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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Kory Dean Krieger,

10 Plaintiff,

11 v.

12 Nationwide Mutual Insurance Company,

13 Defendant.

No. CV11-1059-PHX-DGC

ORDER

14
15 Plaintiff Kory Dean Krieger has filed a motion to seal specific documents in this
16 case. Doc. 70. The motion is unopposed. The Court will deny the motion.

17 Two standards govern requests to seal documents. “First, a ‘compelling reasons’
18 standard applies to most judicial records.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665,
19 677-78 (9th Cir. 2010) (citing *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,
20 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135-36
21 (9th Cir. 2003)). “[A] party seeking to seal judicial records must show that ‘compelling
22 reasons supported by specific factual findings outweigh the general history of access and
23 the public policies favoring disclosure.’” *Pintos*, 605 F.3d at 678 (quoting *Kamakana*,
24 447 F.3d at 1178). The second standard applies to “‘private materials unearthed during
25 discovery,’ as such documents are not part of the judicial record.” *Id.* (quoting
26 *Kamanaka*, 447 F.3d at 1180). The “good cause” standard set forth in Rule 26(c) of the
27 Federal Rules of Civil Procedure applies to this category of documents. *See id.*; *San Jose*
28 *Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999). For good

1 cause to exist under Rule 26(c), “the party seeking protection bears the burden of
2 showing specific prejudice or harm will result if no protective order is granted.” *Phillips*
3 *v. G.M. Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *see Foltz*, 331 F.3d at 1130. The
4 good cause standard applies to documents attached to non-dispositive motions because
5 those documents are often “unrelated, or only tangentially related, to the underlying
6 cause of action.” *Phillips*, 307 F.3d at 1213 (citation omitted). Documents attached to
7 dispositive motions, by contrast, are governed by the compelling reasons standard. *See*
8 *San Jose Mercury News*, 187 F.3d at 1102; *Foltz*, 331 F.3d at 1136.

9 Plaintiff asks the Court to seal the following documents: Docs. 1, 19-3, 31-2, 45,
10 47, 48, 50, 55, 62, and 67. Plaintiff’s sole argument is that these documents include
11 Plaintiff’s “sensitive medical and personal information.” Doc. 71, at 1. Such generalized
12 statements supporting sealing are inadequate; “a party must articulate specific facts to
13 justify sealing, and must do so with respect to each item sought to be sealed.” *B2B CFO*
14 *Partners, LLC v. Kaufman*, No. CV 09-2158-PHX-JAT, 2010 WL 2104257, at *1
15 (D. Ariz. May 25, 2010) (citing *Kamakana*, 447 F.3d at 1183-84 (“Simply mentioning a
16 general category of privilege, without any further elaboration or specific linkage with the
17 documents, does not satisfy the burden.”)). Plaintiff put his medical condition at issue
18 when he filed for benefits. *See Clark v. Schriro*, No. CV 06-0085-TUC-FRZ, 2007 WL
19 2750667, at *4 n.5 (D. Ariz. Sept. 19, 2007). The mere assertion that Plaintiff considers
20 medical and personal information sensitive does not amount to a compelling reason to
21 seal. *See TriQuint Semiconductor, Inc. v. Avago Techs. Ltd.*, No. CV 09-1531-PHX-JAT,
22 2011 WL 4947343, at *4 (D. Ariz. Oct. 18, 2011).

23 The Court must “conscientiously balance[] the competing interests’ of the public
24 and the party who seeks to keep certain judicial records secret.” *Kamakana*, 447 F.3d
25 at 1179 (quoting *Foltz*, 331 F.3d at 1135) (alteration in original). “In general,
26 ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify
27 sealing court records exist when such ‘court files might have become a vehicle for
28 improper purposes,’ such as the use of records to gratify private spite, promote public

1 scandal, circulate libelous statements, or release trade secrets.” *Id.* (quoting *Nixon v.*
2 *Warner Commc’ns, Inc.*, 435 U.S. 589, 498 (1978)). “The mere fact that the production
3 of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
4 litigation will not, without more, compel the court to seal its records.” *Id.* Plaintiff has
5 not shown that his interest in sealing outweighs the “strong presumption in favor of
6 access to court records.” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995).

7 Courts in this District have permitted movants who demonstrated a good faith
8 effort to carefully redact exhibits an opportunity to supplement their motion to seal in
9 order to meet the standards set forth by the Ninth Circuit. *See TriQuint*, 2011 WL
10 4947343, at *4. Plaintiff, however, has made no previous effort to protect the
11 information he now claims to be sensitive. Plaintiff has openly filed documents
12 pertaining to his medical condition, sometimes as separate exhibits (*e.g.*, Doc. 1), and
13 other times appended to the motions themselves (*e.g.*, Docs. 45, 48, 50, 55). Plaintiff has
14 not provided the Court with the specific information that he seeks to seal.¹ *See TriQuint*,
15 2011 WL 4947343, at *4 (“TriQuint cannot leave it to the Court to puzzle out which
16 information it thinks relates to lost profits and then to apply TriQuint’s generalized
17 assertions of compelling reasons to justify sealing that information.”). Nor has Plaintiff
18 presented compelling reasons to seal the identified documents in their entirety. *See B2B*,
19 2010 WL 2104257, at *1 (“Plaintiffs make no effort to comply with *Kamakana* in that
20 they do not explain item by item why an exhibit or argument must be sealed. Indeed,
21 they seek to seal the entire motion, which clearly contains law and argument that should
22 not be sealed.”).

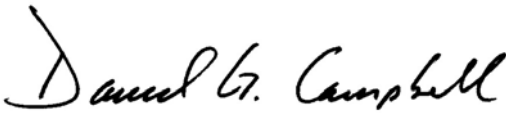
23 As the *Kamakana* court noted, it is not this Court’s burden to justify unsealing a
24 document; it is the party’s burden to overcome the presumption of access to the courts.
25 *Kamakana*, 447 F.3d at 1181-82. Plaintiff has failed to meet this burden.

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27 ¹ Even if Plaintiff were afforded an opportunity to supplement his motion by
28 identifying the specific information he seeks to seal, the majority of the documents at
issue were filed in such a way that makes it impossible for the Court to seal isolated
portions of the documents.

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IT IS THEREFORE ORDERED that Plaintiff's motion to seal (Doc. 70) is **denied.**

Dated this 9th day of May, 2012.



David G. Campbell
United States District Judge