a motion where the Court has denied a request to seal, Plaintiffs shall re-file that motion and exhibit consistent with this Order and the Court's Standing Order within seven days. Defendants shall do the same for any motion and exhibit to a motion for

which its motion to seal has been granted-in-part and denied-in part. In addition, if any portion of the exhibits that the parties wish to file under seal becomes part of the public record, such as during the hearing on class certification, the parties must file that portion publicly within seven days of public disclosure.

IT IS SO ORDERED.

Footnotes

- 1 The Court recognizes that there may be circumstances in which a motion for class certification is case dispositive. As the Eleventh Circuit observed in *Prado v. Bush*, 221 F.3d 1266, (11th Cir.2000), a motion for class certification might be dispositive if “a denial of class status means that the stakes are too low for the named plaintiffs to continue the matter.” *Id.* at 1274. Nevertheless, the Court applies a “good cause” standard here in accordance with the vast majority of other courts within this circuit. See, e.g., *In re NCAA Student-Athlete Name and Likeness Licensing Litigation*, No. 09–01967, 2012 WL 5395039 (N.D.Cal. Nov.5, 2012); *Vietnam Veterans of America v. C.I.A.*, No. 09–0037, 2012 WL 1094360, *1–2 (N.D.Cal. March 29, 2012); *Buchanan v. Homeservices Lending LLC*, No. 11–0922, 2012 WL 5505775, *2 (S.D.Cal. Nov.13, 2012); *Davis v. Social Service Coordinators, Inc.*, No. 10–02372, 2012 WL 2376217 (E.D. Cal. June 22, 2012); *Rich v. Hewlett-Packard Co.*, No. 06–03361, 2009 WL 2168688 (N.D.Cal. Jul.20, 2009).
- 2 This Order does not address the parties' request to file under seal portions of the Leamer Report. The Court will address the parties' request to file portions of this report under seal in a separate order.
- 3 This Order does not address the parties' request to file under seal portions of the Murphy Report. The Court will address the parties' request to file portions of this report under seal in a separate order.

- 4 This Order does not address the parties' request to file under seal portions of the Leamer Reply Report. Accordingly, this Order also does not address Defendants' request to remove the reply expert report from the ECF docket due to the report's headings. *See* ECF No. 254. The Court will address the parties' requests to file portions of this report under seal in a separate order.

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,)	
)	
Plaintiff,)	
)	Case No. 4:11-cv-00244-Y
vs.)	
)	
TRAVELPORT LIMITED, et al.,)	
)	
Defendants.)	

DECLARATION OF THOMAS DEMAY

1. My name is Thomas DeMay. I am over the age of 21, have never been convicted of a felony or a crime involving moral turpitude, and am otherwise competent to make this Declaration. Each and every statement contained in this Declaration is true and correct based on my personal knowledge.

2. I am currently employed by Travelport as Head of Legal Supplier Services, Americas. In that role, I provide legal and regulatory advice to Travelport on a variety of issues. During the above-captioned litigation, I was actively involved in working with Travelport's outside counsel on issues related to the litigation. As part of my work on the litigation, I was aware of the protective orders that were agreed upon by the parties and entered by the Court to protect confidential Travelport information. These protective orders, which I understand provided for the filing of confidential material with the Court under seal, were essential for the protection of Travelport confidential information from disclosure to the other parties to the litigation (who are one of Travelport's largest competitors, one of its largest suppliers, and one of its largest customers) and the general public.

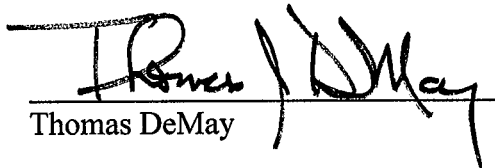
3. I have reviewed Exhibit 1 to Travelport's Unopposed Motion to Permanently Seal Documents Containing Confidential Travelport Information, which contains a list of documents that Travelport is requesting the Court permanently seal. These documents contain confidential, highly secretive details relating to Travelport's business strategies and its relationships with its suppliers and customers. Specifically, the documents fall into two main categories:

(1) documents reflecting internal Travelport business strategies, plans, or product development efforts; and (2) documents reflecting confidential details regarding the business relationships between Travelport and its suppliers or customers.

4. If these documents were unsealed, Travelport would suffer significant injury. By exposing Travelport confidential information, Travelport's competitors, suppliers, and customers – not to mention the general public – would have access to details about Travelport's internal, sensitive business dealings. Travelport's competitors, suppliers, and customers could use this confidential Travelport information to take advantage of Travelport or to use the inside information to compete with Travelport in the marketplace. Travelport would be harmed by this disclosure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 14, 2013


Thomas DeMay