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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALFRED GONZALES and KELLY
GONZALES, Individually and on Behalf of
All Others Similarly Situated,

CASE NO. 1:10-cv-01010-LJO-SKO

Plaintiffs,

**ORDER DENYING PLAINTIFFS’
REQUEST TO SEAL DOCUMENTS**

v.

COMCAST CORPORATION, and
DOES 1 through 10 Inclusive,

Defendants.

_____ /

I. INTRODUCTION

Plaintiffs filed this putative class action suit on May 3, 2010, in Fresno County Superior Court. (Doc. 1, ¶ 1.). The action was removed to this Court by Defendant Comcast Corporation (“Comcast”) on June 3, 2010. On November 30, 2010, the parties entered into a stipulation for a protective order of confidentiality with regard to discovery documents. (Doc. 28.) This proposed stipulated protective order (“protective order”) was signed by the Court on December 17, 2010. (Doc. 29.)

On August 22, 2011, Plaintiffs filed a “motion to certify class and appoint representative plaintiffs and lead counsel.” (Doc. 64.) In support of this motion, Plaintiffs filed the declaration of Kevin F. Ruf with attached exhibits containing various documents. On August 29, 2011, Plaintiffs

1 filed a request to seal certain documents that are attached to the declaration of Mr. Ruf. Plaintiffs
2 explain in their request to seal that certain documents were designated as “Confidential” by Comcast
3 pursuant to the parties’ protective order. The protective order provides that, when discovery
4 documents or materials are identified as “Confidential,” the party seeking to disclose the confidential
5 material as part of a court filing must seek a sealing order prior to filing the documents. For the
6 reasons stated below, Plaintiffs’ request to seal documents is DENIED without prejudice.

7 II. DISCUSSION

8 A. Legal Standard

9 Every court has supervisory power over its own records and files, and may provide access
10 to court documents at its discretion. *See Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)
11 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). A motion to seal documents
12 implicates the “general right to inspect and copy public records and documents, including judicial
13 records and documents.” *Nixon*, 435 U.S. at 597 (footnote omitted). In the Ninth Circuit, there is
14 a strong presumption in favor of access to court records. *See Foltz v. State Farm Mut. Auto. Ins. Co.*,
15 331 F.3d 1122, 1135 (9th Cir. 2003) (stipulated order without more insufficient basis to seal court
16 records). The right to access is not absolute and can be overridden where there are sufficiently
17 compelling reasons. *Id.*

18 The party seeking to seal a document related to a non-dispositive motion must meet the
19 “good cause” standard set forth by Federal Rule of Civil Procedure 26(c) that applies to protective
20 orders. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 677-80 (9th Cir. 2010); *see also Kamakana*
21 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (noting differing treatment of
22 judicial records attached to dispositive motions versus those attached to non-dispositive motions).
23 In the Rule 26(c) context, “[a] party asserting good cause bears the burden, for each particular
24 document it seeks to protect, of showing that specific prejudice or harm will result if no protective
25 order is granted.” *Foltz*, 331 F.3d at 1130. “Broad allegations of harm, unsubstantiated by specific
26 examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Beckman Indus., Inc. v. Int’l*
27 *Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (internal quotation marks omitted). “If a court finds
28 particularized harm will result from disclosure of information to the public, then it balances the

1 public and private interests to decide whether a protective order is necessary.” *Phillips v. Gen.*
2 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

3 **B. Analysis**

4 **1. Blanket Protective Order Does Not Establish Good Cause to Seal**

5 Pursuant to the good cause standard of Rule 26(c), Plaintiffs have the burden of showing that
6 specific prejudice or harm will result if its motion to seal is not granted. Plaintiffs essentially assert
7 that good cause exists here because the material they seek to seal was the subject of the December
8 17, 2010, protective order, which established the necessary good cause to support a sealing order.

9 “Blanket protective orders” like the protective order at issue in this case, extend “broad
10 protection to all documents produced [in litigation], without a showing of good cause for
11 confidentiality as to any individual documents.”¹ *Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775,
12 790 (1st Cir. 1988). Such orders are, by nature, overinclusive. *See Beckman Indus.*, 966 F.2d at 476.

13 Here, the protective order was a stipulated blanket protective order in which “the judge
14 signed off on the order without the benefit of making an individualized determination as to specific
15 documents.” *Kamakana*, 447 F.3d at 1183. Therefore, Plaintiffs did not have to make a “good
16 cause” showing under Rule 26(c) with regard to any particular document at the time the protective
17 order was issued. *See Beckman Indus.*, 966 F.2d at 476; *see also Foltz*, 331 F.3d at 1133 (“[A] party
18 seeking the protection of the court via a blanket protective order typically does not make a ‘good
19 cause’ showing required by Rule 26(c) with respect to any particular document.”). Accordingly,
20 Plaintiffs cannot establish good cause to seal the documents merely by pointing to the existence of
21 a stipulated blanket protective order where no good-cause determination was made as to any
22 particular document.

23 **2. Plaintiffs' Burden of Establishing Good Cause to Seal Documents is Not**
24 **Satisfied**

25 As set forth above, “[h]istorically, courts have recognized a ‘general right to inspect and copy
26 public records and documents, including judicial records and documents.’” *Kamakana*, 447 F.3d at

27
28 ¹ Blanket protective orders typically extend broad protection to all documents produced during discovery
without a showing of good cause with respect to any individual document.

1 1178 (quoting *Nixon*, 435 U.S. at 597, n.7). “A party seeking to seal a judicial record then bears the
2 burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard. That
3 is, the party must articulate compelling reasons supported by specific factual findings, . . . that
4 outweigh the general history of access and the public policies favoring disclosure, such as the public
5 interest in understanding the judicial process.” *Id.* at 1178-79 (citations and quotation marks
6 omitted). The presumption of the public’s right of access to court documents may be overcome
7 “only by an overriding right or interest ‘based on findings that closure is essential to preserve higher
8 values and is narrowly tailored to serve that interest.’” *Oregonian Publ’g Co. v. U.S. Dist. Ct.*,
9 920 F.2d 1462, 1465 (9th Cir. 1990) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 510
10 (1985)).

11 Here, Plaintiffs’ request to seal documents does not include any discussion of the
12 “compelling reasons supported by specific factual findings” establishing that the particular
13 documents at issue should be sealed to prevent harm or prejudice. Although the protective order
14 states that, pursuant to 47 U.S.C. § 551, cable operators were not to disclose personally identifiable
15 information concerning any subscriber unless the disclosure is made pursuant to a court order
16 authorizing such disclosure, it appears that the documents Plaintiffs are seeking to seal are redacted
17 to eliminate personally identifiable information pertaining to Comcast's subscribers. (Doc. 29, ¶ 1;
18 *see, e.g.*, Sealing Request pp. 26-28.) Even in light of the protective order, it is unclear why
19 particularized prejudice or harm would be suffered if these documents were made public.

20 In sum, Plaintiffs have not satisfied their burden of establishing the specific or particularized
21 prejudice or harm that would result if their motion to seal were denied. Because Plaintiffs have
22 failed to show good cause for the Court to grant their motion to seal, the Court DENIES the motion.

23 III. CONCLUSION

24 For the reasons stated above, Plaintiffs’ motion to seal is DENIED without prejudice to a
25 renewed motion setting forth good cause to seal specific documents.

26 IT IS SO ORDERED.

27 **Dated:** September 12, 2011

/s/ Sheila K. Oberto
28 UNITED STATES MAGISTRATE JUDGE