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11 Attorneys for Plaintiffs
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12 and SVS Trucking, LLC

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 ShopKo Stores Operating Co., LLC, and
17 SVS Trucking, LLC,

18 Plaintiffs,

19 vs.

20 Balboa Capital Corporation,

21 Defendant.
22

Case No. 8:16-cv-99 JLS (KESx)

**DECLARATION IN SUPPORT
OF DEFENDANT'S
APPLICATION TO FILE UNDER
SEAL**

23 **DECLARATION OF EVAN K. JACOBS**

24 I, Evan K. Jacobs, declare as follows:

- 25 1. I am over the age of eighteen.
26 2. I have personal knowledge of the matters set forth herein, and if called
27 to testify, I would testify as set forth herein.
28 3. I am associate attorney at the law firm of Morgan, Lewis & Bockius,

1 LLP, and I represent ShopKo Stores Operating Co., LLC and SVS Trucking, LLC
 2 (collectively, “ShopKo”), *pro hac vice* in the above-captioned matter.

3 4. Pursuant to Local Rule 79-5.2.2(b)(i), I submit this Declaration in
 4 support of Defendant’s Application for Leave to File Under Seal the deposition
 5 testimony of Gordon Rausser, Ph.D. (ECF 125) as set forth below:

Document	Page	Description
Rausser Dep.	160:22 161:12	Statements concerning Dr. Rausser’s compensation.

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 7
 8 5. The testimony described above makes reference to the specific
 9 amounts of Dr. Rausser’s yearly compensation and income from various sources.
 10 ShopKo designated this testimony as “Confidential” pursuant to the Parties’
 11 Stipulated Protective Order entered July 8, 2016. *See* ECF 56. Balboa does not
 12 dispute that this information is properly subject to sealing.

13 6. Pursuant to California constitutional law, Courts have recognized a
 14 compelling privacy interest in sealing an individual’s compensation information, as
 15 such disclosure would violate an individual’s constitutional right to privacy in his
 16 personal financial affairs.¹ *See e.g.*, California Constitution, Art. 1, § 1.; *Int’l Fed’n*
 17 *of Prof’l & Tech. Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319,
 18 330, 165 P.3d 488, 493 (Cal. 2007) (“[I]ndividuals have a legally recognized
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20 ¹While Courts have found protecting an individual’s personal compensation
 21 information meets the “compelling interest” standard, Dr. Rausser’s deposition
 22 testimony was attached to a non-dispositive Motion to Exclude, thus, the lesser
 23 “good cause” standard governs whether sealing is proper. *See Phillips ex rel.*
 24 *Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002).
 25 Moreover, Dr. Rausser’s personal compensation information should be sealed
 26 because it should not have been included as an exhibit in the first place since it is
 27 not relevant to any of the issues in dispute. The specific deposition pages on which
 28 Dr. Rausser’s private compensation information appears are not cited anywhere in
 Defendant’s accompanying Motion to Exclude or supporting Memorandum of
 Points and Authorities. Pursuant to the Court’s Initial Standing Order, Defendant
 should not have attached these extraneous pages to its Motion. *See* ECF 9.

1 privacy interest in their personal financial information.”); *Pagano v. Oroville*
2 *Hosp.*, 145 F.R.D. 683, 698 (E.D. Cal. 1993) (noting the compelling privacy
3 interests related to disclosure of employees’ personnel, financial and disciplinary
4 records); *see also Zuccaro v. MobileAccess Networks, Inc.*, C11-272 MJP, 2012
5 WL 261342, at *5 (W.D. Wash. Jan. 30, 2012) (sealing documents attached to a
6 dispositive motion related to employee private data, including compensation).
7 Consistent with this law, this Court has granted Balboa’s previous requests to seal
8 compensation information of a crucial fact witness, David White. *See* ECF 114.

9 7. Dr. Rausser considers the specifics of his compensation information to
10 be private and confidential and maintains it as such. Accordingly, disclosure of his
11 compensation data would invade his privacy rights, which are granted to him by the
12 California State Constitution and recognized by California courts, and should not be
13 overlooked freely.

14 8. Finally, the requested redactions are narrowly tailored to protect Dr.
15 Rausser’s privacy interests in that only the actual monetary figures are redacted
16 from Dr. Rausser’s deposition testimony.

17 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
18 foregoing is true and correct to the best of my knowledge.

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DATED: April 13, 2017

By: /s/Evan K. Jacobs
Evan K. Jacobs