

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PB LEGACY, INC and TB FOODS
USA, LLC, a Texas Corporation

Plaintiffs,

v.

Case No: 2:17-cv-9-FtM-29CM

AMERICAN MARICULTURE,
INC., AMERICAN PENAEID, INC.
and ROBIN PEARL,

Defendants.

ORDER

This matter comes before the Court upon review of the Motion to Seal Documents Designated Attorneys' Eyes Only to be Filed in Support of Motion to Compel ("Motion to Seal") filed on July 17, 2018. Doc. 108. Plaintiffs move pursuant to Middle District of Florida Local Rule 1.09 to file under seal certain exhibits in support of its Motion to Compel as to its First Set of Requests for Production Directed to all Defendants and for Sanctions ("Motion to Compel"). *Id.* at 2-4; *see* Doc. 106. Defendants American Mariculture, Inc., American Penaeid, Inc. and Robin Pearl have not responded as the time to do so has not yet expired, and Plaintiffs' Motion to Seal does not indicate whether it is opposed.¹ In the interests

¹ Local Rule 3.01(g) requires that each motion filed in a civil case, with certain enumerated exceptions not at issue here, contain a statement regarding "whether counsel agree on the resolution of the motion." M.D. Fla. R. 3.01(g). Any future motions that fail to comply with Local Rule 3.01(g) will be denied on that basis.

of efficient resolution of the underlying Motion to Compel, however, the Motion to Seal will be granted.

Under Local Rule 1.09(b):

If filing under seal is authorized by statute, rule, or order (including an order requiring or permitting a seal and obtained pursuant to (a) of this rule), a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words “Motion to Seal Pursuant to [Statute, Rule, or Order]” and which includes: (i) a citation to the statute, rule, or order authorizing the seal; (ii) an identification and description of each item submitted for sealing; (iii) a statement of the proposed duration of the seal; and (iv) a statement establishing that the items submitted for sealing are within the identified statute, rule, or order the movant cites as authorizing the seal.

M.D. Fla. Rule 1.09(b). The Order Granting Joint Motion for Entry of Confidentiality Protective Order and Order Regarding the Disclosure of Privileged Information (“Confidentiality Order”) authorizes and requires the parties to follow the procedures set forth in Local Rule 1.09 for filing under seal documents or information designated as confidential. *See* Doc. 102 at 8-9; *see also* Doc. 108 at 2. This requirement applies even if the moving party does not agree the document requires sealing, but the moving party may argue against the need for sealing in the motion. *See* Doc. 102 at 8-9. In such a situation, the Confidentiality Order indicates the designator should have the opportunity to argue in favor of sealing. *Id.*

Plaintiffs’ Motion to Compel seeks, in part, a court order requiring Defendants to remove the blanketed “Attorneys’ Eyes Only” (“AEO”) designation on all 36,046 documents produced in its second production, to provide good cause justification for AEO designation on a document-by-document basis, and to remove unwarranted redactions from the produced documents. Doc 108 at 2; *see also* Doc. 106 at 2-3, 9-

10, 17-22. Therefore, Plaintiffs' position is that the documents they seek to file in support of the Motion to Compel are not in fact confidential, but they are nonetheless required to seek leave to file the documents under seal given the Confidentiality Order. Doc. 108 at 2-3. Given that the parties conferred "repeatedly and at length" regarding the underlying Motion to Compel—which, in part, addresses whether the documents at issue are rightly designated as confidential—it would appear Defendants believe the documents they designated as confidential should be filed under seal. *See* Doc. 106 at 10-11. Therefore, because the confidentiality of the documents is at issue in the underlying Motion to Compel and Plaintiffs have sufficiently identified and described the documents proposed for sealing pursuant to Local Rule 1.09(b) and the Confidentiality Order, the Court finds good cause to grant the Motion to Seal pending resolution of the underlying Motion to Compel.

ACCORDINGLY, it is

ORDERED:

The Motion to Seal Documents Designated Attorneys' Eyes Only to be Filed in Support of Motion to Compel (Doc. 108) is **GRANTED**. Plaintiff shall have up to and including **July 20, 2018** to file under seal the "sample documents" identified in the Motion to Seal (Doc. 108 ¶ 8). If the Court determines the documents are not properly designated as confidential under the Confidentiality Order, the Court will unseal the documents.

DONE and **ORDERED** in Fort Myers, Florida on this 19th day of July, 2018.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record