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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PETER VELASCO, *et al.*,

Plaintiffs,

v.

CHRYSLER GROUP LLC,

Defendant.

Case No. 2:13-cv-08080-DDP (VBKx)

REPLY IN SUPPORT OF THE CENTER FOR AUTO SAFETY'S MOTION TO UNSEAL

Date: December 1, 2014
Time: 10:00 a.m.
Judge: Honorable Dean D. Pregerson
Courtroom: 3

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INTRODUCTION

The law requires that a party that wishes to keep court records from public view must demonstrate a compelling reason for doing so. But instead of compelling reasons supported by articulable facts, Chrysler has offered only conclusory assertions, supported, in many cases, by misleading citations. This is not sufficient to overcome the longstanding presumption of public access to court records. The briefs and documents filed in connection with the plaintiffs' preliminary injunction motion in this case should therefore be unsealed.

ANALYSIS

I. THE BRIEFS, DECLARATIONS, AND DISCOVERY DOCUMENTS SUBMITTED IN CONNECTION WITH THE PRELIMINARY INJUNCTION MOTION MUST BE UNSEALED UNLESS CHRYSLER DEMONSTRATES COMPELLING REASONS FOR SEALING.

To overcome the strong presumption of public access to court records, a proponent of sealing typically must demonstrate "compelling reasons" for secrecy. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Nonetheless, Chrysler insists that to justify sealing the records in *this* case, it need only demonstrate "good cause" for secrecy. (Opp'n Mot. Unseal 4). This is incorrect. Because, under Ninth Circuit caselaw, the plaintiffs' motion for preliminary injunction should be treated as a dispositive motion for purposes of the public right of access, the compelling reasons standard applies to the discovery

documents filed in connection with that motion. Furthermore, because the compelling reasons standard *always* applies to briefs and declarations, regardless of whether they are submitted in connection with dispositive motions, the parties' unredacted briefing on the motion for preliminary injunction must be unsealed, unless Chrysler can show compelling reasons for maintaining these documents under seal.

A. The Compelling Reasons Standard Governs the Discovery Materials Filed in Conjunction with the Parties' Briefing on the Motion for Preliminary Injunction.

The Ninth Circuit has "carved out an exception" to the compelling reasons standard "for a sealed discovery document attached to a non-dispositive motion." *Kamakana*, 447 F.3d at 1179. According to Chrysler, this exception was meant to apply to all court records except for "those pleadings aimed at 'bringing about a final determination' in a case." (Opp'n Mot. Unseal 5 (quoting *Black's Law Dictionary* 540 (9th ed. 2009)). But this "final determination" language does not come from the Ninth Circuit. It is a standard Chrysler itself invented. And it is incorrect.

Contrary to Chrysler's suggestion, there is no uniform definition of a dispositive motion: Whether a motion is dispositive depends on the context. *See, e.g.*, *Bernstein v. Target Stores, Inc.*, No. 13-CV-01018 (NC), 2013 WL 5807581, at *2 (N.D. Cal. Oct. 28, 2013) ("In order to apply the proper standard to the

parties' joint motion to seal, the Court must determine whether the parties' stipulation seeking approval of the settlement and dismissal of the case with prejudice qualifies as a dispositive or non-dispositive motion *in this context*." (emphasis added)); *Admin. Subpoena Walgreen Co. v. U.S. Drug Enforcement Admin.*, 913 F. Supp. 2d 243, 247 (E.D. Va. 2012) ("In order to decide this question, the Court must first determine whether a motion to compel is, *in this context*, a 'dispositive' or 'non-dispositive' motion." (emphasis added)); *D'Jamoos v. Griffith*, No. 00-CV-1361 (ILG), 2008 WL 2567034, at *2 (E.D.N.Y. June 26, 2008) ("*In this context*, motions for attorneys' fees are treated as dispositive." (internal quotation marks omitted) (emphasis added)), *aff'd*, 340 F. App'x 737 (2d Cir. 2009).

Although the typical dispositive motion has the potential to result in a final judgment, courts have repeatedly held that in some contexts, motions that lack this potential are nevertheless considered dispositive. *See, e.g., Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-CV-01491-JCM, 2011 WL 1630338, at *5 (D. Nev. Apr. 29, 2011) (treating motion for preliminary injunction as dispositive for purposes of public access to court records); *D'Jamoos*, 2008 WL 2567034, at *2 (treating motion for attorneys' fees as dispositive motion). In fact, motions for injunctive relief – like the motion at issue here – have been held to be dispositive in multiple contexts, including cases like this one in which a party seeks to unseal

court records as well as cases unrelated to the public right of access. *See, e.g.*, *Dish Network L.L.C. v. Sonicview USA, Inc.*, No. 09-CV-1553 L (NLS), 2009 WL 2224596, at *6 (S.D. Cal. July 23, 2009).

For purposes of the public right of access to court records, the distinction between dispositive and non-dispositive motions is not, as Chrysler contends, finality, but rather the extent to which the motion is relevant to the merits of the dispute.[1] *See Kamakana*, 447 F.3d at 1179-80; *Melaleuca Inc. v. Bartholomew*, No. 4:12-CV-00216-BLW, 2012 WL 5931690, at *2 (D. Idaho Nov. 27, 2012); *Selling Source*, 2011 WL 1630338 at *5; *Dish Network*, 2009 WL 2224596, at *6. The "resolution of a dispute on the merits . . . is at the heart of the interest in ensuring the public's understanding of the judicial process and of significant public events." *Kamakana*, 447 F.3d at 1179 (internal quotation marks omitted). Documents that are tangential, or entirely unrelated to, the merits of a case are less integral to protecting this interest than those that are directly relevant to the cause of action. *See id.* at 1179-80. As the Ninth Circuit recently explained, "[t]he rationale" for why "non-dispositive orders" are excepted from the compelling reasons standard is "that the public has less of a need for access to court records

[1] Of course, motions that could result in a final resolution of the case – such as a motion for summary judgment – are dispositive motions in this context. But that is not *because* they are final. Indeed, if Chrysler were correct that the presumption of access applies only to motions that result in "final judgments," (Opp'n Mot. Unseal 5), then documents attached to a summary judgment motion would only be subject to the presumption if the motion were granted. This is not the law.

attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1026 (9th Cir. 2014) (internal quotation marks omitted); *see also Navarro v. Eskanos & Adler*, No. C-06-02231 (WHA) (EDL), 2007 WL 902550, at *2 (N.D. Cal. Mar. 22, 2007) ("[A]ccess to judicial records not addressing the merits of the case will not assist the public's understanding of the judicial process and significant public events." (internal quotation marks omitted)).

Where this rationale does not apply – that is where the documents at issue are, in fact, relevant to the merits of a case – courts, including the Ninth Circuit, have applied the compelling reasons standard. *See, e.g.*, *Oliner*, 745 F.3d at 1026 (applying the compelling reasons standard to a request to seal district court records because "[t]he rationale underlying the good cause standard for nondispositive orders, namely that the public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action, does not apply to this case" (internal quotation marks omitted)); *Melaleuca*, 2012 WL 5931690, at *2; *Selling Source*, 2011 WL 1630338 at *5; *Dish Network*, 2009 WL 2224596, at *6. They have done so even where the documents were not attached to motions that would result in a final judgment. *See Oliner*, 745 F. 3d at 1025-26;

Melaleuca, 2012 WL 5931690, at *2; *Selling Source*, 2011 WL 1630338 at *5; *Dish Network*, 2009 WL 2224596, at *6.

Chrysler does not dispute that the documents at issue are directly relevant to the merits of the underlying lawsuit. (*See* Opp'n Mot. Unseal 6). Because Chrysler has not demonstrated compelling reasons to keep them confidential, they must therefore be unsealed.

B. The Compelling Reasons Standard Applies to the Briefs and Declarations.

Because the parties' briefing and declarations on the motion for preliminary injunction are not even arguably discovery documents, they cannot possibly fall under the exception to the presumption of public access for sealed discovery documents attached to non-dispositive motions. Therefore, regardless of whether the Court decides the plaintiffs' preliminary injunction motion is dispositive for purposes of the public right of access, the compelling reasons standard indisputably applies to these records.

II. NEITHER THE STIPULATED PROTECTIVE ORDER NOR THE COURT'S SEALING ORDERS CONSTITUTE GOOD CAUSE, LET ALONE COMPELLING REASONS, FOR MAINTAING THE DOCUMENTS UNDER SEAL

Chrysler, citing the stipulated protective order and the Court's sealing orders in this case, argues that "[t]his Court has already found, on two separate occasions, that 'good cause' exists to seal the documents at issue." (Opp'n Mot. Unseal 6-7).

This is wrong. Even if the good cause standard were to apply here, the standard is not met by a stipulated protective order or an order granting an application to seal without analysis.

First, under binding Ninth Circuit precedent, even under the good cause standard, the documents at issue may only remain sealed if Chrysler makes a "particularized showing" with respect to each document that "specific prejudice or harm will result" from disclosure. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (internal quotation marks omitted); *see also In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*, 101 F.R.D. 34, 45 n.7 (C.D. Cal. 1984) ("The good cause requirement is met by a showing that disclosure will work a clearly defined, specific and serious injury."). The Ninth Circuit has explicitly – and repeatedly – rejected Chrysler's argument that a stipulated protective order satisfies this burden. *See, e.g.*, *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003); *Phillips*, 307 F.3d at 1211. Where, as here, parties stipulate to a protective order, courts, like the magistrate judge in this case, often enter it without requiring a demonstration of good cause. *See, e.g.*, *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011); *Kamakana*, 447 F.3d at 1176, 1183. Therefore, "the burden of proof remains with the party seeking protection. If a party takes steps to release documents subject to a stipulated order, the party opposing

disclosure has the burden of establishing that there is good cause to continue the protection of the discovery material." *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d at 424 (internal quotation marks, citation, and alterations omitted).

Thus, Chrysler's argument that the stipulated protective order in this case shifts the burden to the Center to justify disclosure, (Opp'n Mot. Unseal 7), misstates the law. The Ninth Circuit's precedent is clear: Where parties have stipulated to a protective order – and therefore the court has not yet made specific findings of good cause to seal particular documents – the burden of proof remains on the proponent of sealing to demonstrate such cause.

Nor do the Court's sealing orders demonstrate that Chrysler has satisfied this burden. To maintain the documents under seal, Chrysler must, "for each particular document it seeks to protect, . . . show[ ] that specific prejudice or harm will result if" the documents are unsealed, and the Court must "identify and discuss the" reasons sealing is warranted.[2] *Foltz*, 331 F.3d at 1130 (internal quotation marks omitted); *see also E.E.O.C. v. Erection Co.*, 900 F.2d 168, 169 (9th Cir. 1990) (reversing and remanding to district court to "articulate its reasoning and findings" where court denied a motion to unseal without explaining the basis for sealing);

[2] Because public access to court records is "the default posture," the Court need not articulate specific findings if it chooses to unseal the records. *Kamakana*, 447 F.3d at 1182.

Navarro, 2007 WL 902550, at *3 ("The Court must examine each disputed record to determine if Defendants have made a particularized showing of good cause to warrant protection under Rule 26(c)." (internal quotation marks omitted)).

Presumably because the applications to seal were uncontested, it appears that the Court has yet to undertake a good cause analysis – let alone a compelling reasons analysis. The documents filed by the plaintiffs were sealed pursuant to proposed orders that the Court granted. (*See* Order Granting Pls.' Am. Application Seal Evid. [Docket No. 52]; Order Granting Application File Under Seal [Docket No. 72]). Although the orders state that "good cause appear[ed]" for sealing, this appears to be form language, drafted by the plaintiffs, not the Court. The orders do not contain any findings demonstrating that specific prejudice or harm will result if the documents are unsealed. In addition, the minute order sealing the memorandum in opposition to the preliminary injunction motion – that is, the only sealing order that appears to have been drafted by the Court itself – does not make any reference at all to good cause. (Minute Order in Chambers [Docket No. 62]).

As noted above, courts often do not undertake a good cause (or compelling reasons) analysis before sealing records unless and until someone objects. Once there is an objection, however, a court must revisit the issue and require the proponent of sealing to demonstrate that sealing is proper. *See In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d at 424. This Court should

do so here.

III. CHRYSLER HAS NOT DEMONSTRATED GOOD CAUSE, LET ALONE COMPELLING REASONS, TO MAINTAIN THE COURT RECORDS UNDER SEAL.

As explained in the motion to unseal, to overcome the public's right of access, Chrysler must identify – with respect to each document it wishes to keep confidential – "specific compelling reasons" supported by "articulable facts" demonstrating why the information should be kept secret. *Kamakana*, 447 F.3d at 1181, 1183 (internal quotation marks omitted).

Chrysler falls far short of demonstrating good cause, let alone compelling reasons, for keeping these court records under seal. Even if the good cause standard were to apply (which it does not), Chrysler would still be required to identify, "for each particular document it seeks to protect, . . . [the] specific prejudice or harm [that] will result if" the document is unsealed. *Foltz*, 331 F.3d at 1130. Moreover, it would have to provide "a particular and specific demonstration of fact" supporting its assertions; it would not be entitled to rely upon "stereotyped and conclusory statements." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981) (internal quotation marks omitted); *accord U.S. ex rel. Bagley v. TRW, Inc.*, 204 F.R.D. 170, 175 (C.D. Cal. 2001). Chrysler has not met this burden.[3]

[3] Chrysler offers no justification at all for sealing Exhibits A-D to the Bielenda Declaration submitted in support of its opposition to the preliminary injunction motion (Docket No. 61).

A. Chrysler Has Not Demonstrated That Any of the Exhibits Contain Trade Secrets

Chrysler primarily relies on conclusory assertions that the exhibits submitted in connection with the preliminary injunction motion contain trade secrets. While the Center, of course, does not know the content of the sealed documents, it is clear that Chrysler's unsupported contentions do not constitute the "particular and specific demonstration of fact" required to seal documents .

A trade secret is "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." *In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008) (internal quotation marks omitted). The Supreme Court has "emphasize[d] that the value of a trade secret lies in the competitive advantage it gives its owner over competitors." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1012 n.15 (1984). Thus, a trade secret is information that if public, would allow a competitor to, for example, improve its product or operate more efficiently. *See id.*

Information that a company's product is harmful, on the other hand, does not constitute a trade secret, because any decline in profits caused by the release of that

Chrysler therefore has clearly not carried its burden with respect to these exhibits, and – along with the exhibits Chrysler does not oppose unsealing, (Opp'n Mot. Unseal 1 n.1) – they should be unsealed regardless of how the Court rules on the other documents.

information "stems from a decrease in the value of the [product] to consumers, rather than from the destruction of an edge the [company] had over its competitors." *Id.*; *see also Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179-80 (6th Cir. 1983) ("[T]he natural desire of parties to shield prejudicial information contained in judicial records from competitors and the public . . . . cannot be accommodated by courts without seriously undermining the tradition of an open judicial system. Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know. In such cases, a court should not seal records unless public access would reveal legitimate trade secrets."); *Joy v. N.*, 692 F.2d 880, 894 (2d Cir. 1982) ("The potential harm asserted by the corporate defendants is in disclosure of poor management in the past. That is hardly a trade secret.").

Although Chrysler identifies several categories of documents it asserts contain trade secrets, its assertions are vague and conclusory. For many of the documents, Chrysler fails to identify a single competitive advantage its competitors would gain by their release, and in no case does Chrysler provide a particularized demonstration of fact supporting its assertions.

For example, Chrysler contends that Exhibits A and C to the Stein declaration – "presentations concerning the investigation which resulted in the current recall of certain vehicles" – may be sealed because they "contain confidential research,

development and trade secrets," but Chrysler does not identify a single way in which the information contained in the presentations might have value to its competitors. (Opp'n Mot. Unseal 12). This is perhaps because it has no such value. For instance, it is unlikely that other car companies would be able to design better or cheaper cars if only they had access to an "analysis of the trends of failure rates of" the vehicles Chrysler has recalled or "photographs[ ] of returned TIPMS," (*Id.*). *Cf. Louisiana Pac. Corp. v. James Hardie Bldg. Products, Inc.*, No. C-12-3433 SC, 2013 WL 3483618, at *2 (N.D. Cal. July 8, 2013) (holding that a failed marketing campaign is not a trade secret because "it is highly unlikely that anyone else will intentionally attempt to imitate the campaign"); *Travelers Prop. Cas. Co. of Am. v. Centex Homes*, No. 11-3638-SC, 2013 WL 707918, at *1 (N.D. Cal. Feb. 26, 2013) (holding that documents that have no "economic benefit" to competitors are not trade secrets).

Documents may not remain sealed simply because a company has previously kept them secret. *See Travelers*, 2013 WL 707918, at *1 ("Plaintiff argues that the [documents at issue] are trade secrets, regardless of whether they are outdated, because they were never disclosed to Plaintiff's competitors. This argument conflates trade secrets with ordinary secrets. Information does not have value to a competitor merely because the competitor does not have access to it."). Nor may they be sealed because they reflect poorly on the company or its products. *See*

Brown & Williamson Tobacco Corp., 710 F.2d at 1179-80. To constitute a trade secret sufficient to overcome the public's right of access, documents must contain information that would provide competitors a competitive advantage. Chrysler has not even attempted to articulate how other companies might benefit from the information contained in these presentations, let alone provide "a specific, non-speculative showing" of facts demonstrating that release of the presentations would give competitors an economic edge, *California ex rel. Lockyer v. Safeway, Inc.*, 355 F. Supp. 2d 1111, 1118 (C.D. Cal. 2005).

Chrysler seems to suggest that the presentations should nevertheless be kept confidential because they contain spreadsheets, as well as scientific and technical information. (*See* Opp'n Mot. Unseal 12). This is clearly wrong. Chrysler cites a Western District of Washington case for the proposition that "'spreadsheets' [are] a type of trade secret under the 'compelling reasons' standard." (*Id.* (quoting *Yountville Investors, LLC v. Bank of Am., N.A.*, No. C08-425 (RSM), 2009 WL 411089, at *3 (W.D. Wash. Feb. 17, 2009)). But of course, not all spreadsheets are automatically trade secrets.[4] Like any other document, spreadsheets are trade

[4] *Yountville* does not hold otherwise. The full quotation from which Chrysler selects only the word "spreadsheets" makes clear that the *Yountville* court did not mean to suggest that *all* spreadsheets are trade secrets. Rather, the court held that the documents at issue in that case were not trade secrets because they did "not contain the type of information (account numbers, personal data, trade secrets, and so forth) that would justify sealing. The documents contain no spreadsheets, computer codes, formulas for calculating swap rates, or any other information that could be considered a trade secret." *Yountville Investors, LLC*, 2009 WL 411089, at *3.

secrets if and only if revealing their substantive content would have economic value to competitors.

Similarly, Chrysler cites *Biovail*, a Central District of California case, as "holding that 'scientific' and 'technical information' are trade secrets and therefore constitute 'compelling reasons' to seal." (Opp'n Mot. Unseal 12 (quoting *Biovail Labs., Inc. v. Anchen Pharm., Inc.*, 463 F. Supp. 2d 1073, 1082 (C.D. Cal. 2006)). But *Biovail* says no such thing. Rather, the court held that compelling reasons justified sealing documents that were "*indisputabl[y]*" trade secrets, "the disclosure of which to a competitor . . . would be extremely damaging." *Biovail*, 463 F. Supp. 2d at 1082 (emphasis added). In support of this holding, *Biovail* cited several cases in which courts sealed documents containing trade secrets, including a case that discussed "scientific" and "technical" information. *Id.* But it is apparent from the context – and, in fact, explicit in the quotation from which Chrysler draws – that such information is only a trade secret when its release poses a "threat of serious economic injury." *Id.* (internal quotation marks omitted).

It would be absurd to hold that all scientific or technical information is a trade secret. If it were, documents that discussed, say, Einstein's theory of relativity or, more relevantly, the way a standard combustion engine works, could be sealed as a trade secret. *Biovail* does not hold this (nor, for that matter, does any other case). Documents cannot be sealed simply because they are formatted as spreadsheets or

contain scientific or technical information. To keep the presentations confidential as trade secrets, Chrysler must demonstrate with particularity that competitors would gain economic value from their release. It has not done so.

Chrysler's argument regarding Exhibits D, G, I, J, K, N, R, T, and U of the Stein declaration – "intra-company emails concerning TIPM-7 issues in the field and the investigation that led to the recall of certain vehicles" – is similarly unavailing. (Opp'n Mot. Unseal 12). Chrysler's assertions that these emails contain trade secrets are conclusory, and its citations to caselaw are misleading. For example, Chrysler contends that Exhibit R, "an internal email thread discussing one particular Chrysler Group vehicle and its repair history . . . is entitled to protection as a trade secret." (*Id.* at 13). But neither Chrysler's brief, nor the declaration submitted in support thereof, explains how Chrysler's competitors could benefit from information about the repair history of a single vehicle.

Instead of articulable facts, Chrysler again cites *Biovail*, this time for the proposition that "'quality control' is a trade secret, as is troubleshooting." (*Id.* (quoting *Biovail*, 463 F. Supp. 2d at 1083)). Again, however, *Biovail* says nothing of the sort. The case does not mention troubleshooting at all. And its reference to quality control is limited to parentheticals from cases stating that information about how a drug "is formulated, chemically composed, manufactured, and quality

controlled" is a trade secret. *Biovail*, 463 F. Supp. 2d at 1083 (internal quotation marks omitted). There is no indication in *Biovail* – or anywhere else, as far as the Center has found – that all documents related to quality control (or troubleshooting) constitute a trade secret.

Chrysler's argument is, in fact, replete with conclusory assertions that a document is a trade secret, supported only by a misleading citation to caselaw. (*See, e.g.* Opp'n Mot. Unseal 12 & 12 n.10 (stating that "Exhibit G is a thread discussing test data done on Chrysler vehicles and thus is properly sealed" and citing *Biovail* for the proposition that "'quality control,' 'technical information,' and 'scientific information' [are] 'compelling reasons'"); *Id.* 13 & 13 n.14 (citing *Biovail* and stating that "Exhibit T is an email thread containing engineering discussions and predictions, which constitutes 'technical' or 'scientific' information and thus was properly sealed"); *Id.* 14 (contending that Exhibit F to the Stein Declaration "is considered a trade secret because it includes both data and predictions about the recalled vehicles" and characterizing *Biovail* as "describing 'technical' and 'scientific information' as satisfying the 'compelling reasons' standard"). These unsupported – and, in many cases, inaccurate – assertions are simply insufficient to meet Chrysler's burden to demonstrate with particularity why the court records should remain sealed. *Cf. In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*, 101 F.R.D. at 44 ("I further

admonish the defendants that their conclusory statements regarding commercial sensitivity made thus far in connection with the instant motions to declassify will not suffice to establish that there is a significant and specific need for continued protection.").[5]

B. Chrysler's Conclusory Assertion that Releasing the Exhibits Will Promote Public Scandal Is Meritless

Chrysler fares no better arguing that the exhibits "could be used to promote public scandal." (Opp'n Mot. Unseal 11, 13 (internal quotation marks omitted)). For one thing, Chrysler provides no "factual basis or explanation" whatsoever "for this general statement." *Lockyer*, 355 F. Supp. 2d at 1120. It is unclear even what scandal Chrysler contends will result. Such an unsupported assertion is simply "too conclusory to satisfy the specific factual showing required by the case law." *Id.*; *see also Oliner*, 745 F.3d at 1026-27 ("A naked conclusory statement that publication of the Report will injure the bank in the industry and local community falls woefully short of the kind of showing which raises even an arguable issue as

[5] Even if the Court finds that the exhibits contain some trade secrets, the documents as a whole should not be sealed; rather, this information should be redacted. *See In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d at 425 ("[A] court must not only consider whether the party seeking protection has shown particularized harm, and whether the balance of public and private interests weighs in favor, but also keep in mind the possibility of redacting sensitive material."); *Methodist Hospitals, Inc. v. Sullivan*, 91 F.3d 1026, 1032 (7th Cir.1996) ("To say that particular *information* is confidential is not to say that the entire document containing that information is confidential."); *Kelly v. Wengler*, 979 F. Supp. 2d 1243, 1246 (D. Idaho 2013) ("[The proponent of sealing's] remaining arguments – that documents contain proprietary information, or would threaten an individual's safety – are reasons, at best, to make limited redactions, not to seal entire documents.").

to whether it may be kept under seal." (internal quotation marks and alteration omitted)).

To the extent Chrysler is concerned about its reputation, such concern is not a sufficient reason to seal documents. "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." *Kamakana*, 447 F.3d at 1179; *see Brown & Williamson Tobacco Corp.*, 710 F.2d at 1179 (6th Cir. 1983) ("Simply showing that the information would harm the company's reputation is not sufficient to overcome the strong common law presumption in favor of public access to court proceedings and records.").

Nor is it relevant that there has not been any "determin[ation] that Chrysler Group acted wrongly," (Opp'n Mot. Unseal 11, 13). Chrysler cites – and the Center has found – no authority for the proposition that documents may not be made public unless and until a court concludes that a party committed wrongdoing. Indeed, as discussed above, the Ninth Circuit has repeatedly held that there is a strong presumption of access to dispositive motions, which, of course, occur before the merits of a lawsuit are resolved. *See Kamakana*, 447 F.3d at 1179; *Foltz*, 331 F.3d at 1136; *San Jose Mercury News, Inc. v. U.S. Dist. Court-N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999)

Likewise, courts routinely hold that records should be unsealed in cases where

there has yet to be – or never will be – a finding of wrongdoing. *See, e.g.*, *Kamakana*, 447 F.3d at 1175-76; *In re McClatchy Newspapers, Inc.*, 288 F.3d 369 (9th Cir. 2002); *Lockyer*, 355 F. Supp. 2d 1111 (C.D. Cal. 2005). In *McClatchy Newspapers*, for example, the Ninth Circuit considered whether letters implicating a political figure and a real estate developer in corruption could be sealed. 288 F.3d at 372. The district court found that unsealing "would have a serious adverse effect upon the official's . . . reputation" that "no amount of denial would completely dispel" and that there was a "substantial probability" that the damage to the developer's reputation would harm his business." *Id.* at 373 (internal quotation marks omitted). But, despite the fact that neither the official nor the developer had been charged with a crime, let alone found by a court to have committed any wrongdoing, the Ninth Circuit held that the documents should be unsealed. *Id.* at 374-75. "[I]njury to official reputation," the court explained, "is an insufficient reason" for sealing documents. *Id.* at 374; *see also In re Anthracite Capital, Inc.*, 492 B.R. 162, 178 (Bankr. S.D.N.Y. 2013) ("The Movants argue that they are seeking to protect information that could be particularly harmful if disclosed without ever having been proven or even answered. . . . As stated above, reputational harm and embarrassment do not justify the sealing of court documents."); *In Matter of Search of Premises Known As: L.S. Starrett Co.*, No. 1:02M137, 2002 WL 31314622, at *4 (M.D.N.C. Oct. 15, 2002) (refusing

to seal a search warrant despite the fact that no "allegation of fraud against [the company named in the warrant] or its employees ha[d] . . . been proven nor ha[d] any charges been brought"); *Wiggins v. Burge*, 173 F.R.D. 226, 230 (N.D. Ill. 1997) (rejecting contention that documents in a lawsuit against a police department should be sealed because "the allegations of police torture may be false and therefore should remain confidential until proven. . . . The allegations contained in these lawsuits may or may not be true. The general public is sophisticated enough to understand that a mere allegation of police torture, just like a lawsuit, does not constitute actual proof of misconduct.").

Chrysler offers no reason why this case is any different than the numerous other cases in which courts have refused to seal records simply because a party has not been found to have committed wrongdoing.

C. The Unredacted Briefs and Declarations Should Be Unsealed.

Because Chrysler has failed to meet the compelling reasons burden with respect to the unredacted briefs and declarations filed in connection with the preliminary injunction motion, they should be immediately unsealed. Chrysler's only argument for why these documents should be sealed is that the exhibits submitted in connection with the preliminary injunction motion contain trade secrets, and therefore (according to Chrysler) "[i]t stands to reason that any arguments" in the briefs and declarations that refer to these exhibits should also be sealed. (Opp'n

Mot. Unseal 15). This argument is flawed. A document may refer to an exhibit that contains trade secrets and yet not itself contain any trade secrets. For example, this Reply refers to and cites exhibits Chrysler contends should be sealed, but presumably Chrysler would not argue that the Reply itself contains trade secrets. Chrysler makes no effort whatsoever to identify particular information in the briefs or declarations that must remain sealed, let alone explain why there are compelling reasons for doing so. It cannot, for example, seriously contend that its entire opposition to the preliminary injunction motion is a trade secret. It certainly cannot do so without providing any argument or factual support for this contention.

Moreover, as explained above, Chrysler has not demonstrated that there is any information in the exhibits themselves that should be sealed. Therefore, there is no reason that briefs or declarations referring to these exhibits should be sealed or redacted.

Nor should the briefs and declarations remain sealed "because [they] specifically reference[]" only "some of the research[,] . . . actions and internal strategies that Chrysler Group has pursued," (Opp'n Mot. Unseal 15). There is no exception to the public right of access for documents that do not "tell the whole story," (*id.*). *See United States v. Gen. Motors Corp.*, 99 F.R.D. 610, 612 (D.D.C. 1983) (rejecting defendant's contention that there was good cause to seal documents because the defendant had not yet had "an opportunity to place of

record evidence which would contradict or explain what it believe[d] to be the misleading inferences which [would] be drawn from" the documents); *see also Press-Enter. Co. v. Superior Court of California for Riverside Cnty.*, 478 U.S. 1, 4 (1986) (holding, under the First Amendment, that a magistrate judge's conclusion that "only one side may get reported in the media" was insufficient to justify sealing transcript of a preliminary hearing). Furthermore, the documents related to Chrysler's research, actions, and internal strategies are entirely within Chrysler's control. Therefore, if Chrysler is concerned that releasing only the documents in the court record will result in a one-sided view, it can simply make public whatever other documents it believes are necessary to "tell the whole story."

IV. THE FIRST AMEDMENT PROVIDES A PUBLIC RIGHT OF ACCESS TO CIVIL COURT RECORDS

Although the Court need not reach the First Amendment issue because the common law right of access mandates that the records be unsealed, the First Amendment does provide a public right of access to the documents related to the preliminary injunction motion. As explained in the motion to unseal, the Ninth Circuit – in *Courthouse News Service v. Planet* – recently joined several other courts of appeal in recognizing that the First Amendment right of access to court records applies to civil as well as criminal proceedings. *See* 750 F.3d 776, 787-78 (9th Cir. 2014).

While *Courthouse News* is perhaps a bit opaque, the Ninth Circuit explicitly clarified in *Wood v. Ryan* that the case had, in fact, "acknowledged [a] First Amendment right of access 'to civil proceedings and associated records and documents.'"[6] *Wood v. Ryan*, 759 F.3d 1076, 1081-82 (9th Cir. 2014) (quoting *Courthouse News Service*, 750 F.3d at 786), *vacated*, 135 S.Ct. 21 (2014). Although *Wood* was vacated by the Supreme Court, the Court did not address *Wood*'s characterization of *Courthouse News* as holding that a First Amendment right of access applies to civil proceedings. *See* 135 S.Ct. 21 (2014). Nor, of course, did it address *Courthouse News* itself. This holding, therefore, remains good law. *See Rhoden v. Carona*, No. CV 08-00420 (JHN) (SS), 2010 WL 4449711, at *6 (C.D. Cal. Aug. 24, 2010) ("[T]he Ninth Circuit and others have taken the position that a vacated judgment retains precedential authority on those issues not addressed in the order vacating it."); *see also United States v. Adewani*, 467 F.3d 1340, 1342 (D.C. Cir. 2006) ("When the Supreme Court vacates a judgment of this court without addressing the merits of a particular holding in the panel opinion, that holding continues to have precedential weight, and in the absence of contrary authority, we do not disturb it." (internal quotation marks and brackets omitted)).

[6] Chrysler contends that the relevance of *Wood* is "difficult to discern." (Opp'n Mot. Unseal 17). It is not. *Wood* affirms that *Courthouse News* held that the First Amendment right of access applies in civil cases. Its relevance to the Center's motion for access to court records is therefore exceedingly clear.

As Chrysler acknowledges, "[t]he reasoning set forth in *Courthouse News* is very general." (Opp'n Mot. Unseal 17). There is no reason, therefore, that it would not apply here. Because Chrysler has not demonstrated a compelling interest in sealing the court records in this case, let alone explained how this interest would be harmed by public access to the documents or shown that there are no alternatives to sealing, the documents must be unsealed. *See Perry v. Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012).

CONCLUSION

This Court should unseal the documents filed in conjunction with the plaintiffs' motion for preliminary injunction.

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