

1 the request to seal, proposed order, or exhibits requested to be sealed, but they have emailed them
2 to the Court.

3 For the reasons that follow, the Court will grant, the request to seal, construed as a motion
4 to seal in part. It will allow the documents to be filed under seal, but will require filing of the
5 documents in redacted form. *See* Fed. R. Civ. P. 7(b)(1) (“A request for a court order must be
6 made by motion.”).

7 “Historically, courts have recognized a ‘general right to inspect and copy public records
8 and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of*
9 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
10 U.S. 589, 597 & n.7 (1978)); *see also* Local Rule 141 (“Documents may be sealed only by written
11 order of the Court, upon the showing required by applicable law.”). Unless a particular court
12 record is one “traditionally kept secret,” a “strong presumption in favor of access” is the starting
13 point for this Court’s inquiry. *Kamakana*, 447 F.3d at 1178 (citations omitted). In order to
14 overcome this strong presumption, a party seeking to seal a judicial record must meet the
15 compelling-reasons standard by articulating compelling reasons, which are supported by specific
16 facts, that outweigh the historical right of access and the public policies favoring disclosure. *Id.* at
17 1178–79; *see Reberger v. Vern*, No. 3:17-cv-00077-MMD-WGC, 2019 WL 5889293, at *2 (D.
18 Nev. Nov. 12, 2019) (applying compelling-reasons standard where defendants sought “to file
19 exhibits under seal in connection with their motion for summary judgment”). The Court must
20 “conscientiously balance” the “competing interests” of the public and the party seeking to seal the
21 judicial record. *Kamakana*, 447 F.3d at 1179 (citation omitted). The determination as to what
22 constitutes a “compelling reason” is within the Court’s “sound discretion.” *Center for Auto Safety*
23 *v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (citation omitted)

24 As an initial matter, the Court notes that the Defendants’ notice of request to seal documents
25 contains no legal argument. (ECF No. 36). Rather, Defendants’ request to seal, which was not filed
26 of record, but was emailed to the Court, contains all the relevant legal argument. Defendants do not
27 explain (and the Court sees no basis) why the request was not filed of record. The reason cannot be
28 that the request itself contains information sought to be sealed, as Defendants served the request on

1 Plaintiff. Accordingly, the Court will order Defendants to file their request to seal of record.

2 Turning to the merits of the request, Defendants seek to seal two different exhibits (both
3 labeled as Exhibit B) to the declarations of J. Mendez and H. Moseley, which declarations are
4 included in support of the motion for summary judgment. (*See* ECF Nos. 35-4, 35-5). Defendants
5 state that the exhibits relate to a group appeal filed by other inmates, and not joined by Plaintiff,
6 that concerns the subject matter of this suit. Defendants argue that these exhibits support their
7 argument that Plaintiff never exhausted his administrative remedies.

8 As grounds for sealing, the Defendants argue as follows:

9 The information contained within the document to be sealed includes the names,
10 CDCR numbers, assignments, unit and cell numbers, and dated signatures of 14
11 inmates. The disclosure of inmate names and CDCR numbers would violate the
12 inmates' right to privacy. Title 15 of the California Code of Regulations also
13 prohibits the disclosure of an inmate's personal information to another inmate. Cal.
14 Code Regs. tit. 15, §§ 3450(e), 3402(a), 3321. And, the disclosure of such personal
15 information is prohibited by California Civil Code Section 1798.24, unless certain
16 requirements are met, including notice if disclosure is made pursuant to court order.
17 The disclosure of the identities of involved inmates could also present further
18 security risks because of gang affiliations. Redaction is also not feasible or practical,
19 because the confidential information is contained throughout the entire document.
20 This request for sealing is therefore based on institutional safety and security, and
21 inmates' right to privacy and the confidentiality.

22 The Court finds these reasons compelling enough to outweigh the presumption of public
23 access to some of the information contained within the exhibits. First, the Court finds compelling
24 Defendants' desire to prohibit Plaintiff from possessing personal information (such as
25 assignments and cell numbers) of other inmates. *Gamez v. Gonzalez*, No. 08CV1113 MJL PCL,
26 2011 WL 1087090, at *3 (E.D. Cal. Mar. 24, 2011) (noting that California law generally prohibits
27 inmates from possessing records related to other inmates). Likewise, the Court concludes that
28 prohibiting Plaintiff from learning the gang affiliations of the other inmates to be a compelling
reason. *Id.* at *4 ("Contained within a debriefing report is information regarding the inmate's
gang activity and active gang affiliates. Debriefing reports are kept in the confidential section of
the prison central files of those inmates who have debriefed. If another inmate were to learn the
name and CDC number of an informant, it would place the informant's safety in danger. Thus,
disclosure of debriefing reports to Plaintiff would create a hazard to the safety and security of the
institution. Also, because debriefing reports are stored in the inmate's central file, disclosure of

1 this information to Plaintiff would violate other inmates' privacy.”).

2 However, Defendants will be directed to file a redacted copy, removing the personal
3 information of the relevant inmates and any other portions implicating prison safety and security.
4 While the Court recognizes that Defendants argue that “redaction is also not feasible or practical,
5 because the confidential information is contained throughout the entire document,” the Court
6 disagrees. At the very least, being able to read the heading, dates, and descriptions of the
7 complained of conduct in the exhibits will be of benefit to Plaintiff in formulating his response to
8 the motion for summary judgment, even if a substantial amount of information is otherwise
9 redacted.

10 Accordingly, as explained above, IT IS ORDERED as follows:

- 11 1. Defendants' request to seal documents, construed as a motion to seal, is granted, in part;
- 12 2. No later than July 23, 2021, Defendants shall file a copy of their request to seal documents
13 in an identical form to that which was provided to the Court by email;
- 14 3. Upon the filing of the request to seal documents, construed as a motion to seal, the Clerk
15 of Court is directed to term the construed motion as granted pursuant to this order;
- 16 4. No later than July 23, 2021, Defendants shall file, under seal, unredacted copies of
17 Exhibits B to the declarations of H. Moseley and J. Mendez. (ECF Nos. 35-4, 35-5); *see*
18 Local Rule 140(b) (“A party that makes a redacted filing may also file an unredacted copy
19 under seal if the Court so orders. The unredacted copy will be retained by the Court under
20 seal as part of the record.”);
- 21 5. Also no later than July 23, 2021, Defendant shall file a redacted version of these exhibits
22 redacting any information revealing personal information about inmates or implicating
23 prison safety and security concerns, but including the date, general subject matter, and any
24 other non-confidential information;

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- 28 6. Plaintiff shall file his response to Defendants' motion for summary judgment (ECF No.

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35) within 21 days after being served with a copy of the unredacted exhibits. *See* Local Rule 230(1).

IT IS SO ORDERED.

Dated: July 19, 2021

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE