

THE HONORABLE RICARDO S. MARTINEZ

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT KENNY,

Plaintiff,

v.

PACIFIC INVESTMENT
MANAGEMENT COMPANY LLC, a
Delaware limited liability company;
PIMCO INVESTMENTS LLC,

Defendants.

No. CV 14-1987-RSM

DEFENDANTS' MOTION TO SEAL

NOTE ON MOTION CALENDAR:

June 19, 2018

DEFENDANTS' MOTION TO SEAL
(No. CV 14-1987-RSM)

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TABLE OF CONTENTS

1
2
3
4 ARGUMENT 3
5 I. Legal Standard 3
6 II. Compelling Reasons Exist to Seal a Limited Number of Confidential Materials 4
7 A. Category A: Personnel Evaluations 4
8 B. Category B: Individual Compensation Data 5
9 C. Category C: Competitively Sensitive Business Strategy Discussions
10 Among Senior Management 6
11 D. Category D: Documents Regarding PIMCO’s Other Clients 8
12 E. Category E: Additional Commercially Sensitive Confidential Information 9
13 F. Category F: Confidential Agreement 9
14 G. Category G: Board Deliberative Process 10
15 H. Category H: PIMCO Materials Provided to the Board 11
16 I. Category I: Dechert Memoranda Prepared for the Board and Discussion
17 Thereof 12
18 J. Category J: Expert Reports & Deposition Transcripts 12
19 K. Category K: Personally Identifiable Information in Trustee Retirement
20 Policy 13
21 L. Category L: Declarations in Support of PIMCO’s Opposition to Plaintiff’s
22 Motion for Partial Summary Judgment 13
23 M. Category M: Corresponding Redactions in Briefs 13
24 III. PIMCO’s Compelling Reasons to Seal These Limited Confidential Materials Are
25 Not Outweighed by Plaintiff’s Arguments 14
26 CONCLUSION 15
27
28
29
30
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Page(s)

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Beaulieu Group, LLC v. Bates,
 No. 15-cv-1090, 2016 WL 7626471 (C.D. Cal. Oct. 18, 2016)6

BitTitan, Inc. v. SkyKick, Inc.,
 No. C15-0754-RSM, 2015 WL 12151073 (W.D. Wash. July 29, 2015).....14

Chill v. Calamos Advisors, LLC,
 No. 15-cv-01014 (ER) (S.D.N.Y. Oct. 11, 2017), ECF No. 64.....4

Clearly Food & Beverage Co. v. Top Shelf Beverages Inc.,
 102 F. Supp. 3d 1154 (W.D. Wash. 2015).....9

Cousineau v. Microsoft Corp.,
 No. C11-1438-JCC, 2014 WL 11961979 (W.D. Wash. Mar. 20, 2014)4

Center for Auto Safety v. Chrysler Group, LLC,
 809 F.3d 1092 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 38 (2016).....3, 5, 9, 11

In re Electronic Arts, Inc.,
 298 F. App'x 568 (9th Cir. 2008)4, 5, 6, 9

Goodman v. J.P. Morgan Investment Management, Inc.,
 No. 2:14-CV-414 (S.D. Ohio Mar. 9, 2018), ECF No. 135.....4

Kamakana v. City & County of Honolulu,
 447 F.3d 1172 (9th Cir. 2006) *passim*

Kasilag v. Hartford Investment Financial Services, LLC,
 Nos. 11-1083, 14-1611, 2016 WL 1394347 (D.N.J. Apr. 7, 2016).....4

Microsoft Corp. v. Motorola, Inc.,
 No. C10-1823-JLR, 2012 WL 5476846 (W.D. Wash. Nov. 12, 2012)15

National Products, Inc. v. Aqua Box Products,
 No. C12-605 RSM, 2013 WL 12106901 (W.D. Wash. Mar. 25, 2013).....15

Ruckelshaus v. Monsanto Co.,
 467 U.S. 986 (1984).....8

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Unknown Parties v. Johnson,
No. CV-15-00250-TUC-DCB, 2016 WL 8199309 (D. Ariz. June 27, 2016)14

Velasco v. Chrysler Group LLC,
No. CV 13-08080 DDP (VBK), 2017 WL 388797 (C.D. Cal. Jan. 26, 2017)7

Wacom Co. v. Hanvon Corp.,
No. C06-5701RJB, 2008 WL 623631 (W.D. Wash. Mar. 4, 2008)12

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Local Rule 5(g)(4).....3

Local Rule 5.2(a)13

Pursuant to the Court's May 22, 2018 Order, ECF No. 232, PIMCO respectfully lists herein all exhibits that it requests that the Court maintain under seal in connection with the briefing on PIMCO's Motion for Summary Judgment, ECF No. 154, and Plaintiff's Motion for Partial Summary Judgment, ECF No. 162. In light of the Court's direction that no new declarations or exhibits be filed, PIMCO cites to the evidentiary support establishing compelling reasons for sealing offered with its prior filings.

Mindful of the strong preference for public disclosure in dispositive motions and seeking to minimize the amount of information filed under seal, PIMCO has minimized the material that it proposes to seal and has excerpted and redacted wherever possible. PIMCO respectfully requests that the Court seal information falling into the categories listed in the chart below. Pursuant to the Court's May 22, 2018 Order, PIMCO has listed the sealed exhibits by ECF number. For redacted exhibits, PIMCO lists first the ECF number for the sealed (unredacted) filings, followed by the ECF number for the corresponding publicly filed, redacted versions.

Type of Document	Documents
Category A: Personnel Evaluations	SEALED: <u>ECF No. 163</u> : Exs. 20, 21, 22; <u>ECF No. 179</u> : Exs. 36, 37, 38, 39
Category B: Individual Compensation Data	SEALED: <u>ECF No. 163</u> : Ex. 23; <u>ECF No. 179</u> : Ex. 33
Category C: Competitively Sensitive Business Strategy Discussions Among Senior Management	SEALED: <u>ECF No. 179</u> : Exs. 32, 34, 52, 58, 61 REDACTED: <u>ECF No. 163</u> : Ex. 19 (redacted version at ECF No. 231-2); <u>ECF No. 179</u> : Exs. 7, 9, 35 (redacted versions at ECF No. 180)
Category D: Documents Regarding PIMCO's Other Clients	SEALED: <u>ECF No. 179</u> : Exs. 40, 41, 45, 46 REDACTED: <u>ECF No. 179</u> : Bradley Decl. (redacted version at ECF No. 180)
Category E: Additional Commercially Sensitive Confidential Information	SEALED: <u>ECF No. 157</u> : Ex. 16; <u>ECF No. 163</u> : Ex. 34; <u>ECF No. 179</u> : Exs. 47, 48, 49, 50, 51, 53, 59, 60, 62 REDACTED: <u>ECF No. 163</u> : Ex. 7 (redacted version at ECF No. 231-2); <u>ECF No. 179</u> : Exs. 5, 6, 8, 11, 12, 44 (redacted versions at ECF No. 180)

Type of Document	Documents
Category F: Confidential Agreement	SEALED: <u>ECF No. 163</u> : Ex. 44
Category G: Board Deliberative Process	SEALED: <u>ECF No. 157</u> : Exs. 13, 18, 19; <u>ECF No. 163</u> : Exs. 28, 34, 35, 38, 40, 41; <u>ECF No. 179</u> : Exs. 55, 56; <u>ECF No. 189</u> : Exs. 1, 4 REDACTED: <u>ECF No. 163</u> : Lin Declaration and Exs. 3, 18, 31, 32, 33, 37, 42 (redacted versions at ECF No. 231-2); <u>ECF No. 179</u> : Exs. 13, 14, 15, 16, 24 (redacted versions at ECF No. 180); <u>ECF No. 189</u> : Ex. 2 (redacted version at ECF No. 187); <u>ECF No. 197</u> : Exs. 2, 4, 12, 13 (redacted versions at ECF No. 231-3); <u>ECF No. 205</u> : Exs. 1, 3 (redacted versions at ECF No. 203)
Category H: PIMCO Materials Provided to the Board	SEALED: <u>ECF No. 157</u> : Exs. 6, 11, 12, 15; <u>ECF No. 179</u> : Exs. 21, 22, 23, 25, 28 REDACTED: <u>ECF No. 157</u> : Exs. 7, 8, 9, 10 (redacted versions at ECF No. 231-1); <u>ECF No. 179</u> : Ex. 27 (redacted version at ECF No. 181-2); <u>ECF No. 197</u> : Exs. 1, 3 (redacted versions at ECF No. 231-3)
Category I: Dechert Memoranda Prepared for the Board and Discussion Thereof	SEALED: <u>ECF No. 163</u> : Exs. 29, 30 REDACTED: <u>ECF No. 179</u> : Ex. 26 (redacted version at ECF No. 180); <u>ECF No. 197</u> : Ex. 6 (redacted version at ECF No. 231-3)
Category J: Expert Reports & Deposition Transcripts	SEALED: <u>ECF No. 157</u> : Ex. 23 REDACTED: <u>ECF No. 157</u> : Ex. 22 (redacted version at ECF No. 231-1); <u>ECF No. 163</u> : Exs. 4, 5, 6 (redacted versions at ECF No. 231-2); <u>ECF No. 179</u> : Exs. 1, 2, 3, 4, 17 (redacted versions at ECF No. 180, except redacted version of Ex. 3 at ECF No. 181-1)
Category K: Personally Identifiable Information in Trustee Retirement Policy	REDACTED: <u>ECF No. 163</u> : Ex. 43 (redacted version at ECF No. 231-2); <u>ECF No. 189</u> : Ex. 3 (redacted version at ECF No. 187)
Category L: Declarations for PIMCO Opposition to Plaintiff's Motion for Partial Summary Judgment	REDACTED: <u>ECF No. 198</u> : Helm Declaration (redacted version at ECF No. 194); <u>ECF No. 199</u> : Parker Declaration (redacted version at ECF No. 195)
Category M: Corresponding Redactions in Briefs	REDACTED: <u>ECF No. 154</u> : PIMCO Mot. Summ. J. (redacted version at ECF No. 151); <u>ECF No. 178</u> : Pl. Opp'n PIMCO Mot. Summ. J. (redacted version at ECF No. 177); <u>ECF No. 189</u> : PIMCO Reply Supp. Mot. Summ. J. (redacted version at ECF No. 185); <u>ECF No. 162</u> : Pl. Mot. Partial Summ. J. (redacted version at ECF No. 160); <u>ECF No. 196</u> : PIMCO Opp'n Pl. Mot. Partial Summ. J. (redacted version at ECF No. 192); <u>ECF No. 204</u> : Pl. Reply Supp. Mot. Partial Summ. J. (redacted version at ECF No. 202)

1 PIMCO is cognizant of the relatively large volume of material that it is asking the Court to
 2 seal. Three factors put the volume into the proper context. *First*, the parties filed cross-motions
 3 for summary judgment in a complex case after years of discovery, resulting in the submission of
 4 six briefs, supported by a total of 182 exhibits. The information PIMCO seeks to seal is a relatively
 5 small portion of the exhibits. *Second*, the plaintiff has, in contravention of Local Rule (“LCR”)
 6 5(g)(4), indiscriminately included large swaths of material in his filed exhibits that he does not
 7 rely on. For example, Exhibit 19 to Plaintiff’s Motion for Partial Summary Judgment, at ECF No.
 8 231-2 (redacted version), contains 76 pages, 66 of which appear to support only a “See also”
 9 citation. Likewise, the plaintiff included lengthy excerpts of his experts’ reports while only
 10 drawing the Court’s attention to small portions thereof – for example, highlighting only five
 11 excerpts of less than a page each in a 38-page expert report. *E.g.*, Ex. 3 to Pl.’s Opp. PIMCO Mot.
 12 Summ J., ECF No. 181-1 (redacted version). *Third*, notwithstanding PIMCO’s extensive efforts
 13 to meet and confer, the plaintiff has refused to consent to the sealing or redaction of *any*
 14 Confidential exhibits, with the exception of tiny portions of material protected by the attorney-
 15 client privilege and personally identifiable information and medical information.

ARGUMENT

I. Legal Standard

16 Documents submitted in connection with dispositive or merits-related motions may be
 17 sealed if the Court finds “compelling reasons supported by specific factual findings that outweigh
 18 the general history of access and the public policies favoring disclosure.” *See Kamakana v. City*
 19 *& Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal citations and quotation marks
 20 omitted). For example, “compelling reasons” justify sealing documents that could be used “as
 21 sources of business information that might harm a litigant’s competitive standing.” *Ctr. for Auto*
 22 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 38
 23 (2016) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978)). When court files
 24 “might have become a vehicle for improper purposes, such as the use of records to . . . release

1 trade secrets,” compelling reasons warrant sealing. *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569
 2 (9th Cir. 2008) (internal quotations and citation omitted). The Ninth Circuit interprets “trade
 3 secret” broadly, to “consist of any formula, pattern, device, or compilation of information which
 4 is used in one’s business, and which gives him an opportunity to obtain an advantage over
 5 competitors who do not know or use it.” *Id.* (citations omitted); *Cousineau v. Microsoft Corp.*,
 6 No. C11-1438-JCC, 2014 WL 11961979, at *1 (W.D. Wash. Mar. 20, 2014). In *Electronic Arts*,
 7 the Ninth Circuit issued a writ of mandamus and directed the district court to file under seal
 8 “confidential and commercially sensitive information,” consisting of “pricing terms, royalty rates,
 9 and guaranteed minimum payment terms.” 298 F. App’x at 569.

10 In other pending Section 36(b) actions, courts have recognized the confidential nature of
 11 materials bearing on an adviser’s business operations, like the materials PIMCO seeks to seal here.
 12 *See, e.g., Kasilag v. Hartford Inv. Fin. Servs., LLC*, Nos. 11-1083, 14-1611 (RMB/KMB), 2016
 13 WL 1394347, at *7 (D.N.J. Apr. 7, 2016) (sealing statement of undisputed facts including
 14 confidential cost and profit information potentially beneficial to competitors); Order, *Chill v.*
 15 *Calamos Advisors, LLC*, No. 15-cv-01014 (ER) (S.D.N.Y. Oct. 11, 2017), ECF No. 64 (granting
 16 motion to publicly file a motion for summary judgment with permanent redactions for profitability,
 17 15(c) material, and board deliberation references); Order, *Goodman v. J.P. Morgan Inv. Mgmt.,*
 18 *Inc.*, No. 2:14-CV-414 (S.D. Ohio Mar. 9, 2018), ECF No. 135 (granting motion to file summary
 19 judgment papers, including exhibits and references to the board’s 15(c) process, under seal). This
 20 Court should grant PIMCO’s request to seal similar material.

40 **II. Compelling Reasons Exist to Seal a Limited Number of Confidential Materials**

41 **A. Category A: Personnel Evaluations**

42 This category includes employee performance self-evaluations for three of PIMCO’s most
 43 senior executives, Brent Harris (Chairman of the PIMCO Funds), Douglas Hodge (former CEO),
 44 and Peter Strelow (Co-Chief Operating Officer). Specifically, Exhibits 20, 21, and 22 at ECF No.
 45 163 are Mr. Harris’s self-evaluations for 2013, 2015, and 2010, respectively. *See Leshaw Decl.*,
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1 ECF No. 170, ¶¶ 9-11. At ECF No. 179, Exhibits 36 and 37 are Mr. Harris's self-evaluations for
2 2013 and 2010, respectively; Exhibit 38 is Mr. Hodge's self-evaluation for 2012; and Exhibit 39
3 is Mr. Strelow's self-evaluation for 2013. See Leshaw Decl., ECF No. 219, ¶¶ 61-64. Senior
4 executives at PIMCO prepare these self-evaluations in connection with their annual reviews.
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8 The information in Category A is accessible only to a very limited number of senior
9 PIMCO personnel. The evaluations reveal PIMCO's highly confidential business strategies and
10 information about PIMCO's operations and internal governance. PIMCO considers the
11 information discussed in the evaluations to be highly proprietary. If the evaluations were filed
12 publicly, significant harm could result to PIMCO's business, including the risk of clients and
13 employees being solicited away from PIMCO in a highly competitive marketplace. See Leshaw
14 Decl., ECF No. 170, ¶¶ 7-11, 13; Leshaw Decl., ECF No. 219, ¶¶ 61-65. The proprietary, non-
15 public business information in these exhibits constitutes trade secrets under Ninth Circuit
16 precedent and warrants confidential treatment by the Court. See *Ctr. for Auto Safety*, 809 F.3d at
17 1097; *Elec. Arts*, 298 F. App'x at 569.
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28 **B. Category B: Individual Compensation Data**

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30 Category B includes information about compensation paid to PIMCO managing directors
31 and portfolio managers. Exhibit 33 at ECF No. 179 includes compensation for all PIMCO
32 managing directors and portfolio managers for 2010 through 2016; the compensation for four
33 executives, Mohamed El-Erian, Bill Gross, Brent Harris, and Doug Hodge, is expressly identified,
34 and the compensation for all others is listed by role or title. See Leshaw Decl., ECF No. 219, ¶ 60.
35 Exhibit 23 at ECF No. 163 is Brent Harris's compensation for 2013. See Leshaw Decl., ECF No.
36 170, ¶ 12. PIMCO's compensation data is highly sensitive and non-public, and a very limited
37 group of senior PIMCO executives has access to it. If this confidential compensation information
38 were filed publicly, significant harm to PIMCO's business could result. See Leshaw Decl., ECF
39 No. 170, ¶¶ 12-13; Leshaw Decl., ECF No. 219, ¶¶ 60, 65.
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1 The Court has the “power . . . to insure that its records are not used . . . as sources of
 2 business information that might harm a litigant’s competitive standing.” *Elec. Arts*, 298 F. App’x
 3 at 569 (quoting *Nixon*, 435 U.S. at 598). For that reason, district courts within this circuit have
 4 sealed employee compensation information. *E.g.*, *Beaulieu Grp., LLC v. Bates*, No. EDCV 15-
 5 1090, 2016 WL 7626471 JGB, at *3-4 (C.D. Cal. Oct. 18, 2016) (applying compelling reasons
 6 standard). Internally, disclosure of individual compensation amounts could destabilize a firm’s
 7 internal business dynamics. And externally, especially given the importance in a service industry
 8 like the asset management business of retaining experienced and qualified employees, disclosure
 9 of compensation information would be a boon to competitors who could use such information to
 10 recruit PIMCO personnel or otherwise compete with PIMCO for talent. Compelling reasons
 11 warrant keeping employee compensation information under seal.

22 **C. Category C: Competitively Sensitive Business Strategy Discussions Among**
 23 **Senior Management**

24 Category C contains documents that reflect sensitive business strategy discussions among
 25 PIMCO’s most senior executives. PIMCO has carefully reviewed the filed materials to identify
 26 these nine documents, four of which PIMCO proposes to redact, that could have significant
 27 negative effects on PIMCO’s business if they were filed publicly.

28 *Exhibits at ECF No. 179*: Exhibit 32 is a document authored by William H. Gross, co-
 29 founder of PIMCO, former Chief Investment Officer, and portfolio manager of the PIMCO Total
 30 Return Fund until September 2014, at or around the time of his departure from PIMCO. It contains
 31 detailed compensation information and discusses PIMCO’s confidential internal governance
 32 matters and business strategies. Leshaw Decl., ECF No. 219, ¶ 42. Exhibit 34 is an internal
 33 presentation prepared by PIMCO for its parent company, Allianz, that contains confidential
 34 analysis of PIMCO’s financial and operational positions relative to its competitors. *Id.* ¶ 43.
 35 Exhibit 35, which PIMCO proposes to redact, is a presentation prepared for PIMCO’s senior
 36 leadership by a consultant that includes analysis of fundamental directional aspects of PIMCO’s
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1 business, such as its client base and product lines – many of which are completely irrelevant to the
 2 issues before the Court. *Id.* ¶ 44. Exhibit 52 is an internal email chain among senior PIMCO
 3 leadership regarding sensitive governance and management issues; the email also reflects
 4 discussion of those issues with a representative of PIMCO’s parent, Allianz. *See id.* ¶ 52. Exhibit
 5 58 is an internal email chain among senior PIMCO leadership concerning similar sensitive
 6 governance and management issues. *See id.* ¶ 54. Exhibit 61 is an internal email chain among
 7 senior PIMCO personnel regarding firm-wide pricing strategy for all clients, as well as client
 8 relationships. *Id.* ¶ 57. Exhibit 7 is excerpts from the deposition transcript of Mr. Gross, and
 9 Exhibit 9 is excerpts from the deposition transcript of Douglas Hodge, former CEO of PIMCO.
 10 Leshaw Decl., ECF No. 219, ¶¶ 15-16, 19-20. PIMCO proposes to redact portions of Exhibits 7
 11 and 9 discussing topics in Category C referenced above.
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22 *Exhibit at ECF No. 163:* Exhibit 19, which PIMCO proposes to redact, is an excerpt from
 23 the transcript of Brent Harris, Chairman of the PIMCO Funds. It contains detailed information
 24 about PIMCO’s operations, internal governance, and compensation practices. Leshaw Decl., ECF
 25 No. 170, ¶ 8.
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30 These documents reflect the most key and proprietary business decisions for an asset
 31 management firm, including product mix, product pricing, executive-level staffing, and succession
 32 planning. Put simply, these are documents that PIMCO’s competitors would be able to use
 33 immediately to the detriment of PIMCO. *See* Leshaw Decl., ECF No. 219, ¶¶ 15-16, 19-20, 42-
 34 44, 52, 54, 57, 59; Leshaw Decl., ECF No. 170, ¶¶ 8, 13. “[D]istrict courts in this Circuit have
 35 sealed records containing information about proprietary business operations, a company’s business
 36 model[,] or agreements with clients, internal policies and strategies, and manufacturing
 37 information.” *Velasco v. Chrysler Grp. LLC*, No. CV 13-08080 DDP (VBK), 2017 WL 388797,
 38 at *2 (C.D. Cal. Jan. 26, 2017) (applying compelling reasons standard) (internal citations and
 39 quotation marks omitted). These types of information qualify as trade secrets because they offer
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1 a “competitive advantage over others . . . by virtue of [the company’s] exclusive access to the
 2 data.” See *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1012 (1984).

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 5 **D. Category D: Documents Regarding PIMCO’s Other Clients**

6 Category D comprises five documents implicating the confidentiality interests of PIMCO
 7 clients who have no role in the current action. Four documents are exhibits filed at ECF No. 179.
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 9 Two of the documents, Exhibits 40 and 41, are investment management agreements (including
 10 pricing information) between PIMCO and other clients that are subject to contractual
 11 confidentiality provisions. Leshaw Decl., ECF No. 219, ¶¶ 66-67. Exhibit 45 is an email chain
 12 containing negotiations between PIMCO and one of its separate account clients; this chain reveals
 13 detailed information about PIMCO’s operation, strategic decisions, and its relationship with that
 14 client. *Id.* ¶ 68. Exhibit 46 contains detailed confidential information regarding PIMCO’s business
 15 relationships with separate account holders and the fees that they pay. *Id.* ¶ 46. The final document
 16 is an attorney declaration with minimal redactions describing Exhibits 40, 41, and 45. Bradley
 17 Decl. Supp. Pl. Opp. PIMCO Mot. Summ. J., ECF No. 179 (redacted version at ECF No. 180).
 18 PIMCO’s relationships with these clients (and potentially others) would be harmed if the
 19 information in Category D were disclosed publicly. Leshaw Decl., ECF No. 219, ¶¶ 46, 59, 66-
 20 69. Moreover, the documents contain commercially sensitive information of PIMCO’s, including
 21 confidential advisory fee rates charged by PIMCO to third-party clients unrelated to the current
 22 case, PIMCO’s confidential sales practices and negotiation of fees charged, and confidential
 23 information about the nature of the services that PIMCO contracted to provide these other clients.
 24 *Id.* Release of this information would damage PIMCO’s business relationships with clients not at
 25 issue in this case. Further, this information could assist competitors in soliciting PIMCO’s clients
 26 and cause substantial competitive harm. *Id.* Finally, because the information in Category D is
 27 particularly unrelated to the merits of the case, the materials in this Category are less likely to
 28 implicate the “interest in ensuring ‘the public’s understanding of the judicial process and of
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1 significant public events” that underlies the compelling reasons standard. *See Kamakana*, 447
 2 F.3d at 1179.
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4 **E. Category E: Additional Commercially Sensitive Confidential Information**

5 The documents in Category E reflect commercially sensitive confidential information,
 6 similar to that discussed in Category C above, that also qualifies for protection because of the risk
 7 of competitive harm from disclosure. Whereas the documents in Category C deal with enterprise
 8 strategies at the heart of PIMCO’s business, the documents in Category E concern more granular
 9 proprietary information, such as profitability figures, portfolio management strategy, headcount
 10 analyses, and internal analyses of PIMCO’s relationship and interactions with the Board of
 11 Trustees of PIMCO Funds (“Board”). PIMCO considers each of these documents to be proprietary
 12 and to pose a risk of competitive harm if disclosed publicly. *See Leshaw Decl.*, ECF No. 150,
 13 ¶¶ 4, 7-8 (Ex. 16 at ECF No. 157); *Leshaw Decl.*, ECF No. 170, ¶¶ 5, 7, 15 (Exs. 7 and 34 at ECF
 14 No. 163); *Leshaw Decl.*, ECF No. 219, ¶¶ 11-14, 17-18, 21-24, 45, 47-51, 53, 55-56, 58-59 (Exs.
 15 5-6, 8, 11-12, 44, 47-51, 53, 59-60, and 62 at ECF No. 179). As reflected in the table above,
 16 PIMCO proposes to redact seven of these exhibits.
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30 These documents could be used by PIMCO’s competitors to their advantage and to
 31 PIMCO’s detriment, as explained in Mr. Leshaw’s declarations. *See Ctr. for Auto Safety*, 809 F.3d
 32 at 1097; *Elec. Arts*, 298 F. App’x at 569; *see also Clearly Food & Beverage Co. v. Top Shelf*
 33 *Beverages Inc.*, 102 F. Supp. 3d 1154, 1178 (W.D. Wash. 2015) (observing that “trade secrets,
 34 confidential information, marketing strategies, or business plans” justify sealing summary
 35 judgment documents). As just one example, Exhibit 53 at ECF No. 179 discusses in detail
 36 PIMCO’s proprietary strategy for managing cash flows in particular market situations, including
 37 particular reasons why PIMCO believes that strategy to offer advantages over competitors. Other
 38 documents in Category E contain similar information.
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48 **F. Category F: Confidential Agreement**

49 The single document in Category F, Exhibit 44 filed at ECF No. 163, is a confidential
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1 agreement that reflects the results of discussions regarding transitional matters relating to Mr.
 2 Popejoy's board service. Disclosure of this document would have harmful effects on PIMCO,
 3 Leshaw Decl., ECF No. 170, ¶ 16, and PIMCO respectfully submits that it should remain under
 4 seal.
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8 **G. Category G: Board Deliberative Process**
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10 Category G contains documents reflecting the deliberative process of the Board, including
 11 excerpted independent trustee deposition transcripts, emails among independent trustees, minutes
 12 of the Board and its committees, and an attorney declaration describing deliberations of the Board.
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 14 *See* Leshaw Decl., ECF No. 150, ¶¶ 4-8 (Exs. 13, 18, and 19 at ECF No. 157); Leshaw Decl., ECF
 15 No. 219, ¶¶ 25-32, 38 & Johnson Decl., ECF No. 218, ¶¶ 10-14, 18-23 (Exs. 13-16, 24, and 55-56
 16 at ECF No. 179); Leshaw Decl., ECF No. 186, ¶¶ 5, 7-8 (Exs. 1-3 at ECF No. 189); Leshaw Decl.,
 17 ECF No. 170, ¶ 15, Johnson Decl., ECF No. 172, ¶¶ 10-12, 20-24, 25-26, & Parker Decl., ECF
 18 No. 171, ¶¶ 8-10, 15-17 (Exs. 3, 18, 28, 31-35, 37-38, 40-42 at ECF No. 163); Leshaw Decl., ECF
 19 No. 191, ¶¶ 6, 8, 10-12 (Exs. 2, 4, and 12-13 at ECF No. 197); Defs.' Resp. Pl. Mot. Seal, ECF
 20 No. 220, 3-4 (discussing Exs. 1 and 3 at ECF No. 205); *see also* Lin Decl. Supp. Pl. Mot. Partial
 21 Summ. J., ECF No. 161. PIMCO proposes to redact the majority of the documents in Category G.
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32 Subjecting the information in Category G to public scrutiny would harm the deliberative
 33 process of the Board, which depends on its ability to engage in candid discussions regarding fund
 34 management fees and Board self-governance issues. Further, subjecting the detailed record of the
 35 adviser's interactions with the Board to public scrutiny could chill conversations between the
 36 adviser and Board to the detriment of the Board's governance of the Funds. PIMCO has submitted
 37 the declarations of Megan C. Johnson, independent counsel to the Independent Trustees, ECF Nos.
 38 172, 218, 227, and Ronald C. Parker, ECF No. 171, an independent trustee since July 2009 and
 39 Lead Independent Trustee since February 2017. Ms. Johnson and Mr. Parker explain the grave
 40 risk of harm that could result from public disclosure of the Board's deliberative materials.
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 51 Additionally, to the extent that the Board's deliberative process necessarily implicates the Board's

1 discussion of PIMCO’s competitively sensitive internal material, disclosure would cause PIMCO
2 competitive harm for the reasons discussed above in Categories C and E and as specifically
3 discussed in the declarations of Mr. Leshaw in connection with these particular documents, as cited
4 in the preceding paragraph. PIMCO respectfully submits that the risk of injury to the Board’s
5 oversight function, which shareholders rely on, that would result from public disclosure of the
6 information in Category G, as well as the potential competitive harm to PIMCO, constitutes a
7 specific compelling reason for sealing that outweighs the public interest in disclosure. *See*
8 *Kamakana*, 447 F.3d at 1178-79.
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17 **H. Category H: PIMCO Materials Provided to the Board**

18 Category H includes materials that PIMCO provided to the Board, which were prepared
19 and submitted by PIMCO to the Board (at the Board’s request) to facilitate the trustees’
20 consideration of the adviser’s services and fees as part of the annual “15(c) process” required by
21 statute. *See* Leshaw Decl., ECF No. 150, ¶¶ 4-9 (Exs. 6-12, and 15 at ECF No. 157); Leshaw
22 Decl., ECF No. 219, ¶¶ 35-37, 39-41, 59 (Exs. 21-23, 25, and 27-28 at ECF No. 179); Leshaw
23 Decl., ECF No. 191, ¶¶ 5, 7, 12 (Exs. 1 and 3 at ECF No. 197).
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30 As explained in the portions of the Leshaw declarations cited in the preceding paragraph,
31 the materials in Category H merit sealing for a combination of the reasons discussed above in
32 Categories C and E, regarding PIMCO’s internal competitively sensitive information, and
33 Category G, regarding the Board’s deliberative process. The Category H materials that PIMCO
34 seeks to seal contain extensive financial information and descriptions of PIMCO’s operations that,
35 if revealed, would harm PIMCO’s competitive standing; they thus merit protection as trade secrets
36 under Ninth Circuit precedent. *See, e.g., Ctr. for Auto Safety*, 809 F.3d at 1097. Moreover, because
37 the Category H materials contain detailed requests for information from the Board and PIMCO’s
38 responses thereto, they reveal the considerations the Board deems necessary to evaluate whether
39 to approve the Funds’ contracts with PIMCO, and their disclosure would harm the confidential
40 negotiations between PIMCO and the Board.
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I. Category I: Dechert Memoranda Prepared for the Board and Discussion Thereof

Category I contains the confidential advice and material provided by Dechert LLP (“Dechert”) to the Independent Trustees as their independent counsel. These documents reflect Dechert’s detailed guidance and instructions to assist the Independent Trustees in discharging their statutory obligations to protect shareholder interests by negotiating contracts with PIMCO.¹ See Leshaw Decl., ECF No. 170, ¶ 14, Johnson Decl., ECF No. 172, ¶¶ 11-15, & Parker Decl., ECF No. 171, ¶¶ 9-12 (Exs. 29-30 at ECF No. 163); Johnson Decl., ECF No. 218, ¶¶ 11-13, 15-16 (Ex. 26 at ECF No. 179); Johnson Decl., ECF No. 227, ¶¶ 12-13, 15-16 (Ex. 6 at ECF No. 197).

As explained in the declarations cited in the preceding paragraph, especially those of Ms. Johnson (of Dechert) and Mr. Parker (lead Independent Trustee), the Board views the information in Category I as confidential and proprietary and believes that its disclosure would harm the Board’s deliberative process and the oversight function. See *Kamakana*, 447 F.3d at 1178-79. Disclosing the Board’s deliberative process could also negatively impact the Board’s oversight function on which shareholders rely. Further, because the Board relies on this information in its confidential negotiations with PIMCO to determine whether to approve the Funds’ contracts, the information in Category I merits sealing as part of the course of a confidential negotiation. See *Wacom Co. v. Hanvon Corp.*, No. C06 -5701RJB, 2008 WL 623631, at *2 (W.D. Wash. Mar. 4, 2008) (granting motion to seal “information pertaining to a confidential negotiation”).

J. Category J: Expert Reports & Deposition Transcripts

Category J includes portions of the parties’ expert reports and transcripts of the experts’ depositions. PIMCO proposes that most of these documents be filed in redacted form.

Sealing of the material in Category J is warranted because the experts’ reports or testimony discuss information that falls into the categories above and thus merits sealing. The reports and

¹ The documents in Category I reflect otherwise privileged communications between the Independent Trustees and their independent counsel at Dechert and were only produced to the plaintiff pursuant to the Court’s Order applying the fiduciary exception and extending access to the privileged communications to the shareholder plaintiff.

1 testimony concern: PIMCO’s highly sensitive personnel evaluations and individual compensation
2 data, as discussed in Categories A and B; PIMCO’s highly sensitive and commercially sensitive
3 information, as discussed in Categories C and E; the Board’s deliberative process and the Dechert
4 memoranda, as discussed in Categories G and I; and materials provided by PIMCO to the Board,
5 as discussed in Category H. Leshaw Decl., ECF No. 150, ¶¶ 10 (Exs. 22-23 at ECF No. 157);
6 Leshaw Decl., ECF No. 219, ¶¶ 5-10, 33-34, 59 (Exs. 1-4 and 17 at ECF No. 179); Johnson Decl.,
7 ECF No. 172, ¶¶ 11-12, 16-19 & Parker Decl., ECF No. 171, ¶¶ 9-10, 13-14 (Exs. 4-6 at ECF No.
8 163). Accordingly, for the reasons discussed in connection with the underlying categories, the
9 Court should also seal the corresponding portions of the expert reports and expert deposition
10 testimony discussing information in those categories.
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21 **K. Category K: Personally Identifiable Information in Trustee Retirement Policy**

22 Pursuant to LCR 5.2(a), PIMCO proposes redacting just the dates of birth of the
23 Independent Trustees in the documents in Category K, which reflect the Board’s retirement policy.
24 Ex. 43 at ECF No. 163; Ex. 3 at ECF No. 189. The plaintiff does not oppose this request.
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28 **L. Category L: Declarations in Support of PIMCO’s Opposition to Plaintiff’s**
29 **Motion for Partial Summary Judgment**
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31 The redacted portions of the Helm and Parker Declarations offered in support of PIMCO’s
32 Opposition to Plaintiff’s Motion for Partial Summary Judgment, ECF Nos. 198 and 199 (redacted
33 versions at ECF Nos. 194 and 195 respectively), discuss information that falls into three categories
34 discussed above: internal board deliberations, *see* Category G; information in the Dechert
35 memoranda, *see* Category I; and sensitive private information concerning an individual
36 Independent Trustee, including personally identifiable information subject to LCR 5.2(a), *see*
37 Category K. *See* Leshaw Decl., ECF No. 191, ¶¶ 8, 12, 13.
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45 **M. Category M: Corresponding Redactions in Briefs**

46 PIMCO respectfully submits that the Court should permit the sealing of limited portions of
47 the six summary judgment briefs. PIMCO has sought to minimize the amount of material subject
48 to redaction, redacting information only in limited instances in the briefs, each of which reflects
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1 express discussion of the above material that PIMCO requests be sealed.

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3 **III. PIMCO’s Compelling Reasons to Seal These Limited Confidential Materials Are Not**
4 **Outweighed by Plaintiff’s Arguments**

5 Because the Court has directed that no reply brief be filed, PIMCO responds briefly to
6 arguments that the plaintiff raised in earlier filings.
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9 *First*, the plaintiff’s broad, unsupported statements about the public’s interest in PIMCO
10 and citations to PIMCO-related news stories do not justify the public filing of PIMCO’s
11 competitively sensitive information or the Board’s internal deliberations. Authority does not hold
12 that media attention to a case demonstrates a “public interest” in the case’s subject matter that
13 overrides a properly supported assertion of compelling reasons to justify sealing. To the contrary,
14 the public interest in judicial records may be overcome where “documents contain information
15 that, if released to the public, has the potential to harm [a party’s] and its partners’ positions in [an]
16 industry.” *BitTitan, Inc. v. SkyKick, Inc.*, No. C15-0754-RSM, 2015 WL 12151073, at *1 (W.D.
17 Wash. July 29, 2015); *see also Kamakana*, 447 F.3d at 1178 (“[A]ccess to judicial records is not
18 absolute.”). Further, the plaintiff has not identified the kind of “matters of significant public
19 concern” that would more forcefully present a true public interest, like government misconduct.
20 *See, e.g., Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8199309, at *4
21 (D. Ariz. June 27, 2016). And finally, the public’s interest in these proceedings can be fully met
22 through the voluminous *public* filings, which allow “public access to the nature of the [filings] and
23 [the] supporting exhibits,” while still protecting the specific confidential information for which
24 compelling reasons exist to justify sealing. *BitTitan*, 2015 WL 12151073, at *1.²
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41 *Second*, that the documents PIMCO seeks to seal reflect certain past information does not
42 mean they should be filed publicly when, as here, compelling reasons for sealing exist. Because
43 “past information may be used to predict future business plans,” compelling reasons can exist even
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48 ² In addition to the voluminous unsealed public filings in this case reflecting in detail the parties’ competing arguments
49 and supporting evidence, the public also has access to extensive information about the PIMCO Funds in their mandated
50 public disclosures under the securities laws and SEC rules, which are routinely updated. Mutual funds are perhaps
51 the most transparent financial product in the U.S. economy, thanks to these rigorous disclosure requirements.

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when the documents date from the recent past. *See Nat’l Prods., Inc. v. Aqua Box Prods.*, No. C12-605 RSM, 2013 WL 12106901, at *1 (W.D. Wash. Mar. 25, 2013) (sealing confidential financial documents dating back eight years); *see also Microsoft Corp. v. Motorola, Inc.*, No. C10-1823-JLR, 2012 WL 5476846, at *4 (W.D. Wash. Nov. 12, 2012) (“[P]ast strategic plans and past financial data may meaningfully predict [plaintiff’s] future business plans, such that public disclosure of such information may provide a competitive advantage to [plaintiff’s] competitors”).

Third, for the reasons PIMCO discussed in its earlier filings and in the Skinner Declaration, ECF No. 169, ¶¶ 4-9, the plaintiff is incorrect in suggesting that PIMCO forfeited protection over certain Confidential materials. Not only is the plaintiff’s suggestion contrary to the parties’ conduct during discovery, PIMCO properly invoked § 5.3 of the Amended Stipulated Protective Order out of an abundance of caution, and the plaintiff has not been prejudiced in any way.

CONCLUSION

For the foregoing reasons, PIMCO requests that the Court seal the materials listed above.

A proposed Order is submitted herewith.

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DATED: June 5, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court’s Electronic Mail Notice List.

DATED: June 5, 2018

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