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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.'S 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 their Motion *in*
5 *limine* No. 5, No. 7, portions of Alec Peters’ deposition testimony, portions of Terry
6 McIntosh’s deposition testimony, and portions of Daniel O’Rourke’s deposition
7 testimony. Defendants’ counsel has informed Plaintiffs’ counsel of Defendants’ intent
8 to file this Application. *See* Declaration of Kelly N. Oki filed concurrently herewith
9 (hereafter, “Oki Decl.”) ¶ 2. Counsel for Plaintiffs has indicated that Plaintiffs **will not**
10 oppose the relief sought in this Application. *Id.* Therefore, the Application is
11 unopposed.

12 **I. Factual Background**

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

26 Plaintiffs and Defendants have both designated certain deposition testimony and
27 documents as “Confidential” and “Highly Confidential – Attorney’s Eyes Only”
28 pursuant to the Stipulated Protective Order. Under the Stipulated Protective Order,

1 the parties must seek permission from the Court in order to file “Confidential” or
 2 “Highly Confidential – Attorney’s Eyes Only” documents under seal. ECF No. 53 at
 3 7. Defendants’ Motion *in limine* No. 5 and No. 7 quote from and describe documents
 4 and testimony that the parties designated as “Confidential” pursuant to the Stipulated
 5 Protective Order, specifically:

6 Exhibit 6 to Leiden Declaration	Excerpts from the September 30, 2016 deposition of Daniel O’Rourke
7 Exhibit 7 to Leiden Declaration	Excerpts from the October 28, 2016 deposition of Terry McIntosh
8 Exhibit 8 to Leiden Declaration	Excerpts from the October 19, 2016 deposition of Alec Peters

9
 10 Furthermore, Defendants’ Motion *in limine* No. 5 and No. 7 cite to documents
 11 and testimony that has been previously filed under seal, as they all discuss highly
 12 sensitive and confidential topics, including Defendants’ financial information and
 13 expenditures associated with the creation of the Axanar Works, and Defendants’
 14 confidential business plans.

15 Defendants apply to file under seal the unredacted Motion *in limine* No. 5, No.
 16 7, and the foregoing testimony pursuant to the Stipulated Protective Order and Local
 17 Rule 79-5.2.2. Due to the sensitive nature of this information, good cause exists to
 18 approve Defendants’ Application to file portions of Motion *in limine* No. 5 and No. 7,
 19 and Exhibits 7 and 8 to the Leiden Declaration under seal pursuant to Local Rule 79-
 20 5.2.2(a). Pursuant to Local Rule 79-5.2.2(b)(i), Plaintiffs shall demonstrate such good
 21 cause for Exhibit 6 to the Leiden Declaration. Defendants will file a redacted version
 22 of this testimony and Motion *in limine* No. 5 and No. 7, which refers to and quotes
 23 Exhibits 6, 7, and 8. Pursuant to Local Rule 79-5.2.2(b), Counsel for Defendants
 24 conferred with counsel for Plaintiffs on whether Exhibit 6 to the Leiden Declaration
 25 could be de-designated to avoid the need to file the Exhibit under seal. Oki Decl. ¶ 4.
 26 Plaintiffs requested that Defendants file Exhibit 6 under seal. *Id.*

1 **II. Good Cause Exists to File the Unredacted Motion in Limine No. 5, No. 7**
2 **and the Supporting Testimony Under Seal**

3 The decision to seal records is left to the discretion of the District Court.
4 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Nixon v. Warner*
5 *Communications, Inc.*, 435 U.S. 589, 599 (1978)). In connection with a non-
6 dispositive motion, such as Defendants' Motions in Limine, Rule 26(c)(1)(G) allows
7 parties, upon a showing of "good cause," to file under seal documents containing
8 "confidential . . . commercial information." See *IMAX Corp. v. Cinematech, Inc.*, 152
9 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that confidential and proprietary business
10 information is "to be filed under seal."); *Sun Microsystems Inc. v. Network Appliance*,
11 No. C-08-01641 EDL, 2009 WL 5125817, at *9 (N.D. Cal. Dec. 21, 2009) (granting
12 sealing requests because the documents "contain confidential [business] information,
13 much of which has been designated as Confidential or Highly Confidential under the
14 parties' stipulated protective order, that could cause competitive harm if disclosed.");
15 *In re Adobe Systems, Inc. Sec. Litig. Master File*, 141 F.R.D. 155, 161-162 (N.D. Cal.
16 1992) ("Protective orders and filings under seal are the primary means by which the
17 courts ensure full disclosure of relevant information, while still preserving the parties'
18 (and third parties') legitimate expectation that confidential business information,
19 proprietary technology and trade secrets will not be publicly disseminated."). Under
20 this good cause standard, only the interests of the parties are considered; any
21 "presumption of the public's right of access is rebutted." *Kamakana v. City & Cnty.*
22 *of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (differentiating dispositive motions
23 by explaining that, for such motions, "the private interests of the litigants are not the
24 only weights on the scale"). Moreover, there may be "compelling reasons" to file
25 certain documents under seal where public disclosure of the "court files might []
26 become a vehicle for improper purposes,' such as the use of records to gratify private
27 spite, promote public scandal, circulate libelous statements, or release trade secrets."
28 *In re Electronic Arts Inc.*, 298 F. App'x. 568, 569 (9th Cir. 2008) (internal quotations

1 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09CV500-WQH-BGS, 2012 WL
2 1899838, at *2 (S.D. Cal. May 24, 2012). Here there is both good cause and
3 “compelling reasons” to seal the exhibits described herein.

4 The limited portions of Motion *in limine* No. 7 Defendants seek to file under
5 seal contain highly confidential information regarding Defendants’ proprietary
6 business information, the financial information of Axanar Productions and the
7 expenditures associated with the creation of the Axanar Works, and Peters’ personal
8 finances. Oki Decl. ¶ 6. These are precisely the sort of “compelling reasons” that
9 justify filing documents under seal, as allowing this information to become public
10 would compromise Peters’ privacy, and prejudice Defendants greatly with respect to
11 their confidential proprietary business information. Defendants submit a proposed
12 redacted version of Motion *in limine* No. 7 herewith, with the redactions limited to the
13 material described above.

14 Exhibit 7 to the Leiden Declaration is the deposition testimony of Terry
15 McIntosh. Mr. McIntosh’s deposition testimony contains false and damaging
16 accusations and misleading testimony of a non-party with a personal vendetta against
17 Defendant Peters. Moreover, Mr. McIntosh discusses confidential prior business
18 plans of Defendants. As Motion *in limine* No. 5 quotes from and discusses Mr.
19 McIntosh’s testimony, it similarly requires the protection of an under seal filing.
20 Allowing this information to become public would circulate libelous statements and
21 prejudice Defendants greatly by revealing their confidential and proprietary business
22 information. Oki Decl. ¶¶ 7, 8; *see In re Electronic Arts Inc.*, 298 F. App’x. at 569,
23 *Bauer Bros. LLC v. Nike, Inc.*, 2012 WL 1899838, at *2. Similarly, the limited
24 portions of Motion *in limine* No. 5 Defendants seek to file under seal cite to the
25 damaging deposition testimony of Terry McIntosh. Thus, Defendants submit a
26 proposed redacted version of Motion *in limine* No. 5 herewith, with the redactions
27 limited to the material described above.

28 Exhibit 8 to the Leiden Declaration is the deposition testimony of Alec Peters,

1 discussing a draft marketing plan about the confidential business plans of Defendants,
2 regarding projects unrelated to the Axanar Works. Oki Decl. ¶ 5. The transcript
3 further discusses conversations between counsel that took place on the record during
4 Mr. Peters’ confidential deposition. *Id.* Due to the highly sensitive nature of the
5 information contained in this testimony, it requires the protection of an under seal
6 filing. *See IMAX Corp. v. Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998)
7 (noting that confidential and proprietary business information is “to be filed under
8 seal”); *Coloplast A/S v. Generic Med. Devices*, No. C10-227 BHS, 2012 WL
9 3629037, at *1 (W.D. Wash. Aug. 22, 2012) (documents sealed to protect
10 “confidential sensitive business . . . information”).

11 Pursuant to Local Rule 79-5.2.2(b)(1), Plaintiffs shall file a declaration
12 establishing that Exhibit 6 to the Leiden Declaration is sealable.

13 For the foregoing reasons, good cause exists for filing the unredacted Motion *in*
14 *limine* No. 5, No. 7, Alec Peters’ deposition testimony, Terry McIntosh’s deposition
15 testimony, and Daniel O’Rourke’s deposition testimony under seal. Accordingly,
16 Defendants hereby respectfully request that the Court grant this Application.

17 Dated: December 16, 2016

WINSTON & STRAWN LLP

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