

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Tan v. Konnektive Rewards, LLC, et al.

Tan · No. 20-cv-1082-LL-DDL · Decided March 2, 2023

SUMMARY

The United States District Court for the Southern District of California denied Plaintiff Leanne Tan’s motions to seal documents related to defendants’ spoliation-sanctions motion and her perjury-related terminating-sanctions motion. The court held that the compelling-reasons standard applied and that defendants had not shown specific, compelling reasons or narrowly tailored requests for sealing. The court ordered public filing of unredacted documents within seven days and established procedures for future motions to seal confidentially designated materials.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	David D. Leshner
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 2, 2023
DOCKET	20-cv-1082-LL-DDL
DISPOSITION	denied
PROCEDURAL POSTURE	Plaintiff moved for leave to file documents under seal in connection with an opposition to an evidentiary-spoliation sanctions motion and a motion for terminating sanctions. Defendants joined the sealing requests.
STANDARD OF REVIEW	A party seeking to seal judicial records must overcome the strong presumption of public access. When the underlying motion is more than tangentially related to the merits, the party must establish compelling reasons supported by specific factual findings; sealing requests must also be narrowly tailored.
PRECEDENTIAL VALUE	Unknown; district court order with no stated precedential status.
PARTIES	Leanne Tan v. Konnektive Rewards, LLC, Quick Box Defendants, Konnektive Defendants

TOPICS

civil procedure

class actions

sanctions

evidence

consumer protection

PRACTICE AREAS

Civil procedure

Evidence

Class actions

Consumer protection

QUESTIONS PRESENTED

1. Whether the documents submitted in connection with the spoliation and perjury sanctions motions were subject to the compelling-reasons standard for sealing.
2. Whether Defendants demonstrated compelling reasons supported by specific facts to overcome the public's right of access to the requested judicial records.
3. Whether the sealing requests were narrowly tailored to protect only information warranting secrecy.
4. What procedures the parties must follow for future motions to seal documents designated confidential by another party.

HOLDINGS

1. The compelling-reasons standard applies because both the spoliation motion and the perjury motion are more than tangentially related to the merits of the case; the perjury motion is also dispositive.
2. Defendants failed to demonstrate compelling reasons to seal Plaintiff's opposition to the spoliation motion, the specified exhibits, Plaintiff's perjury motion, and the specified exhibits.
3. A contractual obligation to maintain information confidential, and the fact that information is financial or commercially sensitive, do not by themselves establish compelling reasons to seal judicial records.
4. The parties' requests to seal documents in their entirety were independently improper because they were not narrowly tailored to remove only material warranting secrecy.
5. For future motions to seal documents designated confidential by another party, the moving party must provide at least 36 hours' notice of the motion and documents; the designating party must identify within 24 hours any documents for which confidentiality is withdrawn; and the motion must include counsel's statement that the procedures were followed.

KEY QUOTATIONS

"Unless a particular court record is one 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting point." (at 2)

"The Court is not obligated to scour the docket for similar motions Plaintiff (or any other party) may have filed and graft the parties' arguments into the present dispute, regardless of any factual or legal overlap." (at 6)

"To meet that standard, the party seeking sealing must make a showing, supported by specific facts, that the records at issue could 'become a vehicle for improper purposes' if not kept confidential." (at 8)

"[T]he fact that parties contract or agree to treat certain information . . . as confidential is an insufficient basis in and of itself for a court to seal a judicial record and override the public's interest in understanding

the judicial process.”” (at 10)

““Any request to seal must also be ‘narrowly tailored’ to remove from the public sphere only material that warrants secrecy.”” (at 12)

““The indiscriminate designation of documents is an abusive discovery practice that ‘attempt[s] to shift the burden’ of identifying a party’s confidential information to other parties.”” (at 13)

FACTUAL BACKGROUND

Plaintiff alleges that Defendants induced her to accept a skin-care product trial for less than \$5 in shipping costs, then charged her more than \$170 for products and installment payments she did not authorize. She supported a proposed class-certification motion with deposition testimony concerning a text message that allegedly initiated the transaction. Defendants asserted that Plaintiff spoliated her cell phone and the alleged text message, and Plaintiff later sought terminating sanctions based on alleged perjury by Quick Box's CEO. The sealing requests concerned exhibits and briefing related to those sanctions disputes, including alleged business, financial, customer-account, and communications information.

PROCEDURAL HISTORY

In a putative consumer-fraud class action, Defendants moved for evidentiary sanctions based on alleged spoliation of Plaintiff's cell phone and related text messages. Plaintiff opposed that motion and separately sought terminating sanctions against Quick Box and its CEO. Plaintiff filed motions to seal materials associated with both disputes, while Defendants joined or supported the requests. The court denied both motions to seal and ordered public filing of specified unredacted documents within seven days, while establishing procedures for future sealing motions.

DISPOSITION

denied

CASES CITED

- *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978)
- *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006)
- *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135, 1139 (9th Cir. 2003)
- *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-98, 1101-02 (9th Cir. 2016)
- *Whitecrypton Corp. v. Arxan Techs., Inc.*, No. 15-cv-00754-WHO, 2016 WL 7852471, at *2 (N.D. Cal. Mar. 9, 2016)
- *SiteLock LLC v. GoDaddy.com LLC*, No. CV-19-02746-PHX-DWL, 2021 WL 1574660, at *14 (D. Ariz. Apr. 15, 2021)
- *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-CV-3393 YGR, 2014 WL 2886246, at *2 (N.D. Cal. June 25, 2014)
- *Edifecs, Inc. v. Welltok, Inc.*, No. C18-1086JLR, 2019 WL 5618822, at *1 (W.D. Wash. Oct. 31, 2019)

- Charles v. Target Corp., No. 20-CV-07854-HSG, 2022 WL 3205047, at *3 (N.D. Cal. July 6, 2022)
- Anderson v. Marsh, 312 F.R.D. 584, 594 (E.D. Cal. 2015)
- Mission Wellness Pharmacy LLC v. Caremark LLC, No. CV-22-00967-PHX-GMS, 2022 WL 17039205, at *2 (D. Ariz. Nov. 17, 2022)
- U.S. Ethernet Innovations, LLC v. Acer, Inc., No. C 10-3724 CW, 2013 WL 4426507, at *2 (N.D. Cal. Aug. 14, 2013)
- Bunsow De Mory LLP v. N. Forty Consulting LLC, No. 20-CV-04997-JSC, 2020 WL 7872197, at *2 (N.D. Cal. Aug. 7, 2020)
- Orthopaedic Hosp. v. Encore Med., L.P., No. 19-cv-970 JLS (AHG), 2021 WL 1966121, at *2 (S.D. Cal. Apr. 12, 2021)
- Pac. Marine Propellers, Inc. v. Wartsila Def., Inc., No. 17-cv-555-L-NLS, 2018 WL 6601671, at *2 (S.D. Cal. Dec. 14, 2018)
- Grano v. Sodexo Mgmt., Inc., No. 18-cv-1818-RSH-BLM, 2022 WL 3371621, at *2 (S.D. Cal. Aug. 16, 2022)
- In re Google Location Hist. Litig., 514 F. Supp. 3d 1147, 1164 (N.D. Cal. 2021)
- Harper v. Nevada Prop. 1, LLC, 552 F. Supp. 3d 1033, 1040-41 (D. Nev. 2021)
- McGhee v. N. Am. Bancard, LLC, No. 17-CV-00586-AJB-KSC, 2021 WL 2577159, at *10 (S.D. Cal. June 23, 2021)
- Gopher Media, LLC v. Spain, No. 319CV02280CABKSC, 2020 WL 12688143, at *4 (S.D. Cal. Aug. 24, 2020)

OPINION

Tan v. Quick Box, LLC

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 LEANNE TAN, an individual, on behalf Case No.: 20-cv-1082-LL-DDL of herself and all
others similarly 12 situated,

13 ORDER ON PLAINTIFF’S

Plaintiff,

MOTIONS TO SEAL

14 v. 15

KONNEKTIVE REWARDS, LLC, et

16 al., [Dkt. Nos. 258, 264] 17 Defendants. 18 19 Before the Court are two Motions for Leave to
File Documents Under Seal 20 (the “Motions to Seal”) by Plaintiff Leanne Tan (“Plaintiff”). Dkt.
Nos. 258, 264. 21 The Konnektive Defendants and the Quick Box Defendants (collectively, 22
“Defendants”) join. See Dkt. No. 267. For the reasons stated below, the Motions 23 to Seal are
DENIED. 24 I.

25 BACKGROUND

26 In this putative consumer fraud class action, Plaintiff alleges Defendants and 27 others “scammed” her by enticing her to redeem an offer for a free trial of skin care 28 products, only to charge her, unwittingly, for the full price of the products and 1 ongoing installments of the same. See generally Dkt. No. 89. In Plaintiff’s case, 2 the alleged scam began with a text message that appeared to be from Amazon. 3 See *id.* Plaintiff alleges she was duped by means of the text message into signing 4 up to receive a sample of skin cream for only the price of shipping – less than 5 \$5.00 – but that ultimately Defendants charged her more than \$170.00 for products 6 she neither wanted nor consented to buy. See *id.* Plaintiff has moved to certify a 7 class of similarly aggrieved consumers, supported by her deposition testimony 8 about the text message she received. See Dkt. Nos. 229, 229-4 (under seal). 9 On January 4, 2023, the Konnektive Defendants moved for evidentiary 10 sanctions against Plaintiff, reporting that Plaintiff had spoliated her cell phone and 11 with it, the “fake text message” she allegedly received. Dkt. No. 254 (the 12 “Spoliation Motion”). The Quick Box Defendants joined the motion. Dkt. No. 255. 13 Defendants seek an order precluding Plaintiff from testifying, whether by 14 declaration or at trial, about the contents of the text messages that were allegedly 15 lost. Dkt. No. 260 at 6. Plaintiff opposed the Spoliation Motion, Dkt. No. 259, and 16 concurrently moved to seal Exhibits 1 and 4 to her opposition, as well as portions 17 of her opposition brief that quote from or reveal the contents of those exhibits. Dkt.

18 No. 258.

19 On February 2, 2023, Plaintiff moved for terminating sanctions, alleging that 20 Quick Box’s CEO, Stephen Adélé, “perjured himself” in declarations before the 21 District Court, undermining the judicial process and causing “severe[] prejudice” to 22 Plaintiff (the “Perjury Motion”). Dkt. No. 263. Plaintiff asks the Court to enter 23 default judgment against Adélé and Quick Box, LLC. See *id.* Plaintiff concurrently 24 moved to file 18 exhibits to the Perjury Motion under seal.¹ Dkt. No. 264. 25 26 27 1 The Quick Box Defendants’ motion to file documents related to their opposition to the Perjury Motion under seal will be addressed in a separate order. See Dkt. 28 1 II.

2 LEGAL STANDARDS

3 “[T]he courts of this country recognize a general right to inspect and copy 4 public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court 6 record is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is 7 the starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th

8 Cir. 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th

9 Cir. 2003)). “‘The presumption of access is ‘based on the need for federal courts,

10 although independent—indeed, particularly because they are independent—to 11 have a measure of accountability and for the public to have confidence in the 12 administration of justice.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 13 1092, 1096 (9th Cir. 2016)

(citation omitted). 14 A party seeking to seal a judicial record bears the burden of overcoming the 15 strong presumption of access. Foltz, 331 F.3d at 1135. The showing required to 16 meet this burden depends upon whether the documents to be sealed relate to a 17 motion that is “more than tangentially related to the merits of the case.” Ctr. for 18 Auto Safety, 809 F.3d at 1102. Where the underlying motion is “more than 19 tangentially related to the merits,” there must be “compelling reasons” to overcome 20 the public’s right of access. Id. at 1096–98. Where the underlying motion does not 21 surpass the tangential relevance threshold, materials may be sealed only upon a 22 showing of “good cause.” Id. Under either standard, limited redactions are to be 23 favored over the wholesale sealing of documents. See *Whitecrypton Corp. v. 24 Arxan Techs., Inc.*, No. 15-cv-00754-WHO, 2016 WL7852471, at *2 (N.D. Cal.

25 Mar. 9, 2016) (noting that records should be redacted “in the narrowest way 26 possible to preserve their confidential information while protecting the general right 27 of the public to access court records”). 28 / / / 1 III.

2 DISCUSSION

3 Before proceeding with its analysis, the Court takes the opportunity to 4 address parties’ briefing – or lack thereof – on the Motions to Seal. Although each 5 of Plaintiff’s filings was styled as a “motion for leave to file documents under seal,” 6 Plaintiff does not, in fact, want permission to file any documents under seal. See 7 Dkt. Nos. 258, 264. Instead, Plaintiff states in each of her single-page filings that 8 none of the materials at issue qualify for sealing, but that pursuant to the operative 9 protective order, she was required to file them under seal. See *id.* Plaintiff seeks 10 “relief from the requirements of the Protective Order.” Id. “[T]o avoid repetitive 11 briefing,” Plaintiff incorporated by reference a previously filed motion to seal and 12 stated that “for the same reasons articulated in that motion, the materials in this 13 motion . . . should not be required to be filed under seal.” Dkt. No. 258 at 2 14 (referencing Dkt. No. 230); Dkt. No. 264 at 2 (same). While this approach may 15 have spared Plaintiff time and effort, it did not have the same benefit for the Court. 16 Plaintiff is reminded that in seeking relief from the Court, it is her responsibility to 17 provide the Court with the legal and factual bases in support thereof. See CivLR 18 7.1.f. The Court is not obligated to scour the docket for similar motions Plaintiff (or 19 any other party) may have filed and graft the parties’ arguments into the present 20 dispute, regardless of any factual or legal overlap. The Court cautions Plaintiff – 21 and all parties – that going forward, motions will be decided on the moving papers 22 only, and the failure to provide the Court with complete briefing may result in denial 23 of the requested relief. See CivLR 7.1.d. 24 As to Defendants, their brief in support of sealing is replete with the rote 25 incantation that the documents concern “confidential” and “proprietary” business 26 information, without further analysis and unsupported by a declaration or other 27 evidence. See generally Dkt. No. 267. Such “perfunctory submission[s]” do not 28 assist the Court, who must then “decide [the] complex issue of sealing with no 1 adversarial briefing” from those litigants who are in the best position to explain why 2 their information meets the Ninth Circuit’s standard for sealing. See *SiteLock LLC*

3 v. GoDaddy.com LLC, No. CV-19-02746-PHX-DWL, 2021 WL 1574660, at *14 (D. 4 Ariz. Apr. 22, 2021) (denying motion to seal); see also *AngioScore, Inc. v. TriReme 5 Med., Inc.*, No. 12-CV-3393 YGR, 2014 WL 2886246, at *2 (N.D. Cal. June 25, 6 2014) (noting the “undue burden” imposed upon the Court by sealing motions that 7 do not make more than “bare allegations of harm”). The Court takes the matter of 8 sealing judicial records seriously and expects the parties to do the same by way of 9 complete and thorough briefing. 10 Notwithstanding the foregoing, the Court has endeavored to evaluate 11 whether the documents before it are sealable. Having reviewed the documents, 12 and considering the governing Ninth Circuit standards for sealing, the Court finds 13 they are not. 14 A. The “Compelling Reasons” Standard Applies 15 In determining which standard should govern a request to seal judicial 16 records, the Ninth Circuit cautions against adopting a “bright line rule” that would 17 employ the “compelling reasons” standard only where the underlying motion is 18 “technically dispositive.” *Ctr. for Auto Safety*, 809 F.3d at 1101-02. Here, the Court 19 finds that the Spoliation Motion is “more than tangentially related to the merits of 20 [the] case,” *id.* at 1102, because the relief requested by Defendants would, if 21 granted, impose restrictions on the evidence Plaintiff can present both for purposes 22 of class certification and at trial. See *Edifecs, Inc. v. Welltok, Inc.*, No. C18- 23 1086JLR, 2019 WL 5618822, at *1 (W.D. Wash. Oct. 31, 2019) (applying 24 compelling reasons standard to a motion for evidentiary sanctions); see also 25 *Charles v. Target Corp.*, No. 20-CV-07854-HSG, 2022 WL 3205047, at *3 (N.D. 26 Cal. July 6, 2022) (applying compelling reasons standard to motion for spoliation 27 sanctions). The Court further finds that the Perjury Motion, indisputably a 28 dispositive motion, is also more than tangentially related to the merits. Therefore, 1 the Court evaluates the Motions to Seal under the “compelling reasons” standard. 2 To meet that standard, the party seeking sealing must make a showing, supported 3 by specific facts, that the records at issue could “become a vehicle for improper 4 purposes” if not kept confidential. *Kamakana*, 447 F.3d at 1179 (citation omitted). 5 The Court must then “balance the competing interests of the public and the party 6 seeking to seal judicial records.” In re *Midland Nat. Life Ins. Co. Annuity Sales 7 Prac. Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) (citation omitted). 8 B. Defendants Have Not Articulated Compelling Reasons for Sealing 9 Plaintiff’s Opposition to the Spoliation Motion and Exhibits 1 and 4 10 Thereto 11 In support of their request to seal documents related to the Spoliation Motion, 12 Defendants conclusorily assert that Exhibits 1 and 4 contain “confidential business 13 and financial information [that] is likely to be misused to the detriment of both the 14 Konnektive Defendants and its [sic] licensees.” Dkt. No. 267 at 5. Defendants 15 further state that Exhibit 1 is a screenshot of Konnektive’s “proprietary” software 16 and that disclosure of the way the software “catalogs and organizes information in 17 an easily digestible format for users is proprietary and essential to the Konnektive 18 Defendants’ competitive advantage over other services.” *Id.* at 4. Defendants also 19 note that the screenshots include the “account settings for one of [their] licensees’ 20 customers.” *Id.* As to Exhibit 4, Defendants assert that the document contains 21 licensees’ sales,

pricing, and revenue information “on a granular level” that 22 Konnektive is “contractually obligated” to keep confidential. *Id.* at 5. Defendants’ 23 joinder is silent as to the proposed redactions to Plaintiff’s opposition brief. 24 The Court finds that Defendants have failed to carry their burden to establish 25 compelling reasons to seal. To begin, neither party has articulated any basis for 26 sealing Plaintiff’s opposition brief, and the Court’s independent review reveals 27 none. Put simply, nothing in the record before the Court would justify the sealing 28 of information regarding the number of potential class members, the type of phone 1 Plaintiff used during the time period at issue, or the fact that Defendants or their 2 affiliates tracked the specific advertisements or surveys that led customers to their 3 websites to purchase their products (or obtain them for free). 4 Further, Defendants’ vague, conjectural statements that the information 5 contained in Exhibits 1 and 4 “is likely to be misused” and that its disclosure would 6 “harm” Konnektive’s “competitive advantage” are exactly the type of 7 unsubstantiated allegations of nonspecific harm that courts in this Circuit have 8 repeatedly found do not demonstrate good cause, let alone compelling reasons, 9 for sealing. See *Anderson v. Marsh*, 312 F.R.D. 584, 594 (E.D. Cal. 2015) (citing 10 *Foltz* for the proposition that “broad allegations of harm” do not satisfy the good 11 cause standard); accord *Midland*, 686 F.3d at 1120 (noting that even where good 12 cause standard is satisfied, compelling reasons test will not be met). The “parties’ 13 mere allegations that disclosure would harm their competitive standing are 14 insufficient to justify sealing court records.” *Mission Wellness Pharmacy LLC v. 15 Caremark LLC*, No. CV-22-00967-PHX-GMS, 2022 WL 17039205, at *2 (D. Ariz.

16 Nov. 17, 2022) (citing *Kamakana*, 447 F.3d at 1179).

17 Relatedly, the bare fact that the documents reveal the “identity and account 18 numbers ... and processing capacity” for Defendants’ business affiliates, devoid of 19 further analysis, does not establish compelling reasons to seal. See *U.S. Ethernet 20 Innovations, LLC v. Acer, Inc.*, No. C 10-3724 CW, 2013 WL 4426507, at *2 (N.D. 21 Cal. Aug. 14, 2013) (finding that party’s “broad and generic statements” of 22 competitive harm and security concerns did not meet the compelling reasons 23 standard for sealing, where party “provide[d] no specific facts or explanation of . . . 24 . what these security concerns are, how it would be hurt competitively and why it 25 expects that this would result from public disclosure of this material”); see also 26 *Bunsow De Mory LLP v. N. Forty Consulting LLC*, No. 20-CV-04997-JSC, 2020 27 WL 7872197, at *2 (N.D. Cal. Aug. 7, 2020) (finding that “merely mentioning a party 28 with whom Plaintiff has done business or worked together does not offer a 1 compelling reason to seal the party’s name absent evidence that the name of its 2 long-time client is a trade secret”). 3 For the same reasons, the Court finds that Defendants have not met their 4 burden of showing that the financial and revenue information contained in Exhibit 5 4 is sealable. It is true that financial and other “commercially sensitive information” 6 has been found sealable by courts in this District and within the Ninth Circuit. See 7 Dkt. No. 257 at 5 (citing *Orthopaedic Hosp. v. Encore Med., L.P.*, No. 19-cv-970 8 JLS (AHG), 2021 WL 1966121, at *2 (S.D. Cal. Apr. 12, 2021)). But the question 9 for the Court is not

whether similar information has been sealed before, but 10 whether the parties have made the necessary showing that it is sealable in this 11 instance. Financial information is not per se subject to sealing, particularly where 12 the passage of time has ameliorated the sensitivity of the information. See *Pac. Marine Propellers, Inc. v. Wartsila Def., Inc.*, No. 17-cv-555-L-NLS, 2018 WL 14 6601671, *2 (S.D. Cal. Dec. 14, 2018) (denying motion to seal because 15 “[d]efendants have not shown why this outdated [financial] information would have 16 any effect on [its] competitive standing at the present”). Here, the financial 17 information in question is three to four years out of date, and Defendants have not 18 “supported” the assertion that their interest in the confidentiality of this information 19 outweighs the public’s right of access with any “specific factual findings.” 20 *Kamakana*, 447 F.3d 1178-79 (citation omitted). 21 The Court is also unpersuaded by the fact that the “End User License 22 Agreement,” entered in the abstract and without regard to whether any particular 23 document or piece of information meets the Ninth Circuit’s standard for sealing 24 judicial records, requires the Konnektive Defendants to maintain its licensees’ 25 information in confidence. “[T]he fact that parties contract or agree to treat certain 26 information . . . as confidential is an insufficient basis in and of itself for a court to 27 seal a judicial record and override the public’s interest in understanding the judicial 28 process.” *Grano v. Sodexo Mgmt., Inc.*, No. 18-cv-1818-RSH-BLM, 2022 WL 1 3371621, at *2 (S.D. Cal. Aug. 16, 2022) (collecting cases). A contrary ruling would 2 render the public’s right of access meaningless. 3 Finally, the Court rejects Defendants’ argument that Exhibit 1 should be 4 sealed because it contains account information about “one of the Konnektive 5 Defendants’ . . . licensees’ customers.” Dkt. No. 267 at 4. Here again, Defendants 6 have made no showing of how this information could be misused, as was their 7 burden. *Kamakana*, 447 F.3d 1178-79. Furthermore, the customer in question 8 appears to be Plaintiff, who has already stated her belief that the document should 9 not be sealed. 10 C. Defendants Have Not Articulated Compelling Reasons to Seal 11 Plaintiff’s Perjury Motion and Exhibits 6, 7, 8, 10, 11, 12, 13, 14, 17 and 12 18 Thereto 13 As with the Spoliation Motion, Defendants make only broad-strokes 14 arguments in support of sealing Plaintiff’s Perjury Motion and certain of the 15 supporting exhibits, nearly all of which are documents produced by Quick Box 16 during the litigation.² Defendants generically state that Exhibits 6, 7, 8, 10, 11, 12, 17 13 and 14 “concern [Quick Box’s] business operations” and “business model.” Dkt.

18 No. 267 at 5. They assert that disclosure of this “confidential business and financial 19 information would damage Quick Box’s ability to compete with other fulfillment 20 companies . . .” *Id.* at 6. For the same reasons discussed above, the Court finds 21 that these broad, nonspecific assertions are insufficient to meet satisfy Defendants’ 22 burden to demonstrate that the documents are sealable. See *Harper v. Nevada*

23 *Prop. 1, LLC*, 552 F.Supp.3d 1033, 1040 (D. Nev. 2021) (noting that “[t]he burden 24 to show compelling reasons is not met by conclusory assertions”). 25 26 27 2 The Quick Box Defendants have withdrawn their confidentiality designations as to Exhibits 1, 2, 3, 4, 5, 9, 15 and

16. Dkt. No. 267 at 2 n.1. The request to seal 28 1 The Court further finds Quick Box’s assertion that disclosure of these 2 documents would provide unnamed “others” with “insight . . . as to how they can 3 compete with Quick Box and achieve the same level of success” is entirely 4 speculative. Dkt. No. 267 at 6. Moreover, Defendants’ assertions of potential 5 competitive harm are significantly undermined by Quick Box’s selective de- 6 designation of documents. Dkt. No. 267 at 2 n.1. The Court cannot discern without 7 guessing, for example, why Quick Box’s “Master Services Agreement” can be 8 publicly disclosed but a single-page email containing no text cannot. Compare Ex. 9 3 (Dkt. No. 265-1 at 7-24) with Ex. 14 (id. at 114). To the Court’s reading, the 10 documents do not reveal any business strategy or trade secrets that would warrant 11 protection, but instead largely concern routine matters such the recovery of 12 receivables from a single business affiliate and a product label mockup. Because 13 the parties have failed to identify a nonspeculative, compelling reason for sealing, 14 the Court also “cannot articulate compelling reasons to keep the information under 15 seal ‘without relying on hypothesis or conjecture.’” In re Google Location Hist. 16 Litig., 514 F. Supp. 3d 1147, 1164 (N.D. Cal. 2021) (citation omitted). 17 The Court further finds the Defendants’ contractual obligation to maintain 18 business information in confidence is not a compelling reason to seal the 19 documents. For the reasons explained above, private parties cannot negotiate 20 away the public’s right of access to the judicial records. 21 Defendants also request sealing of Exhibits 17 and 18, emails from Plaintiff’s 22 counsel to Defendant’s counsel regarding the alleged dishonesty and discovery 23 abuses that are the subject of the Perjury Motion. Dkt. No. 267 at 7. Defendants 24 state these emails “have no evidentiary relevance” and serve only to “further 25 disparage the Quick Box Defendants and their counsel.” Id. However 26 “unprofessional” (id.) these missives might be, though, there is nothing in them that 27 is not also stated in the publicly available Perjury Motion. See Dkt. No. 263. The 28 Court appreciates the seriousness of the allegations Plaintiff has made and that 1 Defendants and their counsel strenuously dispute them. But, given that those 2 allegations are the basis of the Perjury Motion, the Court cannot say that the sole 3 purpose of the emails is to “‘gratify private spite.’” Dkt. No. 267 at 7 (citing Ctr. for 4 Auto Safety, 809 F.3d at 1097). The Court therefore finds that Defendants have 5 not demonstrated compelling reasons to seal Exhibits 17 and 18. 6 Having concluded that the exhibits to the Perjury Motion are not sealable, 7 the Court further finds that Plaintiff’s memorandum of points and authorities in 8 support of that motion is also not sealable. 9 D. The Parties Failed to Narrowly Tailor Their Sealing Requests 10 “Any request to seal must also be ‘narrowly tailored’ to remove from the 11 public sphere only material that warrants secrecy.” Harper, 552 F.Supp.3d at 12 1040-41. Here, Defendants made no effort to limit their requests for sealing to 13 their purportedly sensitive information, choosing instead to advocate for sealing 14 the documents in their entirety. For example, Defendants assert that Exhibit 11, a 15 96-page printout of a company chat thread, is sealable in its entirety because it “is 16 a day-to-day, moment-by-moment account of how Quick Box” does business. Dkt. 17 No. 267 at 6. Yet even a cursory review of the document reveals a great deal of

18 information that is patently not subject to sealing, including requests to schedule 19 meetings and to be added to distribution lists, the CEO's encouraging remarks in 20 the face of COVID lockdowns and delays, and line upon line of html tags. See Dkt.

21 No. 265-2 at 2-97. This information is not remotely protectable under the Ninth
22 Circuit's standards. 23 Although the Court has found that the documents are not sealable for other 24 reasons as explained above, the parties' failure to narrowly tailor their sealing 25 requests provides an independent reason to deny the Motions to Seal. See Foltz, 26 331 F.3d at 1139 (finding it was an abuse of discretion to grant a motion to seal an 27 entire document where the confidential information could have been "redacted with 28 minimal effort"). The parties are cautioned that Court will not endorse the 1 wholesale sealing of redactable documents, nor will it undertake the task of 2 redacting limited and potentially sensitive information from a lengthy document 3 where the parties themselves did not do so. 4 E. Quick Box's Indiscriminate Designation of Documents as 5 "Confidential" 6 The Court's review of the exhibits attached to Plaintiff's Perjury Motion 7 suggests that Quick Box's designation of documents as confidential pursuant to 8 the operative protective order has not been the product of "a careful evaluation of 9 the potential harm that might occur if any particular document were disclosed," but 10 instead a troubling practice of designating documents en masse. See McGhee v. 11 N. Am. Bancard, LLC, No. 17-CV-00586-AJB-KSC, 2021 WL 2577159, at *10 12 (S.D. Cal. June 23, 2021). The Court's conclusion in this regard is supported by 13 the fact that after the Motions to Seal were filed, Quick Box withdrew its 14 confidentiality designations to eight of the 18 exhibits at issue. 15 The indiscriminate designation of documents is an abusive discovery 16 practice that "attempt[s] to shift the burden" of identifying a party's confidential 17 information to other parties. See Gopher Media, LLC v. Spain, No. 18 319CV02280CABKSC, 2020 WL 12688143, at *4 (S.D. Cal. Aug. 24, 2020) 19 (requiring party to re-review and re-designate entire document production where 20 party indiscriminately designated all documents "attorneys' eyes only") (citation 21 omitted). And, as the instant dispute demonstrates, this practice needlessly 22 multiplies the motions to seal documents so designated, which in turn require the 23 Court's time and attention to resolve. To ameliorate the burdens the over- 24 designation of documents has created, the Court requires that all future motions 25 to seal follow this process: Any party who intends to file a motion to seal 26 documents that have been designated confidential by another party must 27 provide the designating party with not less than 36 hours' notice of the motion and 28 the documents at issue. The designating party must inform the moving party within 1 24 hours of such notice of any documents for which the confidentiality designation 2 has been withdrawn. Any motion to seal must be accompanied by counsel's 3 statement that these procedures were followed. 4 IV.

5 CONCLUSION

6 For the reasons stated herein, the Court finds that the parties have not 7 demonstrated compelling reasons to seal Plaintiff's opposition to the Spoliation 8 Motion and Exhibits 1 and 4 thereto. Similarly, the Court finds that the parties have 9 not demonstrated compelling reasons to

seal Plaintiff's Perjury Motion and Exhibits 10 6, 7, 8, 10, 11, 12, 13, 14, 17 and 18 thereto; the request to seal Exhibits 1, 2, 3, 11 4, 5, 9, 15 and 16 is moot. Furthermore, the Court cannot rely on documents 12 improperly lodged under seal in making findings and recommendations with 13 respect to the Sanctions Motion and the Perjury Motion. 14 Accordingly, it is hereby ORDERED that: 15 1. Plaintiff's Motion for Leave to File Documents Under Seal [Dkt. No. 16 258] is DENIED; 17 2. Plaintiff's Motion for Leave to File Documents Under Seal [Dkt. No. 18 264] is DENIED; 19 3. Within 7 days of the date of this Order, Plaintiff shall file on the public 20 docket unredacted3 copies of Dkt. Nos. 259, 259-1, 265, 265-1 and 21 265-2; and 22 /// 23 /// 24 /// 25 /// 26 27 3 To the extent Defendants produced the documents at issue to Plaintiff with 28 1 4. The parties shall follow the procedures described herein for all 2 future motions to seal. Failure to comply will be considered a basis 3 for denying the motion. 4 ||IT IS SO ORDERED. 5 || Dated: March 2, 2023 ae 6 Tbe! lib a 'Hon.DavidD.Leshner sts 8 United States Magistrate Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28