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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAULA GORDON,

Plaintiff,

v.

NEXSTAR BROADCASTING, INC. et
al.,

Defendants.

No. 1:18-cv-00007-DAD-JLT

ORDER GRANTING DEFENDANTS’
REQUEST TO SEAL

(Doc. No. 101)

On June 21, 2019, defendants Nexstar Broadcasting, Inc. and Erik Mendoza filed motions for summary judgment in this action. (Doc. Nos. 100, 102.) In connection with those motions, those same defendants filed notice of a request to file documents under seal pursuant to Local Rule 141. (Doc. No. 101.) Having reviewed the materials that defendants seek to have sealed, the court will grant defendants’ request.

LEGAL STANDARD

All documents filed with the court are presumptively public. *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999) (“It is well-established that the fruits

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1 of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.”¹
2 “Historically, courts have recognized a ‘general right to inspect and copy public records and
3 documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*,
4 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589,
5 597 & n.7 (1978)).

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

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

13 *Kamakana*, 447 F.3d at 1180 (citations omitted). The reason for the two different standards is
14 that “[n]on-dispositive motions are often unrelated, or only tangentially related, to the underlying
15 cause of action, and, as a result, the public’s interest in accessing dispositive materials does not
16 apply with equal force to non-dispositive materials.” *Pintos*, 605 F.3d at 678 (internal quotation
17 marks omitted).

18 Under the “compelling reasons” standard applicable to dispositive motions such as
19 defendant’s motion to dismiss:

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

24 *Id.* at 1178–79 (internal quotation marks and citations omitted). The party seeking to seal a

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26 ¹ Pursuant to Rule 5.2(d) of the Federal Rules of Civil Procedure, a court “may order that a filing
27 be made under seal without redaction.” However, even if a court permits such a filing, it may
28 “later unseal the filing or order the person who made the filing to file a redacted version for the
public record.” Fed. R. Civ. P. 5.2(d).

1 judicial record bears the burden of meeting the “compelling reasons” standard. *Id.* at 1178; *Foltz*
2 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

3 While the terms “dispositive” and “non-dispositive” motions are often used in this
4 context, the Ninth Circuit has clarified that the “compelling reasons” standard applies whenever
5 the motion at issue “is more than tangentially related to the merits of a case.” *Ctr. for Auto Safety*
6 *v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). In some instances, the proposed
7 filing of documents under seal in connection with motions for preliminary injunction, for
8 sanctions, or in limine—though such motions are not dispositive—may be governed by the
9 “compelling reasons” test, predicated on the right of access and the need to “provide the public
10 with a more complete understanding of the judicial system and a better perception of its fairness.”
11 *Id.* at 1097–1101 (quoting *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d
12 Cir. 1993)). In keeping with this principle, requests to seal documents relating to motions for a
13 preliminary injunction have been found by the Ninth Circuit to “more than tangentially relate[] to
14 the merits” because success on the motion for a preliminary injunction would have resolved a
15 portion of the claims in the underlying complaint. *Ctr. for Auto Safety*, 809 F.3d at 1102.

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

24 ANALYSIS

25 Because defendants request sealing in connection with a motion for summary judgment,
26 the “compelling reasons” standard plainly applies. However, even under that higher standard, the
27 court finds that the documents in question should remain sealed. There appears to be little value
28 to the public in releasing these materials which consist largely of text messages among various

1 parties to this action, many of which are of a private and personal nature. These conversations
2 frequently include discussions of intimate activities, in some cases accompanied by photographs.
3 This material therefore appeals largely to the prurient interest and, as such, the court finds they
4 should not appear on the public docket. *See Valley Broadcasting Co. v. U.S. Dist. Court*, 798
5 F.2d 1289, 1294 (9th Cir. 1986) (Factors that may overcome the presumptive right to access
6 “would be the likelihood of an improper use, ‘including publication of scandalous, libelous,
7 pornographic, or trade secret materials . . .’”). Here, having weighed the interests advanced by
8 the parties in light of the public interest and the duty of the court, defendant’s request to file
9 documents under seal pursuant to Local Rule 141 will be granted.

10 Accordingly,

- 11 1. Defendants’ request to seal (Doc. No. 101) is granted; and
- 12 2. The court orders that the Declaration of Angel R. Sevilla and the exhibits attached
13 thereto be sent via email to ApprovedSealed@caed.uscourts.gov for filing under
14 seal on the docket.

15 IT IS SO ORDERED.

16 Dated: June 26, 2019

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19 UNITED STATES DISTRICT JUDGE
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