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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHULTZ STEEL COMPANY, a
California corporation,

Plaintiff,

v.

CONTINENTAL CASUALTY
COMPANY, a corporation; and
DOES 1 through 100,
inclusive,

Defendant.

CV 14-08044-RSWL (ASx)

**ORDER re: APPLICATION TO
SEAL DOCUMENTS MARKED AS
CONFIDENTIAL OFFERED IN
SUPPORT OF DEFENDANT
CONTINENTAL CASUALTY
COMPANY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING BAD FAITH [54]**

Currently before the Court is Defendant Continental Casualty Company's ("Defendant") Application to Seal Documents Marked as Confidential Offered in Support of Defendant Continental Casualty Company's Motion for Partial Summary Judgment Regarding Bad Faith ("Application") [54]. Defendant filed its Application on April 12, 2016. Defendant seeks to file certain exhibits produced by Plaintiff Shultz Steel Company ("Plaintiff") and third party Marsh USA, Inc. Under seal. Appl. ¶¶ 4-11, ECF No. 54. Specifically,

1 Defendant requests to file under seal Exhibits A, B, C,
2 D, and E to the Declaration of J. Stephen Berry ("Berry
3 Declaration"). Defendant states that in addition to
4 filing the Berry Declaration and attachments under
5 seal, Defendant will "contemporaneously file a redacted
6 version on the ECF system, redacting only those
7 documents marked as Confidential, or otherwise
8 requiring redaction by law, and keeping as much
9 information as possible public." Id. at ¶ 12.

10 Defendant states that it seeks to file the
11 aforementioned exhibits under seal in accordance with
12 the wishes of Plaintiff and third party Marsh USA,
13 Inc., both of whom produced these exhibits in discovery
14 and who seek to keep this information confidential.
15 Id. at ¶¶ 4-11. Plaintiff further states that some of
16 the exhibits have been marked confidential by
17 Plaintiff's counsel, and in one case, the court
18 reporter whom transcribed the deposition in Exhibit D.
19 Id.

20 Local Rule 79-5.1 provides the procedural
21 requirements for an application to file under seal and
22 states that, unless authorized by statute or federal
23 rule, filing any document under seal must have the
24 Court's "prior approval" obtained by the movant's
25 "written application and a proposed order." C.D. Cal.
26 Civ. L.R. 79-5.1.

27 "Historically, courts have recognized a 'general
28 right to inspect and copy public records and documents,

1 including judicial records and documents.'" Kamakana
2 v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th
3 Cir. 2006) (quoting Nixon v. Warner Commc'ns, Inc., 435
4 U.S. 589, 597 (1978)). Accordingly, there is a "strong
5 presumption in favor of access" to judicial records.

6 Id.

7 The Ninth Circuit has enumerated two different
8 standards that a moving party must meet for an
9 application to file judicial documents under seal to be
10 granted. For judicial documents connected to a
11 "dispositive motion," the movant must show "compelling
12 reasons" for sealing the specified judicial records.

13 Id. at 1178-81.¹ For judicial documents connected to a
14 "non-dispositive motion," the movant must show "good
15 cause" for sealing the specified judicial records. Id.
16 at 1179-80. Both standards require a "'particularized
17 showing' that 'specific prejudice or harm will result'
18 if the information is disclosed. 'Broad allegations of
19 harm, unsubstantiated by specific examples of

21 ¹ Generally, "'compelling reasons' sufficient to outweigh
22 the public's interest in disclosure and justify sealing court
23 records exist when such 'court files might [be used as a] vehicle
24 for improper purposes,' such as the use of records to gratify
25 private spite, promote public scandal, circulate libelous
26 statements, or release trade secrets." Kamakana, 447 F.3d at
27 1179. The Ninth Circuit requires that the court "conscientiously
28 balance the competing interests of the public and the party who
seeks to keep certain judicial records secret," but if the court
decides to seal the requested judicial records, the court's
decision must be based on "a compelling reason" and the court
must "articulate the factual basis for its ruling, without
relying on hypothesis or conjecture." Id. (internal quotation
marks omitted).

1 articulated reasoning' will not suffice." Adema
2 Technologies, Inc. V. Wacker Chemie AG, No. 5:13-cv-
3 05599-PSG, 2013 WL 6622904, at *1 (N.D. Cal. Dec. 16,
4 2013) (quoting Phillips ex rel. Estates of Byrd v. Gen.
5 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002);
6 Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470,
7 476 (9th Cir. 1992)).

8 The Ninth Circuit has made clear that a party
9 seeking to seal a judicial record relating to the
10 merits of the case bears the burden of overcoming this
11 presumption by articulating "compelling reasons
12 supported by specific factual findings that outweigh
13 the general history of access and the public policies
14 favoring disclosure." Id. The Ninth Circuit reasoned
15 that a judicial record relating to the merits of the
16 case "is at the heart of the interest in ensuring the
17 'public's understanding of the judicial process and of
18 significant public events.'" Id. (quoting Valley
19 Broadcasting Co. v. U.S. Dist. Ct., 798 F.2d 1289, 1295
20 (1986)).

21 As this Application seeks to seal documents offered
22 in support of Defendant's Motion for Partial Summary
23 Judgment [51], the Court finds that the "compelling
24 reasons" standard applies to Defendant's Application.
25 The Court further finds that Defendant has failed to
26 meet the "compelling reasons" standard. Upon review of
27 Defendant's Application and the accompanying
28 Declaration of Keshia W. Lipscomb [55], the Court finds

1 Defendant has failed to set forth a "particularized
2 showing' that 'specific prejudice or harm will result'
3 if the information is disclosed." Adema Technologies,
4 2013 WL 6622904, at *1. Defendant simply argues that
5 Plaintiff and third party Marsh USA, Inc. wish for the
6 exhibits to remain protected and confidential. The
7 Court notes that the Ninth Circuit requires a more
8 particularized showing of prejudice or harm to the
9 parties' in order to grant an application to file under
10 seal. A showing of "harm" may include the use of these
11 documents for improper purposes, such as "the use of
12 records to gratify private spite, promote public
13 scandal, circulate libelous statements, or release
14 trade secrets." Kamakana, 447 F.3d at 1179.

15 Accordingly, **THE COURT NOW FINDS AND RULES AS**
16 **FOLLOWS:** the Court **DENIES** Defendant's Application.
17 Defendant may re-apply for leave to file the exhibits
18 under seal, but should supply the Court with sufficient
19 facts to meet the Ninth Circuit's "compelling reasons"
20 standard.

21 **IT IS SO ORDERED.**

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23 DATED: April 14, 2016

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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