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8 and ALEC PETERS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 PARAMOUNT PICTURES
CORPORATION, a Delaware
13 corporation; and CBS STUDIOS INC., a
Delaware corporation,

14 Plaintiffs,

15 vs.

16 AXANAR PRODUCTIONS, INC., a
17 California corporation; ALEC PETERS,
an individual; and DOES 1-20,

18 Defendants.
19

Case No. 2:15-cv-09938-RGK-E

Assigned to: Hon. R. Gary Klausner

**DEFENDANTS AXANAR
PRODUCTIONS, INC., AND ALEC
PETERS' UNOPPOSED
APPLICATION TO FILE UNDER
SEAL**

Local Rule 79-5.2.2

[Filed concurrently with Sealed
Declaration of Kelly N. Oki and
Proposed Order]

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to Local Rule 79-5.2.2(a)-(b),
3 Defendant Axanar Productions, Inc. and Alec Peters hereby request that this Court
4 enter an order permitting them to file under seal unredacted copies of Defendants'
5 Reply to Plaintiffs' Statement of Genuine Issues In Opposition to Defendants' Motion
6 for Summary Judgment, Exhibits 1, 2, and 3 to the Declaration of Brian Li-A-Ping
7 ("Li-A-Ping Decl."), portions of Alec Peters' deposition testimony, portions of
8 Plaintiffs' witness, Daniel O'Rourke's testimony, Defendants' Evidentiary Objections
9 to the Declaration of John Van Citters, and portions of the Supplemental Declaration
10 of Alec Peters ("Peters Supp. Decl."). Defendants' counsel has informed Plaintiffs'
11 counsel of Defendants' intent to file this Application. *See* Declaration of Kelly N. Oki
12 filed concurrently herewith (hereafter, "Oki Decl.") ¶ 2. Counsel for Plaintiffs has
13 indicated that Plaintiffs **will not** oppose the relief sought in this Application. *Id.*
14 Therefore, the Application is unopposed.

15 **I. Factual Background**

16 On July 12, 2016, Magistrate Judge Charles Eick entered the parties' Stipulated
17 Protective Order. *See* ECF No. 53. The Stipulated Protective Order permits
18 designation as "Confidential Information" documents and information "that constitute
19 non-public, highly sensitive financial information regarding revenues, expenses and
20 profits generated in connection with the motion picture works at issue ... documents
21 or information containing personal financial information of third parties, including for
22 example writers, producers and directors that are not a party to this litigation, as well
23 as all confidential and proprietary business or commercial information or trade secrets
24 within the meaning of Fed. R. Civ. P. 26(c) or California Civil Code § 3426.1." ECF
25 No. 53 at 1. The Stipulated Protective Order also permits the parties to designate as
26 "Highly Confidential – Attorney's Eyes Only" documents and information that consist
27 of "competitively sensitive or proprietary information [that] could cause competitive
28 harm if disclosed to an unauthorized person." *Id.* at 3.

1 Plaintiffs and Defendants have both designated certain deposition testimony and
 2 documents as “Confidential” and “Highly Confidential – Attorney’s Eyes Only”
 3 pursuant to the Stipulated Protective Order. Under the Stipulated Protective Order,
 4 the parties must seek permission from the Court in order to file “Confidential” or
 5 “Highly Confidential – Attorney’s Eyes Only” documents under seal. ECF No. 53 at
 6 7. Defendants’ Reply to Plaintiffs’ Statement of Genuine Issues In Opposition to
 7 Defendants’ Motion for Summary Judgment quotes and describes documents and
 8 testimony that the parties designated as “Confidential” pursuant to the Stipulated
 9 Protective Order. Exhibits 1, 2, and 3 to the Li-A-Ping Declaration, portions of
 10 Peters’ deposition testimony, portions of Daniel O’Rourke’s testimony, portions of
 11 Defendants’ Evidentiary Objections to the Declaration of John Van Citters, and
 12 portions of the Peters Supplemental Declaration constitute copies of all or portions of
 13 these documents and testimony, specifically:

Exhibit 1 to Li-A-Ping Decl.	Excerpts from the October 19, 2016 deposition of Alec Peters discussing confidential and proprietary business plans (designated by Defendants as “Confidential”)
Exhibit 2 to Li-A-Ping Decl.	Excerpts from the September 30, 2016 deposition of Plaintiffs’ witness, Daniel O’Rourke (designated by Plaintiffs as “Confidential”)
Exhibit 3 to Li-A-Ping Decl.	The expert report of Christian Tregillis (designated by Defendants as “Confidential”)
Evidentiary Objections to the Declaration of John Van Citters	Evidentiary objections containing citations to confidential deposition testimony of Alec Peters (designated by Defendants as “Confidential”)
Peters Supp. Decl.	Paragraph 7 of the Peters Declaration constituting confidential information regarding Defendant Peters’ personal finances.

28 Furthermore, Defendants’ Reply to Plaintiffs’ Statement of Genuine Issues In

1 Opposition to Defendants’ Motion for Summary Judgment refer to and quote from
2 Exhibits 1, 2, and 3 to the Li-A-Ping Declaration, Alec Peters’ deposition testimony,
3 Daniel O’Rourke’s deposition testimony, Defendants’ Evidentiary Objections to the
4 Declaration of John Van Citters, and the Peters Supplemental Declaration, which all
5 discuss highly sensitive and confidential information.

6 Defendants apply to file under seal the unredacted Reply to Plaintiffs’
7 Statement of Genuine Issues In Opposition to Defendants’ Motion for Summary
8 Judgment, and the foregoing documents pursuant to the Stipulated Protective Order
9 and Local Rule 79-5.2.2. Due to the sensitive nature of this information, good cause
10 exists to approve Defendants’ Application to file portions of the Peters Supplemental
11 Declaration, the confidential deposition testimony of Alec Peters, Defendants’
12 Evidentiary Objections to the Declaration of John Van Citters, and the confidential
13 Expert Report of Christian Tregillis under seal pursuant to Local Rule 79-5.2.2(a).
14 Pursuant to Local Rule 79-5.2.2(b)(i), Plaintiffs shall demonstrate such good cause for
15 Exhibit 2 to the Li-A-Ping Declaration. Defendants will file a redacted version of
16 these documents, and Defendants’ Reply to Plaintiffs’ Statement of Genuine Issues In
17 Opposition to Defendants’ Motion for Summary Judgment that refer to and quote
18 these Exhibits and documents. Pursuant to Local Rule 79-5.2.2(b), Counsel for
19 Defendants conferred with counsel for Plaintiffs on whether Exhibit 2 to the Li-A-
20 Ping Declaration could be de-designated to avoid the need to file the Exhibit under
21 seal. Oki Decl. ¶ 5. Plaintiffs requested that Defendants file Exhibit 2 under seal. *Id.*

22 **II. Good Cause Exists to File the Unredacted Reply to Plaintiffs’ Statement of**
23 **Genuine Issues In Opposition to Defendants’ Motion for Summary**
24 **Judgment and Supporting Documents Under Seal**

25 The decision to seal records is left to the discretion of the District Court.
26 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
27 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). There are “compelling reasons” to
28 seal the exhibits described herein. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d

1 1172, 1180 (9th Cir. 2006). The “compelling reasons” standard is met where public
2 disclosure of the “court files might [] become a vehicle for improper purposes,’ such
3 as the use of records to gratify private spite, promote public scandal, circulate libelous
4 statements, or release trade secrets.” *In re Electronic Arts Inc.*, 298 F. App’x. 568,
5 569 (9th Cir. 2008) (quoting *Nixon* and *Kamakana*, *supra*) (internal quotations
6 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09CV500-WQH-BGS, 2012 WL
7 1899838, at *2 (S.D. Cal. May 24, 2012).

8 The small portions of Peters’ deposition testimony and Supplemental
9 Declaration Defendants seek to file under seal contain highly confidential information
10 regarding Defendants’ proprietary business information and Peters’ personal finances.
11 Oki Decl. ¶¶ 3, 7. These are precisely the sort of “compelling reasons” that justify
12 filing documents under seal, as allowing this information to become public would
13 compromise Peters’ privacy, and prejudice Defendants greatly with respect to their
14 confidential proprietary business information. Defendants submit a proposed redacted
15 version of the Peters Supplemental Declaration herewith, with the redactions limited
16 to the material described above. As the Peters deposition testimony was designated
17 confidential in its entirety, it cannot be suitably redacted to eliminate the production of
18 confidential information. *Id.* ¶ 3. Moreover, Defendants’ Evidentiary Objections to
19 the Declaration of John Van Citters cite to the same confidential deposition testimony,
20 and are thus subject to the same protections. *Id.* ¶

21 Exhibit 3 to the Li-A-Ping Declaration is the report by Defendants’ damages
22 expert, Christian Tregillis, which was previously filed under seal. ECF No. 75-5. Mr.
23 Tregillis has not made any substantive changes to his previously filed report, and has
24 only added language indicating that his expert opinions, their bases, and all other
25 information set forth in his report were given under penalty of perjury. Oki Decl. ¶ 6.
26 As previously discussed in Defendants’ Application to file their Motion for Summary
27 Judgment under seal, Mr. Tregillis cites, quotes, and relies upon testimony from
28 Plaintiffs’ witnesses that Plaintiffs designated “Confidential” as well as a financial

1 document that Defendants designated “Confidential.” ECF Nos. 76, 77. The financial
2 document Mr. Tregillis cites to constitutes the type of sensitive information that
3 deserves protection. *FDIC v. Tarkanian*, 2012 WL 1327856, at *2 (S.D. Cal. Apr. 17,
4 2012); *Coloplast A/S v. Generic Med. Devices*, 2012 WL 3629037, at *1 (W.D. Wash.
5 Aug. 22, 2012) (documents sealed to protect “confidential sensitive business and/or
6 financial information”); *see also IMAX Corp. v. Cinematech, Inc.*, 152 F.3d 1161,
7 1168 n.9 (9th Cir. 1998) (noting that confidential and proprietary business information
8 is “to be filed under seal.”). Defendants submit a proposed redacted version of the
9 report herewith, with the redactions limited to the material described above.

10 Pursuant to Local Rule 79-5.2.2(b)(1), Plaintiffs shall file a declaration
11 establishing that Exhibit 2 to the Li-A-Ping Declaration is sealable.

12 For the foregoing reasons, good cause exists for filing the unredacted Reply to
13 Plaintiffs’ Statement of Genuine Issues In Opposition to Defendants’ Motion for
14 Summary Judgment, Exhibits 1, 2, and 3 to the Li-A-Ping Declaration, Peters’
15 deposition testimony, Daniel O’Rourke’s deposition testimony, Defendants’
16 Evidentiary Objections to the Declaration of John Van Citters, and portions of the
17 Peters Supplemental Declaration under seal. Accordingly, Defendants hereby
18 respectfully request that the Court grant this Application.

19 Dated: December 5, 2016

WINSTON & STRAWN LLP

20
21 By: /s/ Erin R. Ranahan
22 Erin R. Ranahan
23 Diana Hughes Leiden
24 Kelly N. Oki
25 Attorneys for Defendants,
26 AXANAR PRODUCTIONS, INC.
27 and ALEC PETERS
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