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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,

Plaintiff,

v.

ANTONIO MONTALVO,

Defendant.

Case No. 1:16-cv-00006-SAB

ORDER GRANTING IN PART, DENYING  
IN PART DEFENDANT’S REQUEST TO  
SEAL ANSWER AND COUNTERCLAIM  
(ECF No. 15)

**I.**

**PROCEDURAL BACKGROUND**

On January 5, 2016, Plaintiff Berkshire Life Insurance Company of America (“Plaintiff”) filed this action. On that same date, Plaintiff filed a request to file an unredacted copy of the Complaint and the exhibit attached to the complaint, with the exception of redactions pursuant to Federal Rule of Civil Procedure 5.2(a). Plaintiff sought to seal the complaint to protect Defendant Antonio Montalvo’s (“Defendant’s”) privacy right to confidential medical information, which is protected from disclosure by Article I, Section 1 of the California Constitution and The Health Insurance Portability and Accountability Act (HIPAA) and HIPAA’s regulations, 45 CFR § 164.512(e). The court granted the request to seal portions of the complaint. On February 26, 2016, Defendant filed a redacted answer, a redacted counterclaim

1 for damages, and a notice of request to seal documents. (ECF Nos. 15, 16, 17.) Plaintiff has not  
2 opposed Defendant’s request to seal.

3 **II.**

4 **LEGAL STANDARD**

5 Pursuant to the Local Rule of the United States Court, Eastern District of California  
6 (“L.R.”), documents may only be sealed by written order of the Court upon the showing required  
7 by applicable law. L.R. 141(a). Defendant seeks to seal his answer and counterclaim asserting  
8 his right of privacy to his medical information.

9 “Historically, courts have recognized a ‘general right to inspect and copy public records  
10 and documents, including judicial records and documents.’ ” Kamakana v. City & Cnty. of  
11 Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Nixon v. Warner Commc'ns, Inc., 435  
12 U.S. 589, 597 & n. 7 (1978)). Unless a court document is one that has traditionally been kept  
13 secret a strong presumption in favor of access is where the Court starts its analysis.  
14 Kamakana, 447 F.3d at 1178. A party making a request to file documents under seal is  
15 generally required to show compelling reasons to seal documents. Pintos v. Pacific  
16 Creditors Ass’n, 605 F.3d 665, 677-78 (9th Cir. 2009). Although the Ninth Circuit has yet  
17 to specify whether a party seeking to seal a complaint or answer, or portions thereof, must  
18 meet the “compelling reasons” or “good cause” standard, district courts have concluded that  
19 a civil action arises out of information in a complaint or answer, so a complaint or answer  
20 “is at the heart of the interest in ensuring the public’s understanding of the judicial  
21 process....” Kamakana, 447 F.3d at 1179 (internal quotation omitted). See Harrell v.  
22 California Forensic Medical Group, Inc., No. 2:15-cv00579-KJN P, 2015 WL 1405567  
23 (E.D. Cal. March 26, 2015); In re NVIDIA Corp. Derivative Litig., No. C 06–06110 SBA,  
24 2008 WL 1859067 (N.D. Cal. Apr. 23, 2008); Delphix Corp. v. Actifio, Inc., No. 13–cv–  
25 04613–BLF, 2014 WL 4145520 (N.D. Cal. Aug. 20, 2014). Therefore, the Court will apply  
26 the compelling reasons standard to Defendant’s request to seal his answer and counterclaim.

27 To have documents filed under seal in this instance, Defendant must articulate  
28 compelling reasons that are supported by specific factual findings that outweigh the general

1 history of public access to records and the public interest in understanding the judicial  
2 process. Kamakana, 447 F.3d at 1178-79. Compelling reasons that are generally “sufficient  
3 to outweigh the public’s interest in disclosure and justify sealing court records exist when  
4 such ‘court files might have become a vehicle for improper purposes,’ such as the use of  
5 records to gratify private spite, promote public scandal, circulate libelous statements, or  
6 release trade secrets.” Id. at 1179. “The mere fact that the production of records may lead  
7 to a litigant's embarrassment, incrimination, or exposure to further litigation will not,  
8 without more, compel the court to seal its records.” Id.

### 9 III.

### 10 DISCUSSION

11 Currently before the Court is Defendant’s request to seal his answer and counterclaim.  
12 Initially, the Court notes that primarily due to the requirements of the Health Insurance  
13 Portability and Accountability Act (HIPAA) and its regulations, the Court granted Plaintiff’s  
14 request to seal portions of the initial complaint in this action. Specifically, the Court determined  
15 that due to HIPAA’s prohibitions against disclosure of confidential medical information, Plaintiff  
16 had established compelling reasons to seal the complaint.

17 While HIPAA provided compelling reasons to seal the complaint, HIPAA does not  
18 provide compelling reasons to seal the answer and counterclaim in this action. HIPAA  
19 prescribes that “[a] covered entity may not use or disclose protected health information.” 45  
20 C.F.R. § 164.502(a). Accordingly, the Court considers whether the right to privacy provided by  
21 the California Constitution provides a compelling reason to seal the documents at issue in this  
22 motion.

23 The California Constitution guarantees that among the inalienable rights afforded to  
24 individuals is the right to privacy. Cal. Const. art. I, § 1. Patients have a right to privacy in their  
25 medical information under the California Constitution. See Ruiz v. Podolsky, 50 Cal. 4th 838,  
26 851 (2010). There is “a constitutional right to privacy, more specifically, a constitutional right to  
27 nondisclosure of one’s personal information.” Stallworth v. Brollini, 288 F.R.D. 439 444 (N.D.  
28 Cal. 2012) (citing Whalen v. Roe, 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977)); Nixon

1 v. Administrator of Gen. Serv., 433 U.S. 425, 457, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)). In  
2 fact, other district courts have found that the need to protect medical information has qualified as  
3 a “compelling reason,” for sealing records. See San Ramon Reg’l Med. Ctr., Inc. v. Principal  
4 Life Ins. Co., No. C 10–02258 SBA, 2011 WL 89931, at \*1 n. 1 (N.D. Cal. Jan.10, 2011); Abbey  
5 v. Hawaii Emp’r Mut. Ins. Co., Civil No. 09–000545 SOM/BMK, 2010 WL 4715793, at \* 1–2  
6 (D. Haw. Nov. 15, 2010); Wilkins v. Ahern, No. C 08–1084 MMC (PR), 2010 WL 3755654, at  
7 \*4 (N.D. Cal. Sept. 24, 2010); Lombardi v. Tri West Healthcare Alliance Corp., 2009 WL  
8 1212170, at \*1 (D. Ariz. May 4, 2009).

9 Defendant seeks to redact multiple references to his medical information in his  
10 counterclaim. Balancing the need for the public’s access to information regarding Defendant’s  
11 medical history, treatment, and condition against the need to maintain the confidentiality of  
12 Defendant’s medical records weighs in favor of sealing the counterclaim. Although Defendant  
13 has put his health at issue by filing a counterclaim, he is nonetheless entitled to the Court’s  
14 protection of sensitive medical information. Therefore, the Court will seal the unredacted  
15 counterclaim and the parties, by and through their attorneys, shall be permitted access to the  
16 sealed unredacted counterclaim.

17 Defendant seeks to redact the names of two doctors from his answer. (ECF No. 16 at 5.)  
18 These are the only redactions that Defendant seeks pertaining to the answer. However, the  
19 answer will not be sealed, as balancing the need for the public’s access to information outweighs  
20 any need to seal the information, especially in light of the fact that the two proposed redactions  
21 in the answer do not make sufficiently explicit reference to Defendant’s medical records to  
22 entitle them to protection. The redacted portions do not contain Defendant’s sensitive health  
23 information, such as his medical history, physical examination notes, progress notes, physician’s  
24 orders or medication logs. The redacted portions merely state the names of two doctors.  
25 Therefore, the answer will not be sealed. Defendant shall file an unredacted copy of the answer  
26 on the docket for public view.

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**IV.**

**CONCLUSION AND ORDER**

Accordingly, IT IS HEREBY ORDERED that:

- 1. Defendant’s request to file under seal an unredacted copy of the counterclaim, with the exception of redactions pursuant to Federal Rule of Civil Procedure 5.2(a), is GRANTED;
- 2. Plaintiff and Defendant, by and through their attorneys, shall be permitted access to the sealed counterclaim;
- 3. Defendant’s request to file under seal an unredacted copy of the answer is DENIED; and
- 4. Defendant shall file an unredacted copy of the answer on the public docket within three days of the entry of this order.

IT IS SO ORDERED.

Dated: March 7, 2016



UNITED STATES MAGISTRATE JUDGE