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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
5 Oppositions to Plaintiffs’ Motion *in Limine* Nos. 1 and 3, the Declaration of Erin R.
6 Ranahan in Support of Defendants’ Opposition to Plaintiffs’ Motion *in Limine* No. 1
7 (“Ranahan Declaration”), Exhibits B and C to the Ranahan Declaration, and the
8 Declaration of Alec Peters in support of Defendants’ Opposition to Plaintiffs’ Motion
9 *in Limine* No. 1 (“Peters Declaration”). Defendants’ counsel has informed Plaintiffs’
10 counsel of Defendants’ intent to file this Application. *See* Declaration of Kelly N. Oki
11 filed concurrently herewith (hereafter, “Ok! Decl.”) ¶ 2. Counsel for Plaintiffs has
12 indicated that Plaintiffs **will not** oppose the relief sought in this Application. *Id.*
13 Therefore, the Application is unopposed.

14 **I. Factual Background**

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

28 Plaintiffs and Defendants have both designated certain deposition testimony and

1 documents as “Confidential” and “Highly Confidential – Attorney’s Eyes Only”
 2 pursuant to the Stipulated Protective Order. Under the Stipulated Protective Order,
 3 the parties must seek permission from the Court in order to file “Confidential” or
 4 “Highly Confidential – Attorney’s Eyes Only” documents under seal. ECF No. 53 at
 5 7.

6 Defendants’ Opposition to Plaintiffs’ Motion *in Limine* No. 1 and the Ranahan
 7 Declaration discuss and attach confidential settlement discussions, specifically:

Exhibit B to the Ranahan Declaration	Chart setting forth the parties’ respective confidential settlement demands, circulated between counsel during settlement negotiations
Exhibit C to the Ranahan Declaration	Email between Plaintiffs’ and Defendants’ counsel regarding the parties’ respective confidential settlement demands

14 Furthermore, Defendants’ Oppositions to Plaintiffs’ Motion *in Limine* Nos. 1
 15 and 3, the Ranahan Declaration, and the Peters Declaration cite to and discuss
 16 documents and testimony that has been previously designated as Confidential under
 17 the Stipulated Protective Order and filed under seal with permission of the Court, as
 18 they all discuss highly sensitive and confidential topics, including Defendants’
 19 financial information and expenditures associated with the creation of the Axanar
 20 Works, confidential draft scripts.

21 Defendants apply to file under seal the unredacted Oppositions to Plaintiffs’
 22 Motion *in Limine* Nos. 1 and 3, the Ranahan Declaration, the Peters Declaration, and
 23 the foregoing documents pursuant to the Stipulated Protective Order and Local Rule
 24 79-5.2.2. Due to the sensitive nature of this information, good cause exists to approve
 25 Defendants’ Application to file the unredacted versions of these documents under seal
 26 pursuant to Local Rule 79-5.2.2(a).

1 **II. Good Cause Exists to File the Unredacted Opposition to Plaintiffs' Motion**
2 **in Limine No. 1 and the Supporting Declarations and Exhibits 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' Opposition to Plaintiffs' Motions *in Limine*,
7 Rule 26(c)(1)(G) allows parties, upon a showing of "good cause," to file under seal
8 documents containing "confidential . . . commercial information." See *IMAX Corp. v.*
9 *Cinematech, Inc.*, 152 F.3d 1161, 1168 n.9 (9th Cir. 1998) (noting that confidential
10 and proprietary business information is "to be filed under seal."); *Sun Microsystems*
11 *Inc. v. Network Appliance*, No. C-08-01641 EDL, 2009 WL 5125817, at *9 (N.D. Cal.
12 Dec. 21, 2009) (granting sealing requests because the documents "contain confidential
13 [business] information, much of which has been designated as Confidential or Highly
14 Confidential under the parties' stipulated protective order, that could cause
15 competitive harm if disclosed."); *In re Adobe Systems, Inc. Sec. Litig. Master File*,
16 141 F.R.D. 155, 161-162 (N.D. Cal. 1992) ("Protective orders and filings under seal
17 are the primary means by which the courts ensure full disclosure of relevant
18 information, while still preserving the parties' (and third parties') legitimate
19 expectation that confidential business information, proprietary technology and trade
20 secrets will not be publicly disseminated.").

21 Under this good cause standard, only the interests of the parties are considered;
22 any "presumption of the public's right of access is rebutted." *Kamakana v. City &*
23 *Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (differentiating dispositive
24 motions by explaining that, for such motions, "the private interests of the litigants are
25 not the only weights on the scale"). Moreover, there may be "compelling reasons" to
26 file certain documents under seal where public disclosure of the "court files might []
27 become a vehicle for improper purposes,' such as the use of records to gratify private
28 spite, promote public scandal, circulate libelous statements, or release trade secrets."

1 *In re Electronic Arts Inc.*, 298 F. App'x. 568, 569 (9th Cir. 2008) (internal quotations
2 omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09CV500-WQH-BGS, 2012 WL
3 1899838, at *2 (S.D. Cal. May 24, 2012). Here there are both good cause and
4 “compelling reasons” to seal the documents described herein.

5 The Peters Declaration and the limited portions of Defendants’ Opposition to
6 Plaintiffs’ Motion *in Limine* No. 1 Defendants seek to file under seal contain highly
7 confidential information regarding the financial information of Axanar Productions
8 and the expenditures associated with the creation of the Axanar Works, and Peters’
9 personal finances, all of which was previously filed under seal, as well as confidential
10 settlement discussions between counsel. Oki Decl. ¶ 5. These are precisely the sort of
11 “compelling reasons” that justify filing documents under seal, as allowing this
12 information to become public would compromise Peters’ privacy, prejudice
13 Defendants greatly with respect to their confidential financial information, and reveal
14 confidential discussions between counsel regarding settlement. Defendants submit a
15 proposed redacted version of their Opposition to Plaintiffs’ Motion *in Limine* No. 1
16 herewith, with the redactions limited to the material described above. As the Peters
17 Declaration, in its entirety, constitutes confidential information, it cannot be suitably
18 redacted to eliminate the production of confidential information. *Id.* ¶ 3.

19 Additional portions of Defendants’ Opposition to Plaintiffs’ Motion *in Limine*
20 No. 1 and the Ranahan Declaration cite to and quote from Exhibits B and C attached
21 to the Ranahan Declaration, both of which contain highly confidential settlement
22 discussions between the parties. Oki Decl. ¶ 4. Exhibit B to the Ranahan Declaration
23 is a highly confidential chart the parties exchanged during the course of settlement
24 negotiations, setting forth the settlement positions of both Plaintiffs and Defendants.
25 This chart was prepared as confidential, pursuant to Fed. R. Evid. 408. *Id.* Exhibit C
26 to the Ranahan Declaration is a highly confidential discussion between counsel,
27 similarly setting forth the parties’ settlement demands. *Id.* Due to the highly sensitive
28 nature of the information contained in Exhibits B and C, they and the Ranahan

1 Declaration require the protection of an under seal filing. Fed. R. Evid. 408; *Van v.*
2 *Language Line Svcs., Inc.*, No. 14-cv-03791-LHK, 2016 WL 3566908, at *6 (N.D.
3 Cal. June 30, 2016) (Fed R. Evid. 408 “requires exclusion of evidence regarding any
4 discussion of settlement offers or agreements . . .”). Allowing the private settlement
5 positions of the parties to become public would be highly prejudicial to *both* parties.
6 Exhibits B and C of the Ranahan Declaration, in their entirety, constitute confidential
7 information, they cannot be suitably redacted to eliminate the production of
8 confidential information. Oki Decl. ¶ 4.

9 **III. Good Cause Exists to File the Unredacted Opposition to Plaintiffs’ Motion**
10 ***in Limine No. 3 Under Seal***

11 Defendants’ Opposition to Plaintiffs’ Motion *in Limine* No. 3 quotes and
12 summarizes from deposition testimony of J.J. Abrams and Justin Lin that were
13 designated by Plaintiffs as Confidential and previously filed under seal with the
14 permission of the Court. Oki Decl. ¶ 6.

15 **IV. Conclusion**

16 For the foregoing reasons, good cause exists for filing the unredacted
17 Oppositions to Plaintiffs’ Motion *in Limine* Nos. 1 and 3, the Ranahan Declaration
18 and Exhibits B and C thereto, and the Peters Declaration. Accordingly, Defendants
19 hereby respectfully request that the Court grant this unopposed Application.

20
21 Dated: January 6, 2017

WINSTON & STRAWN LLP

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