

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SYNERGY GREENTECH CORPORATION,)	No. 3:12-cv-05543-BHS
)	
Plaintiff,)	STIPULATED MOTION TO SEAL
)	DOCUMENTS FILED WITH
v.)	MAGNA FORCE SUMMARY
)	JUDGMENT MOTION
MAGNA FORCE, INC.,)	
)	NOTE ON MOTION
Defendant.)	CALENDAR: May 29, 2013

In accordance with CR 5(g) and 7(d)(1), and the Protective Order governing this case (Dkt. 21), Defendant Magna Force, Inc. (“Magna Force”) and Plaintiff Synergy GreenTech Corp. (“Synergy”) jointly move the Court to seal portions of Magna Force, Inc.’s concurrently filed Motion for Summary Judgment (“Motion”), and the supporting Declaration of Daniel Davies. Specifically, the Parties move to seal (1) Exhibits A, B, E, F, G,H,I, M, W, X, and Y to the Davies Declaration; and (2) portions of the Motion that refer to or quote these exhibits. The exhibits should be sealed because they contain or refer to confidential Magna Force and Synergy financial data, and confidential information about the Parties’ strategic planning and direction.

Both the Supreme Court and the Ninth Circuit have held that good cause exists to limit public access to judicial documents where such records constitute “sources of business information that might harm a litigant’s competitive standing.” *See, e.g., Nixon v. Warner*

1 *Commc'ns, Inc.*, 435 U.S. 589, 598 (1978); *In re McClatchy Newspapers, Inc.*, 288 F.3d 369,
2 370-71 (9th Cir. 2002); *Hagestad v. Tragessor*, 49 F.3d 1430, 1434 (9th Cir. 1995) (holding
3 that the protection of trade secrets can overcome the public interest in understanding the
4 judicial process and support the sealing of documents filed in court (quoting *EEOC v. Erection*
5 *Co., Inc.*, 900 F.2d 168, 170 (9th Cir. 1990)).

6 In accordance with Local Rule 5(g)(3), to minimize the amount of material filed under
7 seal, The Parties conferred on May 29, 2013 and agreed that some exhibits attached to the
8 Davies Declaration need not be sealed despite being designated "Confidential" by one of the
9 parties during discovery. The Parties also agree that the following exhibits to the Davies
10 Declaration need only be redacted:

- 11 • **Exhibit F** is a copy of Global Management Technology Group, Inc. transaction
12 statements. It contains Global Management Technology Group's financial
13 accounting information, which should be redacted to the last four digits per LCR
14 5.2.

15 **Exhibit G** is excerpts from the transcript of Wayne Erickson's 39(b)(6)
16 deposition dated April 23, 2013. Some of the excerpts discuss confidential
17 business negotiations between Magna Force and Synergy-affiliated companies
18 and other Synergy confidential and proprietary business information, including
19 confidential term sheets, license agreements and the Patent Agreement under
20 which Synergy has confidentiality obligations, and specific patent and royalties
21 covered by the confidential terms in the Patent Agreement and License
22 Agreement.

23 The Parties agree on the need to file the following documents under seal:

- 24 • **Exhibit A** is a copy of Synergy's Arbitration Brief from the arbitration between
25 Petitioner MagnaDrive Corp. ("MDC") and Respondents Magna Force and
26 Synergy. It discusses Magna Force's, Synergy's, and MDC's confidential and
27 proprietary business information. The public dissemination of that information

1 would threaten to harm the competitive standing of both Synergy and Magna
2 Force. It further is subject to a confidentiality agreement between Synergy,
3 Magna Force, and the third-party MDC.

- 4 • **Exhibit B** is series of emails between Wayne Erickson, Ulysses Wang, Kelvin
5 Liu, and Jason Ting that Synergy designated Highly Confidential in production.
6 Synergy is a private company. It discusses Synergy's confidential and
7 proprietary business plans, and the public dissemination of that information
8 would threaten to harm the competitive standing of Synergy
- 9 • **Exhibit E** is a series of emails between Jo Klinski and Wayne Erickson that
10 Magna Force designated confidential in production. It discusses confidential
11 business negotiations between Magna Force and Synergy-affiliated companies
12 that is subject to a non-disclosure agreement. The public dissemination of that
13 information would threaten to harm the competitive standing of both Synergy
14 and Magna Force.
- 15 • **Exhibit H** is Synergy's Profit & Loss Detail statements from 2010 through
16 2012. Synergy is a private company. These statements contain Synergy's
17 confidential and proprietary business information. The public dissemination of
18 that information would threaten to harm the competitive standing of Synergy.
- 19 • **Exhibit I** is a Non-Exclusive Industrial and Commercial Fixed Air Gap
20 Coupling (FGC) License Agreement between Magna Force, Inc. and Magna
21 Technology Ltd. ("MTL") and Shanghai CIMIC Electrical Co., Ltd. ("CIMIC"),
22 dated January 10, 2010. It contains Magna Force's confidential and proprietary
23 business information concerning the value of the patent portfolio Magna Force
24 licensed to MTL and CIMIC and other contractual terms Magna Force was
25 willing to agree to when licensing patents. The public dissemination of that
26 information would threaten to harm the competitive standing of Magna Force in
27 any future negotiations with third-parties for the purchase of additional Magna

1 Force patents. The public dissemination of the information could also hurt the
2 competitive standing of MTL and CIMIC whom are not parties to this action.

- 3 • **Exhibit M** is an email attaching a letter Magna Force sent to MDC concerning
4 confidential business issues. The public dissemination of that information
5 would threaten to harm the competitive standing of Magna Force and MDC in
6 their negotiations with other parties.
- 7 • **Exhibit W** is a 2010 royalty report MDC submitted on February 10, 2011
8 pursuant to the License Agreement executed by MDC and Magna Force dated
9 June 10, 1999 (the "License Agreement"). It contains MDC, Magna Force, and
10 Synergy proprietary business information, including the value of the License
11 Agreement, and MDC's sales plans. The public dissemination of that
12 information would threaten to harm the competitive standing of MDC, Magna
13 Force, and Synergy.
- 14 • **Exhibit X** is a letter dated March 8, 2012 that MagnaDrive sent to Magna Force
15 concerning payment of supplemental royalties for the year 2011. It discusses
16 the confidential value of the License Agreement and private business issues
17 between Magna Force and MDC. The public dissemination of that information
18 would threaten to harm the competitive standing of MDC and Magna Force
- 19 • **Exhibit Y** is a Magna Force Board of Directors' Resolution Supporting the
20 Divestment of Specific Intellectual Properties dated August 15, 2010. It
21 contains confidential information concerning Magna Force's strategic planning
22 and direction. The public dissemination of that information would threaten to
23 harm the competitive standing of Magna Force.

1 Accordingly, the Parties respectfully request leave to file Exhibits A, B, E, F, G,H,I, M,
2 W, X, and Y to the Davies Declaration; and portions of the Motion that refer to or quote these
3 exhibits under seal.

4 DATED this 29th day of May, 2013.

5 Davis Wright Tremaine LLP
6 Attorneys for Defendant Magna Force, Inc.

Hogan Lovells US LLP
Attorneys for Plaintiff
Synergy GreenTech Corporation

7 By: s/ Daniel Davies

8 Warren Rheume, WSBA #13627
9 Daniel Davies, WSBA #41793
10 1201 Third Avenue, Suite 2200
11 Seattle, Washington 98101-3045
12 Telephone: (206) 757-8088
13 Fax: (206) 757-7088
14 E-mail: warrenrheume@dwt.com
15 dandavies@dwt.com

By: /s/ Jie Li

Robin E. Wechkin, WSBA #24746
8426 316th Pl. SE
Issaquah, WA 98027
Telephone: (425) 222-0595
Robin.wechkin@hoganlovells.com

K.T. Cherian (*Pro Hac Vice*)
Scott Wales (*Pro Hac Vice*)
Song Zhu (*Pro Hac Vice*)
Jie Li (*Pro Hac Vice*)
3 Embarcadero Center, 15th Floor
San Francisco, California 94111
Telephone: (415) 374-2301
Facsimile: (415) 374-2499
Sunny.cherian@hoganlovells.com
Scott.wales@hoganlovells.com
Jie.li@hoganlovells.com
Song.Zhu@hoganlovells.com

18
19 **IT IS SO ORDERED.**

20 The Clerk of Court is directed to retain under seal the unredacted version of the Magna
21 Force, Inc.'s Motion for Summary Judgment and Exhibits A, B, E, F, G, H, I, M, W, X, and Y
22 to the Davies Declaration.

23 Dated this 30 day of May, 2013.

24
25 
26 _____
The Honorable Benjamin H. Settle
UNITED STATES DISTRICT JUDGE