

1 certification for submission and entry on the public docket. (*Id.*) No opposition was received
2 from defendants within three days, as provided for in Local Rule 141(c). For the reasons that
3 follow, plaintiff’s request to seal and motion to file redacted documents are denied.

4 **LEGAL STANDARD**

5 All documents filed with the court are presumptively public. *San Jose Mercury News,*
6 *Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) (“It is well-established that the fruits
7 of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.”).
8 Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, a court “may order that a filing
9 be made under seal without redaction.” However, even if a court orders such a filing, it may
10 “later unseal the filing or order the person who made the filing to file a redacted version for the
11 public record.” Fed. R. Civ. P. 5.2(d). “Historically, courts have recognized a ‘general right to
12 inspect and copy public records and documents, including judicial records and documents.’”
13 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v.*
14 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)).

15 Two standards generally govern requests to seal documents. *Pintos v. Pac. Creditors*
16 *Ass’n*, 605 F.3d 665, 677 (9th Cir. 2010).

17 [J]udicial records attached to dispositive motions [are treated]
18 differently from records attached to non-dispositive motions. Those
19 who seek to maintain the secrecy of documents attached to
20 dispositive motions must meet the high threshold of showing that
“compelling reasons” support secrecy. A “good cause” showing
under Rule 26(c) will suffice to keep sealed records attached to
non-dispositive motions.

21 *Kamakana*, 447 F.3d at 1180 (citations omitted). The reason for the difference between the two
22 standards is that “[n]on-dispositive motions are often unrelated, or only tangentially related, to the
23 underlying cause of action, and, as a result, the public’s interest in accessing dispositive materials
24 does not apply with equal force to non-dispositive materials.” *Pintos v. Pacific Creditors Ass’n*,
25 605 F.3d 665 678 (9th Cir. 2010) (quotations omitted).

26 Under the “compelling reasons” standard applicable to dispositive motions such as the one
27 at issue here:

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1 [T]he court must conscientiously balance the competing interests of
2 the public and the party who seeks to keep certain judicial records
3 secret. After considering these interests, if the court decides to seal
4 certain judicial records, it must base its decision on a compelling
5 reason and articulate the factual basis for its ruling, without relying
6 on hypothesis or conjecture.

7 *Id.* at 1178–79 (internal quotation marks, omissions, and citations omitted).¹ The party seeking
8 to seal a judicial record bears the burden of meeting the “compelling reasons” standard. *Id.* at
9 1178; *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

10 “In general, ‘compelling reasons’ sufficient to . . . justify sealing court records exist when
11 such ‘court files might . . . become a vehicle for improper purposes,’ such as the use of records to
12 gratify private spite, promote public scandal, circulate libelous statements, or release trade
13 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). “The mere fact that the
14 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to
15 further litigation will not, without more, compel the court to seal its records.” *Id.* “The
16 ‘compelling reasons’ standard is invoked even if the dispositive motion, or its attachments, were
17 previously filed under seal or protective order.” *Id.* at 1178–79.

18 DISCUSSION

19 Here, plaintiff has filed a request to seal documents filed in connection with his motion for
20 class certification (Doc. No. 98), which is more than tangentially related to the merits of the case.
21 For that reason, plaintiff is required to make a showing of “compelling reasons” warranting the

22 ¹ While courts frequently use the terms “dispositive” and “non-dispositive” motions in this
23 context, the Ninth Circuit has clarified that the “compelling reasons” standard applies whenever
24 the motion at issue “is more than tangentially related to the merits of a case.” *Center for Auto
25 Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). In some instances, the
26 proposed filing of documents under seal in connection with motions for preliminary injunction,
27 for sanctions, or *in limine*, though such motions are not dispositive, may be subject to the
28 “compelling reasons” test, predicated on the right of access and the need to “provide the public
with a more complete understanding of the judicial system and a better perception of its fairness.”
Id. at 1097–1101 (quoting *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d
Cir. 1993)). The motion for class certification at issue here is clearly more than tangentially
related to the merits of the case, and were that motion to be denied in its entirety, it would almost
certainly be dispositive of this case. *See Aldapa v. Fowler Packing Inc.*, No. 1:15-cv-00420-
DAD-SAB, 2017 WL 2546606, at *2, n. 2 (E.D. Cal. June 13, 2017); *Cohen v. Trump*, Case No.
13-cv-2519-GPC-WVG, 2016 WL 3036302, at *3 (S.D. Cal. May 27, 2016) (“A class
certification motion is thus more than tangentially related to the merits of a case.”) (citing cases).

1 filing of the documents in question under seal. Plaintiff has not made the required showing here.

2 Typically, “compelling reasons” are found where the records in question might be used
3 “to gratify private spite, promote public scandal, circulate libelous statements, or release trade
4 secrets.” *Kamakana*, 447 F.3d at 1179. Here, plaintiff merely states that he does not object to
5 sealing items (a), (b), (c), and (g) because they satisfy the requirements of the parties’ stipulated
6 protective order. (Doc. No. 97 at 3.) Plaintiff’s implied contention that sealing is proper in light
7 of the parties’ stipulated protective order is unpersuasive. In this regard, that stipulated protective
8 order does not identify or discuss the “compelling reasons” standard and, accordingly, the
9 presumption of access to court records has not been rebutted. *See Gregory v. City of Vallejo*, No.
10 2:13-CV-00320-KJM, 2014 WL 4187365, at *3 (E.D. Cal. Aug. 21, 2014); *see also Kamakana*,
11 447 F.3d at 1183 (concluding that “[a]lthough the magistrate judge expressly approved and
12 entered the protective order, the order contained no good cause findings as to specific documents
13 that would justify reliance by the United States” and, therefore, “the claimed reliance on the order
14 is not a compelling reason that rebuts the presumption of access”) (citations and internal
15 quotation marks omitted).

16 CONCLUSION

17 Accordingly, plaintiff’s request to seal documents filed in connection with the motion for
18 class certification and motion for leave to file redacted documents (Doc. No. 98) is denied
19 without prejudice to its renewal based upon the required showing of compelling reasons for
20 sealing.

21 IT IS SO ORDERED.

22 Dated: January 30, 2018

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UNITED STATES DISTRICT JUDGE