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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,

Plaintiffs,

v.

COMCAST CORPORATION, and
DOES 1 through 10 Inclusive,

Defendants.

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

**ORDER GRANTING IN PART AND
DENYING IN PART COMCAST'S
REQUEST TO SEAL DOCUMENTS**

I. INTRODUCTION

Plaintiffs Alfred Gonzales and Kelly Gonzales ("Plaintiffs") filed this putative class action suit on May 3, 2010, in Fresno County Superior Court. (Doc. 1, ¶ 1.) According to the First Amended Complaint, Comcast Corporation ("Comcast") is a provider of cable television, among other things, for which Plaintiffs contracted for service. In September 2008, Plaintiffs attempted to cancel their Comcast services, however Comcast allegedly continued to withdraw monthly service fees from Plaintiffs' bank account beyond Plaintiffs' date of cancellation, despite that Plaintiffs' account had been closed and their equipment returned for nearly a month. (Doc. 56, ¶¶ 12-13, 16.) Plaintiffs allege that Comcast engages in unfair business practices of refusing to clearly identify the termination date of customer accounts, provides convoluted final bills, and intentionally uses "confusing so-called 'final bills' to increase its profits." (Doc. 56, ¶ 20.)

1 The action was removed to this Court by Comcast on June 3, 2010. On November 30, 2010,
2 the parties entered into a stipulation for a protective order of confidentiality with regard to discovery
3 documents. (Doc. 28.) This proposed stipulated protective order ("protective order") was signed
4 by the Court on December 17, 2010. (Doc. 29.)

5 On August 22, 2011, Plaintiffs filed a Motion to Certify Class and Appoint Representative
6 Plaintiffs and Lead Counsel ("Motion for Class Certification"). (Doc. 64.) On September 26, 2011,
7 Comcast filed an opposition to Plaintiffs' Motion for Class Certification. In addition to its opposition
8 papers, Comcast requested that the Court seal certain documents attached as exhibits to the
9 declaration of Bryan Merryman that was filed in support of Comcast's opposition. The documents
10 that Comcast desires to file under seal were lodged with the Court and served on Plaintiffs. No
11 opposition to Comcast's sealing request was filed.

12 For the reasons set forth below, Comcast's request to seal Exhibits C, D, E, G, H, N, O, P,
13 and Q to the declaration of Bryan A. Merryman filed in support of Comcast's opposition to Plaintiffs'
14 Motion to Certify Class is GRANTED IN PART and DENIED IN PART.

15 II. DISCUSSION

16 A. Legal Standard

17 Every court has supervisory power over its own records and files, and may provide access
18 to court documents at its discretion. *See Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)
19 (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). A motion to seal documents
20 implicates the "general right to inspect and copy public records and documents, including judicial
21 records and documents." *Warner Commc'ns, Inc.*, 435 U.S. at 597 (footnote omitted).

22 In the Ninth Circuit, there is a strong presumption in favor of access to court records. *See*
23 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (stipulated order
24 without more insufficient basis to seal court records). The right to access is not absolute, however,
25 and can be overridden where the interest of the parties in sealing documents outweighs the public
26 interest. *Warner Commc'ns, Inc.*, 435 U.S. at 602. The factors a court should consider include the
27 "public interest in understanding the judicial process and whether disclosure of the material could
28 result in improper use of the material for scandalous or libelous purposes or infringement upon trade

1 secrets." *Hagestad*, 49 F.3d at 1434 (quoting *EEOC v. Erection Co., Inc.*, 900 F.3d 168, 170 (9th
2 Cir. 1990)). The decision whether to seal a particular document is "left to the sound discretion of
3 the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the
4 particular case." *Warner Commc'ns, Inc.*, 435 U.S. at 599.

5 **B. Comcast's Request to Seal Exhibits C, D, E, G, and H to the Declaration of Bryan
6 Merryman**

7 On September 26, 2011, Comcast filed a request that the Court seal certain exhibits attached
8 to the declaration of Bryan A. Merryman filed in support of Comcast's opposition to Plaintiffs'
9 Motion for Class Certification. (*See* Doc. 75-3.) Exhibits C, D, E, G, and H, which Comcast lodged
10 with the Court and asserts should be sealed, include copies of the Comcast billing invoices sent to
11 Plaintiffs as subscribers of Comcast's services. Comcast asserts that 47 U.S.C. § 551 prohibits
12 Comcast from publicly disclosing personally identifiable information about a subscriber, and thus
13 it seeks to seal Plaintiffs' billing invoices contained in Exhibits C, D, E, G, and H.

14 Pursuant to 47 U.S.C. § 551, a cable operator "shall not disclose personally identifiable
15 information concerning any subscriber without the prior written or electronic consent of the
16 subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to
17 such information by a person other than the subscriber or cable operator." 47 U.S.C. § 551(c)(1).

18 **1. Exhibits E, G, and H**

19 With respect to Exhibits E, G, and H, Plaintiffs have already filed these documents and made
20 them publicly available on the docket, by filing the documents as Exhibits 4, 6, and 7 to the
21 Declaration of Kevin F. Ruf. (Doc. 66-4, 66-6, 66-7.) Plaintiffs submitted a sealing request to the
22 Court, requesting that these documents be sealed because Comcast had marked them "confidential"
23 pursuant to the parties' stipulated protective order that was signed by the Court. Pursuant to the
24 protective order, a party seeking to file confidential documents must first seek an order permitting
25 the documents to be filed under seal. Other than the protective order, Plaintiffs articulated no basis
26 to seal the documents beyond the fact that Comcast had marked the billing statements "confidential"
27 when it produced them in discovery. (*See* Doc. 71.) Comcast's request to seal documents to protect
28 Plaintiffs' privacy when the documents have already been made publicly available by Plaintiffs

1 themselves is moot. Although Comcast requests that Exhibits E, G, and H be sealed out of "an
2 abundance of caution," there is little point in sealing documents to protect the privacy of cable
3 subscribers who have already made the documents publicly available. (*See, e.g.*, Doc 66-4, 66-6,
4 and 66-7.) The request to seal Exhibits E, G, and H is DENIED.

5 **2. Exhibits C and D**

6 Exhibits C and D are also Comcast invoices billed to Plaintiffs. These documents provide
7 information that is redundant to those provided in Exhibits E, G, and H (which Plaintiffs filed
8 publicly) in all respects except as to the ultimate amount that is billed.

9 As discussed above, Plaintiffs have already made documents containing their subscriber
10 information publicly available by attaching them to the declaration of Kevin F. Ruf that was filed
11 in support of their Motion for Class Certification. (Doc. 66.) Exhibits C and D do not contain any
12 additional individually identifiable information that Plaintiffs have not already disclosed publicly.
13 Thus, there is no basis to seal these documents as the subscriber information contained in the
14 documents is already part of the public domain by the express action of Plaintiffs. Comcast's request
15 to seal Exhibits C and D to the declaration of Bryan A. Merryman is DENIED.

16 **B. Exhibits N, O, P, and Q to the Declaration of Bryan Merryman**

17 **1. Exhibits N, P, and Q**

18 Comcast contends that Exhibits N, P, and Q contain Comcast's voluntary disconnect, porting,
19 and refund policies which encapsulate its business strategies developed from research, market
20 studies, and experience in the industry. Comcast asserts that public disclosure of these materials will
21 jeopardize Comcast's ability to compete in the marketplace. Access to court documents has been
22 denied where the documents contain business information that might harm a litigant's competitive
23 standing. *See Warner Commcn's, Inc.*, 435 U.S. at 598 (citing *Schmedding v. May*, 85 Mich. 1, 5-6
24 (1891) and *Flexmir, Inc. v. Herman*, 40 A.2d 799, 800 (N.J. Ch. 1945)). Here, the issue is whether
25 Comcast's interest in protecting its trade secrets outweighs the presumption of public access to
26 judicial records and any promotion of public understanding of the judicial process that access to the
27 documents would provide. *Warner Commcn's, Inc.*, 435 U.S. at 602-03.

1 Although Comcast does not specify how public disclosure of these documents will jeopardize
2 Comcast's ability to compete, the documents do contain internal details about various Comcast
3 procedures. The information is obviously proprietary, and, as Comcast points out, disclosure of the
4 information is unlikely to promote the public's understanding of the judicial process. Therefore, the
5 Court finds that the presumption of public access to these records is outweighed by the potential for
6 harm to Comcast should such proprietary information be publicly disclosed. Comcast's request to
7 seal these documents is GRANTED.

8 **2. Exhibit O**

9 Exhibit O contains data related to Comcast's escalation policies. Comcast asserts that this
10 exhibit contains proprietary information related to customer inquiries about Comcast services as well
11 as complaints and issues that Comcast has addressed in dealing with its customers. Comcast
12 maintains that, if this information is publicly disclosed, it will allow Comcast's competitors to exploit
13 these complaints, which might have serious business consequences for Comcast. Comcast also
14 contends that there is no way to meaningfully redact the information.

15 After reviewing the information Comcast seeks to seal with respect to Exhibit O, the Court
16 finds that such information is highly proprietary and the presumption of public access to the
17 document is outweighed by the risk of harm to Comcast if the information is publicly disclosed.
18 Therefore, Comcast's request to seal Exhibit O is GRANTED.

19 **C. Documents Filed by Plaintiffs As Exhibits to the Declaration of Kevin F. Ruf**

20 Exhibits N and O to the declaration of Bryan A. Merryman contain documents that the Court
21 finds should be sealed. Copies of documents contained in these exhibits were also included by
22 Plaintiffs as exhibits to the declaration of Kevin F. Ruf filed in support of Plaintiffs' motion for class
23 certification and should be sealed pursuant to Comcast's request. Thus, the following exhibits to the
24 declaration of Kevin F. Ruf shall also be sealed: Exhibit 13, 15, and 21. (Doc. 66-13; 66-15; 66-21.)

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1 **III. CONCLUSION**

2 For the reasons stated above, IT IS HEREBY ORDERED that:

- 3 1. Comcast's request to seal Exhibits C, D, E, G, and H is DENIED; and
4 2. Comcast's request to seal Exhibits N, O, P, and Q is GRANTED.

5
6 IT IS SO ORDERED.

7 **Dated: October 7, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE