

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TAMARA LOHR and RAVIKIRAN
11 SINDOGI, on behalf of themselves and all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 NISSAN NORTH AMERICA, INC., and
16 NISSAN MOTOR CO., LTD.,

17 Defendants.

Case No. C16-1023RSM

ORDER GRANTING IN PART MOTIONS
TO SEAL

18 This matter comes before the Court on Plaintiffs' Motions to Seal, Dkt. #89 and Dkt.
19 #92. The first Motion, Dkt. #89, requests to seal "certain documents, deposition testimony, and
20 portions of expert declarations designated confidential by Defendant Nissan, as well as portions
21 of their brief that discuss the confidential documents, deposition testimony, and declarations."
22 This Motion was filed concurrently with Plaintiffs' Motion for Class Certification, Dkt. #94,
23 and refers to exhibits in the "Drachler Declaration," Dkt. #90. Plaintiffs also filed on the same
24 day a second Motion to Seal, Dkt. #92, which requests to file under seal "certain portions of
25 their Motion for Class Certification that discuss and quote documents and deposition testimony
26 that Nissan designated as confidential in discovery." In other words, the first Motion seeks to
27
28

ORDER GRANTING IN PART MOTIONS TO SEAL - 1

1 seal exhibits and portions of briefing, the second (perhaps duplicative) Motion seeks to seal
2 only portions of briefing.

3 After Defendant Nissan North America, Inc. (“NNA”) failed to file a timely response
4 brief to either of these Motions, the Court issued a Minute Order directing NNA to do so,
5 explicitly citing both Motions. Dkt. #97. On March 18, 2021, NNA filed a single brief
6 responding only to Dkt. #92. See Dkt. #98 at 2 (“Pursuant to Local Civil Rule 5(g), Defendant
7 Nissan North America, Inc. (“NNA”) hereby responds to Plaintiffs’ Motion to Seal (Dkt.
8 92)...”). In an odd twist, although Dkt. #92 only addresses *briefing*, NNA’s Response only
9 addresses the *exhibits* in the Drachler declaration. See *id.* at 13 (“[a]ccordingly, NNA
10 respectfully requests that the following exhibits remain under seal as proposed in Derek Latta’s
11 declaration: Exhibits A-P, S, T, V, X-Z, and AA to Plaintiff’s Motion for Class
12 Certification.”).¹

15 “There is a strong presumption of public access to the court’s files.” LCR 5(g). “Only
16 in rare circumstances should a party file a motion, opposition, or reply under seal.” LCR
17 5(g)(5). Normally the moving party must include “a specific statement of the applicable legal
18 standard and the reasons for keeping a document under seal, with evidentiary support from
19 declarations where necessary.” LCR 5(g)(3)(B). However:

21 Where parties have entered a litigation agreement or stipulated
22 protective order (see LCR 26(c)(2)) governing the exchange in
23 discovery of documents that a party deems confidential, a party
24 wishing to file a confidential document it obtained from another
25 party in discovery may file a motion to seal but need not satisfy
26 subpart (3)(B) above. Instead, the party who designated the
document confidential must satisfy subpart (3)(B) in its response to
the motion to seal or in a stipulated motion.

27 ¹ On top of it all, the Court notes that although the Response brief concludes by saying NNA wants all of these
28 exhibits to “remain under seal,” including Exhibits A and X, in an earlier footnote NNA states that it “does not seek
to seal Exhibit A or X, which are a [sic] publicly-available documents from NHTSA.” Dkt. #98 at 5 n.1. NNA
also requests that many exhibits be unsealed with redactions, as set forth below.

1 LCR 5(g)(3). A “good cause” showing under Rule 26(c) will suffice to keep sealed records
2 attached to non-dispositive motions. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,
3 1180 (9th Cir. 2006) (internal citations omitted). For dispositive motions, the presumption may
4 be overcome by demonstrating “compelling reasons.” *Id.*; *Foltz v. State Farm Mutual Auto. Ins.*
5 *Co.*, 331 F.3d 1135-36 (9th Cir.2003). Applying the “compelling reasons” standard, the Ninth
6 Circuit has found appropriate the sealing of documents attached to a motion for summary
7 judgment when court records could be used “as sources of business information that might harm
8 a litigant’s competitive standing.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,
9 1097 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (2016).

11 As an initial matter, the Court is asked to determine whether the “good cause” or
12 “compelling reason” standard applies to the sealing of records attached to a Motion for Class
13 Certification. Plaintiffs assume that the “compelling reason” standard applies. *See* Dkts. #89 at
14 2, #92 at 2. NNA argues that either standard could apply, depending on whether the Court
15 believes a Motion such as this one is dispositive. Dkt. #98 at 3 (“[i]n the Ninth Circuit, courts
16 are split on whether the ‘good cause’ or ‘compelling reasons’ standard applies to sealed
17 documents in the class certification context.”) (citing cases). Framed differently, one Court has
18 found that it is appropriate to apply the “good cause” standard “[u]nless the denial of a motion
19 for class certification would constitute the death knell of a case.” *Mezzadri v. Med. Depot, Inc.*,
20 No. 14-CV-22330-AJB-DHB, 2015 WL 12564223, at *2 (S.D. Cal. Dec. 18, 2015). Ultimately,
21 NNA argues that it has satisfied both the “good cause” and “compelling reasons” standards.
22 Dkt. #98 at 4. The Court agrees in part and finds that compelling reasons exist to keep the
23 below exhibits under seal. For those exhibits to be unsealed, the Court has found that NNA has
24 failed to demonstrate either good cause or compelling reasons.
25
26
27
28

1 Plaintiffs have declined to file any Reply briefs in support of their Motions to Seal.

2 **A. Plaintiffs' Sealed Exhibits**

3 The Court agrees that Exhibits J, M, O, and T contain proprietary information regarding
4 product specifications, numbers indicative of sales and market trends for NNA vehicles, and
5 warranty information. *See* Declaration of Derek Latta ("Latta Decl."), Dkt. #95, ¶ 15.

6 Exhibits B and C are the reports of Plaintiffs' experts containing NNA's proprietary
7 technical information, design features and specifications of NNA vehicles, graphic illustrations
8 and drawings, internal engineering analyses of NNA employees, and warranty information and
9 analysis. *See id.* at ¶ 17. NNA argues, "[i]f Exhibits B and C are not maintained under seal,
10 this information could be obtained by a competitor, who could use it to copy NNA's
11 specifications and designs, understand NNA's internal design and engineering trade secrets and
12 strategies, understand NNA's warranty strategies, and understand and/or incorporate for itself
13 NNA's proprietary engineering analyses and processes." Dkt. #98 at 8 (citing Latta Decl. at ¶
14 17). The Court has no basis to disagree and these exhibits should remain sealed.

15 Exhibits D, F, H, L, Y, Z, and AA, contain communications with NNA's sunroof
16 suppliers and include NNA's design opinions and strategy, analysis and testing of glass in
17 NNA's vehicles, safety-related information, warranty details and analyses, and detailed
18 technical specifications. *See* Latta Decl. at ¶ 21. This type of information is typically
19 maintained under seal as proprietary business information that could aid competitors. These
20 exhibits should remain under seal, except for Exhibit L, which can be redacted.

21 NNA argues that Exhibit E should be sealed as it contains "social media trending and
22 analysis, warranty information and analysis, and NNA's consideration and response to NHTSA
23 campaigns." *See id.* at ¶ 22. The Court has reviewed this exhibit and disagrees that information
24
25
26
27
28

1 posted publicly on social media, collected by NNA, constitutes proprietary business
2 information. NNA has failed to show how this exhibit, which contains research rather than
3 decision-making, could reflect internal business processes and thinking or create a competitive
4 disadvantage for NNA, other than by simply stating it is so. Even if this information could be
5 seen as proprietary in some fashion, the data are more than five years old and would likely not
6 affect NNA going forward. This exhibit will be unsealed.
7

8 Exhibits G and P contain information from NNA’s Global Concern Administration and
9 Reporting System (“GCARS”). NNA argues that the reports in these exhibits reflect
10 “immediate impressions of NNA personnel” and that “[s]uch spontaneous reactions, if made
11 public, could harm NNA in the short term and could deter the very immediacy and spontaneity
12 NNA is trying to accomplish.” Dkt. #98 at 11. NNA cites no legal basis to support this specific
13 argument, and the Court finds that it need not seal such documents simply because employee
14 reports contain damaging first impressions. These documents will be unsealed.
15

16 Exhibit I was produced by Nissan Motor, Ltd. As part of this litigation and contains
17 sensitive business information. *See* Latta Decl. at ¶ 25. The Court agrees that this exhibit
18 should remain under seal.
19

20 NNA argues that Exhibits K and N contain internal NNA communications reflecting
21 proprietary design and engineering information, including trade secret information. *See id.* at ¶
22 26. NNA argues that disclosure “would provide competitors a detailed view of NNA’s
23 engineering processes, trade secret information, vehicle design options and specifications.”
24 Dkt. #98 at 12. The Court disagrees. These exhibits contain only a few sentences in emails, at
25 most showing one employee’s perspective that one type of sunroof might be better than another.
26 These exhibits will be unsealed.
27
28

1 Exhibit V is properly unsealed and redacted as suggested by NNA as it contains certain
2 proprietary business information.

3 Exhibit S contains NNA's proprietary and confidential sales information and shall
4 remain under seal. *See id.* at ¶ 28.

5 The Court finds that the above exhibits, other than Exhibits E, G, and P, K, and N,
6 should be sealed or redacted as set forth by NNA's proposed order. For the convenience of the
7 Court, the currently filed exhibits associated with the Declaration of Benjamin M. Drachler
8 (Dkt. #90) will remain under seal and the Court will direct Plaintiffs to submit new redacted and
9 unsealed exhibits.
10

11 **B. Plaintiffs' Sealed Motion Briefing**

12 NNA has, for whatever reason, not addressed this issue. This silence comes after
13 initially failing to respond at all to Plaintiffs' Motions, requiring the Court's intervention via
14 minute order. There is no argument from either party in favor of sealing the briefing, although
15 Plaintiffs spent time dutifully redacting it. *See* Dkt. #91-1. The Court has compared the
16 redacted and unredacted versions to learn what, exactly, is at issue with each redaction. Some
17 of the redacted portions quote the above exhibits, while others do not. The Court will not *sua*
18 *sponte* argue for these redactions. Given the strong presumption of public access to the Court's
19 files, and the directive that a motion should be filed under seal "only in rare circumstances," the
20 Court will deny this portion of Plaintiffs' Motions and order the unsealing of the Motion for
21 Class Certification, Dkt. #94. Any prejudice to NNA is self-inflicted.
22
23

24 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,
25 and the remainder of the record, the Court hereby finds and ORDERS that:
26

- 27 1) Plaintiffs' Motions to Seal, Dkt. #89 and Dkt. #92, are GRANTED IN PART.
28

