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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

LARONDA RASMUSSEN et al.,

Plaintiffs,

v.

THE WALT DISNEY COMPANY et al.,

Defendants.

Case No. 19STCV10974

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE TO OPPOSE DEFENDANTS' MOTIONS TO SEAL DOCUMENTS

Hearing Date: December 8, 2023
Hearing Time: 11:00 am
Department: 6
Hon. Elihu Berle

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INTRODUCTION

The California community is intimately familiar with the Walt Disney Company's exploitation of its labor force. From mass layoffs to the failure to provide employees with a living wage, thousands of California workers have long been harmed by Disney's profit-hungry ethos. Given this history, the Californian public wants to know whether the Walt Disney Company and its affiliates (together, "Defendants") have also robbed women workers of millions of dollars in wages over the past eight years. If so, the public also wants to know how exactly Defendants have done it.

KnockLA, a local nonprofit community journalism project, seeks to participate in this case as amicus curiae to protect the public's common law and First Amendment right to access court records. As discussed below, Defendants should not be allowed to hide evidence of systemic discrimination from the public where Defendants have not established that there is an overriding interest supporting secrecy. This Court should reject Defendants' efforts to mass-seal documents.

BACKGROUND

Plaintiffs allege in this case that Defendants systematically underpays women in California and that there is a less than one in one billion chance such a disparity would occur but for discrimination. Pls. Mem. is Supp. Mtn. for Class Certification at 1. If true, this is just one more example in Disney's long history of abusive labor practices, which date back to 1941, when Disney animators went on strike and "picket lines destroyed the facade of the magical world of Disney." Paul Prescod, *80 Years Ago Today, Disney Animation Workers Went on Strike*, Jacobin (May 29, 2021), https://tinyurl.com/y4j63wkr. These collective demands for better pay were loudly echoed decades later after researchers at Occidental College released the findings of a 2018 survey of Disney resort and theme park employees in Southern California, highlighting that Disneyland employees reported "high instances of homelessness, food insecurity, ever-shifting work schedules, extra-long commutes, and low wages." Peter Dreier et al., *Working for the Mouse: A Survey of Disneyland Resort Employees*, Occidental College Urban & Environmental

Policy Institute and the Economic Roundtable (Feb. 2018), https://tinyurl.com/mve3mmsr. After Disneyland workers successfully campaigned to pass a local living wage ordinance in Anaheim, California, Disney refused to comply, arguing that it was not a covered employer because it did not receive a city subsidy. Noah Biesiada, *Disneyland Workers Plan to Appeal OC Judge's Ruling Against Their Class Action Wage Lawsuit*, Voice of OC (Nov. 5, 2021), https://tinyurl.com/4fsz5jse. A California appeals court recently disagreed with Disney's position. *Id.*

The Anaheim living wage campaign and ensuing litigation have brought to center Disney's long-standing relationship with local government and taxpayer dollars. *See* Spencer Custodio, *Local Court Considers Whether Anaheim Taxpayers Are Subsidizing Disneyland*, Voice of OC (Feb. 13, 2020), https://tinyurl.com/nhctzm58; *Grace v. The Walt Disney Co.*, 93 Cal. App. 5th 549, 553 (2023), review filed (Aug. 18, 2023) (describing the financial relationship between Disney and the city). "Disney has very good negotiators," [Councilman Jose Moreno] said, referencing how Disney's lawyers convinced the city of Anaheim to contract away a taxpayer-funded parking garage and all of its revenue. Hosam Elattar, *Is a Taxpayer Funded Disneyland Parking Garage an Illegal Gift?*, Voice of OC (Dec. 7, 2022), https://tinyurl.com/542pp5mt. Disney's long legacy of corporate practices that cheat the California community out of the money they deserve makes this class action of particularly significant public interest.

ARGUMENT

Open access to court proceedings and judicial records is a fundamental element of the American legal system. *See generally Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572–73 (1980); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597–98 (1978). Just as fundamental is the role of the press. "Public [court] records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information [is] of critical importance to our type of government in which the citizenry is the final

judge of the proper conduct of public business." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

In this case, Plaintiffs allege that Defendants have engaged in pervasive wage discrimination against women and have provided this Court with hundreds of records in support of their argument that this case should proceed as a class action. *See generally* Pls. Mem. in Supp. of Class Certification. Defendants seek to hide a significant percentage of that evidence from the public. As discussed in Section I, this Court should allow KnockLA to participate as amicus curiae for the limited purpose of opposing Defendants' attempt to shield information from the public. Furthermore, as discussed in Section II, this Court should deny Defendants' motions to seal[1] and find that Defendants have not established that they have an overriding interest in secrecy that outweighs the statutory and constitutional presumption of openness.

I. THIS COURT SHOULD GRANT KNOCKLA'S REQUEST TO PARTICIPATE IN THIS CASE AS AMICUS CURIAE

The Court should permit KnockLA to participate as amicus curiae in this case under California Rules of Court, Rule 2.551(h)(2). Under that rule, any member of the public, including members of the press, may "move, apply, or petition . . . to unseal a record." Rule 2.551(h)(2) reflects the California Supreme Court's "admonition that 'representatives of the press and public "must be given an opportunity to be heard on the question of their exclusion."'" *Overstock.com*, 231 Cal. App. 4th at 489 (citing *NBC Subsidiary (KNBCTV), Inc. v. Super. Ct.* 20 Cal. 4th 1178, 1217 n.36 (1999)). "[C]ourts have ample authority to allow media participation as amici curiae." *Id.* at 250; *see also In re Marriage Cases*, 43 Cal. 4th 757, 791, n. 10 (2008) ("Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties.")

KnockLA seeks to participate in this case for the limited purpose of opposing Defendants' efforts to keep over one hundred court records from the public. Although any person may seek to unseal records without articulating a special interest under Rule 2.551, KnockLA, as a member of

[1] There are two virtually identical motions to seal pending before the Court, one filed by Defendants on July 12, 2023, and another on September 8, 2023. For readability, KnockLA cites only to Defendants' July 12, 2023, motion to seal but hereby incorporates the same arguments presented as to Defendants' second motion, which contain identical language with slightly different page numbers.

the press, has a particularly strong interest in these proceedings. *See In re Marriage of Nicholas*, 186 Cal. App. 4th 1566, 1577 (2010). KnockLA, a nonprofit community journalism project, strives to create accurate and reliable local coverage of critical issues affecting the Los Angeles and greater Californian community, including coverage of corporate labor abuses. Castle Decl. at ¶¶ 1, 5. As a news source with a demonstrated commitment to protecting freedom of the press, KnockLA takes seriously its responsibility to provide the public with information that contributes to meaningful engagement with public policy issues impacting their community, including the public interest in protecting workers from discrimination. *See* Castle Decl. at ¶¶ 6, 8.

For these reasons, this Court should grant KnockLA's motion for leave to participate as amicus curiae and allow it to be heard on the issue of court record sealing.

II. THE COURT SHOULD DENY DEFENDANTS' MOTIONS TO SEAL

Defendants seek to mass-seal documents that likely show whether and how its corporate practices result in unlawful pay discrimination. To succeed in overcoming the strong presumption of openness, Defendants must provide the court with a factual basis to find that: "(1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." Cal. Rules of Court, Rule 2.550.

Defendants have failed to meet their burden. As described below, the records at issue are presumptively public and of significant public interest. Meanwhile, Defendants have not established the existence of an "overriding interest" that outweighs the presumption of openness and supports sealing the records. *See id.*, Rule 2.550(d)(1)-(2). They also fall woefully short of establishing that there is a substantial probability that their alleged "overriding interest" will be

prejudiced if the records are not sealed.[2] *See id.*, Rule 2.550(d)(3). As a result, the Court should deny Defendants' motions to seal.

A. The Records at Issue are Presumptively Public and of Significant Public Interest

"Courts in California have long recognized a common law right of access to public documents, including court records. . . . California law also recognizes a constitutional right of access, grounded in the First Amendment, to court proceedings and court documents." *In re Marriage of Tamir*, 72 Cal. App. 5th 1068, 1078 (2021) (citations omitted). The right of access is grounded in "a first principle that people have the right to know what is done in their courts." *Wilson v. Sci. Applications Internat. Corp.*, 52 Cal. App. 4th 1025, 1030 (1997) (citation omitted). "[T]raditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals." *Id.* As the Supreme Court has often recognized, the press plays a vital role by subjecting the judiciary to "extensive public scrutiny and criticism." S*hephard v. Maxwell*, 384 U.S. 333, 350 (1966). "Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to . . . bring to bear the beneficial effects of public scrutiny upon the administration of justice." *Cox*, 420 U.S. at 492.

KnockLA, as a member of the press, has an interest in accessing information that could inform their news coverage of corporate labor abuses. Castle Decl. at ¶ 8. These records would help the public understand whether and how Defendants' employment practices have a discriminatory impact, and whether and how the evidence of those practices is legally sufficient to certify a class or get a favorable judgment on the merits. The public also has a strong interest in accessing information that informs public policy. Since this case was first filed, and in recognition of the transformative power of transparency, multiple pay transparency laws have

[2] Because Defendants cannot establish the existence of an "overriding interest," they necessarily cannot establish that the proposed sealing is narrowly tailored, or that no less restrictive means exist to achieve their overriding interest. *See* Cal. Rules of Court, Rule 2.550(d)(4)-(5).

been enacted. But as the author of the 2022 Pay Transparency for Pay Equity Act recently noted, "the fight is far from over," and information made public in this case has the potential to inform future policy discussions about workers rights and workplace discrimination. *See* Margot Roosevelt, *California Workers Get New Protections In 2023. Here's What You Need To Know*, Los Angeles Times (Jan. 3, 2023), https://tinyurl.com/yc6mnc9x. Finally, the public has an interest in knowing what kind of companies their taxpayer dollars are supporting. Although Defendants are for-profit corporations, at least some of the Defendants receive a significant amount of government financial support. For example, the state of California recently committed to providing Disney+ with a $20.9 million tax subsidy, and, for decades, Disney has received significant subsidies from the city of Anaheim. *See* Gene Maddaus, *'Star Wars' Series 'Skeleton Crew' Gets $21 Million Subsidy From California*, Variety (Jul.18, 2022), https://tinyurl.com/5ex7ees4; *Grace*, 93 Cal. App. 5th at 560 (holding that because Disney receives a "City Subsidy" within the meaning of Anaheim's living wage ordinance).

The Court should consider the significant public interests at stake when considering whether Defendants can overcome the strong presumption of public access. *See In re Marriage of Tamir*, 72 Cal. App. 5th at 1078.

B. Defendants Have Not Met Their Burden of Establishing That There Exists An "Overriding Interest" Supporting Secrecy

Defendants have not established that they have an "overriding interest that overcomes the right of public access to the record." *See* Cal. Rules of Court, Rule 2.550(d)(1). "[T]he question in the context of sealing is whether the [overriding interest] overrides the federal constitutional right of access to court records. This is necessarily a balancing inquiry, dependent on the facts and circumstances of the particular case." *Overstock.com*, 231 Cal. App. 4th at 504. Here, Defendants argue that the documents they seek to seal contain "confidential, commercially-sensitive, and/or trade secret," and this overriding interest warrants secrecy. The Court should reject this argument because Defendants have neither established that the documents actually contain commercially sensitive information nor provided any balancing analysis to support the conclusion that sealing is warranted.

Defendants rely heavily on the fact that the documents at issue have been marked confidential subject to the Parties' stipulated protective order. However, it is well-established that courts may "not permit [] record[s] to be filed under seal based solely on the agreement or stipulation of the parties." Cal. Rules of Court, rule 2.551(a). In fact, one of the cases Defendants rely on, *Champion v. Superior Court*,[3] explicitly warns judges that "however appealing it may be to merely accept a stipulation by the parties to seal a record, the temptation must be resisted." 201 Cal. App. 3d 777, 787 (Ct. App. 1988). As such, the fact that the documents were marked as confidential during the discovery process subject to the protective order is not legally dispositive. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003) ("Because [Defendant] obtained the blanket protective order without making a particularized showing of good cause with respect to any individual document, it could not reasonably rely on the order to hold these records under seal forever.")

Defendants are left to rely on their argument that "public policy favors the protection of an interest in maintaining the confidentiality of commercially sensitive information." Defs. Mem. in Supp. of Mtn. to Seal at 6. In support of this, Defendants rely on a smattering of cases that do not, alone or combined, support a broad finding that documents that relate to "operations, business strategies, recruiting, hiring, job architecture, and/or methods of compensation" constitute an "overriding interest" that outweighs the presumption of access. *See id.* at 5 (listing categories of documents Defendants seek to seal). The first case, *McGuan v. Endovascular Techs., Inc*., involved trade secrets as defined in California Civil Code § 3426. 182 Cal. App. 4th 974, 988-89 (2010). The *McGuan* court affirmed a trial court's finding that certain records should be sealed

[3] Defendants' use of this case in support of their argument is misleading. Although the *Champion* court did find that court records relating to a business partnership should be sealed, it only did so because the trial court had sealed, or failed to seal, court records inconsistently. *Id.* The court specifically found that "we have now examined and considered the documents, sealed, unsealed, and to be sealed, and have based our ruling on the merits of the petition upon the various documents. Were we to return them now for subdivision and resubmission, we would throw into confusion the basis for our decision and add undue complication and delay to this matter. We conclude, therefore, that our most prudent course is to grant the application to seal the entire file of this case." *Id.* at 789-90. The opinion contains no analysis as to whether any specific document or category of document should be protected because it contained commercially sensitive information.

because they contained trade secrets and noted that "the protection of trade secrets is an interest that can support sealing records in a civil proceeding." *Id.* at 988 (citing *In re Providian Credit Card Case*s 96 Cal.App.4th 292, 298–299 & fn. 3 (2002)). Here, however, Defendants have not argued that any trade secrets will be revealed if these documents are unsealed, so the *McGuan* analysis and holding are not persuasive.

The rest of the cases Defendants rely on, which may support a generalized proposition that courts can protect commercially sensitive information from disclosure, are also insufficient to establish that each document that Defendants allege has commercially sensitive information should be sealed. For example, in *Schwartz v. Cook*, the court sealed four document and redacted portions of a pleading after considering "a detailed declaration . . . contain[ing] information about their business performance, structure, and finances that could be used to gain unfair business advantage against [the Defendants]." No. 5:15-CV-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016). Here, there is no detailed declaration that supports Defendants' argument; the supporting declaration merely states, without explanation, that the information contained in the documents "would be of great interest to Defendants' competitors."[4] Davis Decl. at ¶ 4-7. In *Aerodynamics Inc. v. Ceasars Ent. Operating Co*, the court considered a single document relating to pay and bonus structures and found, after *in camera* review, that sealing was warranted. No. 2:15-CV-01344-JAD, 2015 WL 5679843, at *14 (D. Nev. Sept. 24, 2015). Similarly, in *Sullivan v. Deutsche Bank Americas Holding Corp.*, a court granted a motion to seal sixteen pages of documents containing proprietary information only after having reviewed the document. No. 08-CV-2370 LPOR, 2010 WL 3448608, at *1 (S.D. Cal. Aug. 31, 2010) But here, Defendants seek to mass-seal over a hundred documents and have failed to argue with any specificity why each document should be sealed. Defendants' request is "fatally overbroad" where they have "fail[ed] to isolate the discrete portions that could be used by its competitors to its disadvantage."

[4] In addition to lacking specificity about individual documents, or even categories of documents, there is no evidence suggesting that the declarant has any knowledge that could lead her to credibly offer her opinion on the commercial value of information as fact.

See Marsteller v. MD Helicopter Inc., No. CV-14-01788-PHX-DLR, 2017 WL 5479927, at *3-4 (D. Ariz. Nov. 15, 2017) (denying motion to seal "nearly 1,000 pages of documents" that defendants alleged "contain[ed] information regarding its 'financial and internal operations, including pricing strategy and personnel matters, that is non-public in nature and which, if disclosed, could be used by competitors or other third parties.'")

Finally, Defendants fail to engage in any meaningful balancing analysis and simply conclude that because courts sometimes seal documents that contain commercially sensitive information, this Court should mass-seal over one hundred documents that allegedly contain commercially sensitive information. As explained in Section I.A, there is a significant public interest in favor of disclosure. Meanwhile, Defendants have failed to establish that the documents they seek to seal contain commercially sensitive information that warrants sealing. As such, this Court should find that Defendants have not established the existence of an "overriding interest that overcomes the right of public access." *See* Cal. Rules of Court, rule 2.550(d)(1).

C. Defendants Have Not Met Their Burden of Establishing That There Is a Substantial Probability That Their Interests Will be Prejudiced Absent Secrecy

Defendants also cannot meet their burden of showing there is a substantial probability that their interests will be prejudiced if the documents are not sealed. *See* Cal. Rules of Court, rule 2.550(d)(3). "[W]ithout a clear enumeration of *specific facts* alleged to be worthy of the extraordinary measure of maintaining our records under seal, there is simply no basis to conclude that unsealing the records will actually infringe any interest . . . or inflict any harm . . . ." *H.B. Fuller Co. v. Doe*, 151 Cal. App. 4th 879, 898 (2007) (emphasis in the original). In this case, Defendants' motions contain only ambiguous and factually unsupported allegations of harm. Defendants argue that the documents they seek to seal contain "information [that] is highly sought by Defendants' competitors who may be seeking an advantage" and that public disclosure of this information would "undermine [Defendants'] competitive position globally." Defs. Mem. in Supp. of Mtn. to Seal at 8, 10. The only evidence offered by Defendants is the self-serving statement of their lawyer that "[t]he confidential, commercially-sensitive information, if disclosed, could cause damage to Defendants." Davis Decl. at ¶ 7. This ambiguous and

unsupported articulation of harm is plainly insufficient to establish that Defendants are substantially likely to be injured if the documents are unsealed. *See* Cal. Rules of Court, rule 2.550(d)(3); *Marsteller,* 2017 WL 5479927, at *3 (D. Ariz. Nov. 15, 2017) ("Without clarity and specificity as to which portions of these documents need to be sealed to protect Defendant's business interests, the Court is unable to decide whether sealing will interfere with the public's interest.").

CONCLUSION

The public has a well-established right to access the court records submitted to this court in support or opposition to Plaintiffs' motion for class certification. These documents are of significant public interest where they relate to possible systemic and pervasive wage discrimination by a prominent California employer. Defendants have not established that they have an "overriding interest" that outweighs the strong presumption of public access. For these reasons, and the reasons described above, this Court should deny Defendants' motions to seal court records.

Dated: October 26, 2023

Submitted,

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