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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT DEWAYNE BOSLEY, JR.,
Plaintiff,
v.
M. VALASCO, et al.,
Defendants.

Case No. 1:14-cv-00049-MJS (PC)

**ORDER DENYING DEFENDANT'S
REQUEST TO SEAL DOCUMENTS
(ECF No. 41.)**

I. INTRODUCTION

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter proceeds against Defendant Valasco on Plaintiff's excessive force claim. The parties have consented to the undersigned's jurisdiction. (ECF Nos. 4, 26.)

Previously, Defendant and counsel for the California Department of Corrections and Rehabilitation ("CDCR"), not a party to this action, filed a "Stipulated Protective Order re Mental Health Records for Robert Bosley (AT-0274) to be Produced." (ECF No. 37.) This protective order concerned a subpoena duces tecum issued by Defendant and served on CDCR seeking the mental health records of Plaintiff that are in the custody of CDCR. Because CDCR is prohibited from releasing mental health records

1 without a court order or authorization indicating that the documents are necessary, it
2 and Defendant filed the Stipulated Protective Order. Shortly after Defendant served
3 CDCR with the subpoena, Plaintiff informed defense counsel that he objected to the
4 release of all of his mental health records and offered to provide copies of relevant
5 records.

6 In declining to adopt the Stipulated Protective Order, the Court held that it could
7 not make a determination regarding whether the disclosure of Plaintiff's mental health
8 records is necessary to the administration of justice or supported by good cause.
9 Defendant had not submitted a copy of the subpoena, so the Court was unable to
10 determine if Defendant's request was properly limited to protect Plaintiff's interest in the
11 confidentiality of such records. Moreover, Plaintiff's allegation that he suffered "mental
12 anguish" as a result of Defendant's conduct did not support a wholesale disclosure of all
13 of Plaintiff's mental health records. The Court then afforded the parties the opportunity
14 to file further briefing or motions in relation to the issue on or before February 8, 2016.

15 Pending now is Defendant's request to seal documents pursuant to Federal
16 Rules of Civil Procedure 5.2(d) and 26. This request is filed in anticipation that
17 Defendant's forthcoming motion for release of Plaintiff's mental health records will
18 disclose the contents or substance of Plaintiff's medical records.

19 For the reasons set forth below, this request will be denied.

20 **II. LEGAL STANDARD**

21 "Courts have long recognized a 'general right to inspect and copy public records
22 and documents, including judicial records and documents.'" Williams v. U.S. Bank Nat'l
23 Ass'n, 290 F.R.D. 600, 604 (E.D. Cal. 2013) (quoting Nixon v. Warner Commc'ns, Inc.,
24 435 U.S. 589, 597 (1978)). "Unless a particular court record is one 'traditionally kept
25 secret,' a 'strong presumption in favor of access' is the starting point." Kamakana v. City
26 and Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Foltz v. State Farm
27 Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003)). "In order to overcome this
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1 strong presumption, a party seeking to seal a judicial record must articulate justifications
2 for sealing that outweigh the historical right of access and the public policies favoring
3 disclosure.” Williams, 290 F.R.D. at 604 (citing Kamakana, 447 F.3d at 1178-79).

4 “Two standards generally govern [requests] to seal documents” Pintos v. Pac.
5 Creditors Ass'n, 605 F.3d 665, 677 (9th Cir. 2010). “[J]udicial records attached to
6 dispositive motions [are treated] differently from records attached to non-dispositive
7 motions.” Kamakana, 447 F.3d at 1180. “[T]he resolution of a dispute on the merits,
8 whether by trial or summary judgment, is at the heart of the interest in ensuring the
9 public's understanding of the judicial process and of significant public events.”
10 Kamakana, 447 F.3d at 1179 (quoting Valley Broadcasting Co. v. U.S. Dist. Ct., 798
11 F.2d 1289, 1294 (9th Cir. 1986)). “Accordingly, a party seeking to seal a judicial record
12 attached to a dispositive motion or one that is presented at trial must articulate
13 ‘compelling reasons’ in favor of sealing.” Williams, 290 F.R.D. at 604 (citing Kamakana,
14 447 F.3d at 1178). “In general, ‘compelling reasons’ sufficient to outweigh the public's
15 interest in disclosure and justify sealing court records exist when such ‘court files might
16 have become a vehicle for improper purposes,’ such as the use of records to gratify
17 private spite, promote public scandal, circulate libelous statements, or release trade
18 secrets.” Kamakana, 447 F.3d at 1179 (quoting Nixon, 435 U.S. at 598). “[S]ources of
19 business information that might harm a litigant's competitive standing’ often warrant
20 protection under seal.” Williams, 290 F.R.D. at 604 (alteration in original) (quoting
21 Nixon, 435 U.S. at 598).

22 In contrast, “[t]he Ninth Circuit has determined that the public's interest in non-
23 dispositive motions is relatively lower than its interest in trial or a dispositive motion.
24 Accordingly, a party seeking to seal a document attached to a non-dispositive motion
25 need only demonstrate ‘good cause’ to justify sealing.” Williams, 290 F.R.D. at 604
26 (citing Pintos, 605 F.3d at 678). Even under the lesser “good cause” standard, “the
27 party seeking protection bears the burden of showing specific prejudice or harm will
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1 result' if the request to seal is denied." Ross v. Bar None Enters., 2014 WL 2700901, at
2 *2 (E.D. Cal. June 13, 2014) (quoting Phillips ex rel. Estates of Byrd v. Gen. Motors
3 Corp., 307 F.3d 1206, 1210-11 (9th Cir.2002)). The movant "must make a
4 'particularized showing' with respect to any individual document in order to justify [its]
5 sealing" Herskowitz v. Apple, Inc., 2014 WL 3920036, at *2 (N.D. Cal. Aug. 7, 2014)
6 (quoting Kamakana, 447 F.3d at 1180). "Broad allegations of harm, unsubstantiated by
7 specific examples or articulated reasoning' are insufficient." Ross, 2014 WL 2700901, at
8 *2 (quoting Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470, 476 (9th Cir. 1992)).

9 Federal Rule of Civil Procedure 5.2(d) provides that "The court may order that a
10 filing be made under seal without redaction. The court may later unseal the filing or
11 order the person who made the filing to file a redacted version for the public record."

12 **III. DISCUSSION**

13 Defendant moves to seal a declaration from defense counsel, Jaspreet Klar,
14 which will be filed in support of Defendant's motion for release of Plaintiff's mental
15 health records. The Klar Declaration and certain exhibits attached to it address
16 Plaintiff's mental health condition. Defendant intends to offer this declaration to support
17 his position that Plaintiff has put his mental health at issue, therefore warranting the
18 release of his mental health records.

19 In this request to seal certain documents in support of a non-dispositive motion,
20 Defendant need only show good cause. Defendant claims that good cause exists in the
21 form of protecting Plaintiff's privacy in his mental health records, particularly so when
22 Plaintiff has objected to the scope of the subpoena. Defendant thus argues that
23 Plaintiff's privacy in his mental health records outweighs the public interest in access to
24 his mental health records.

25 Although the Court agrees with Defendant that a person's privacy interest in his
26 or her mental health records may serve to satisfy the good cause standard, and the
27 Court commends Defendant for seeking to protect Plaintiff's interest in those records,
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1 review of the Klar Declaration and attached exhibits convinces the undersigned that
2 Defendant's request should be denied. Initially, the Court notes that there are no mental
3 health records attached to the declaration. Instead, the references to Plaintiff's mental
4 health are made by Plaintiff himself during the course of this litigation: in his deposition
5 and certain letters to defense counsel, Plaintiff claims that he is "paranoid and
6 depressed" and that he saw a psychiatrist or psychologist for his problems. These few
7 references are insufficient to overcome the strong presumption in favor of access.

8 **IV. CONCLUSION**

9 For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's request
10 to seal documents (ECF No. 41) is DENIED.

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12 IT IS SO ORDERED.

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14 Dated: February 4, 2016

/s/ Michael J. Seng
15 UNITED STATES MAGISTRATE JUDGE