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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

H.W., minor, by and through Guardian ad Litem
HEIDI NELSON; and M.K., minor, by and
through Guardian ad Litem ROBERT
KOELLING,

Plaintiffs,

No. CIV S-11-0531 GEB GGH

vs.

EASTERN SIERRA UNIFIED SCHOOL
DISTRICT, et al.,

Defendants.

ORDER

_____ /

Presently before the court is plaintiffs’ request to seal the evidentiary hearing in connection with plaintiffs’ motion for default judgment against defendant Carlisle which was conducted on February 8, 2012, in the courtroom of the undersigned. Present for plaintiffs were Timothy Scott and Alexis Bastedo. Defendant Carlisle made no appearance; however, counsel for previously dismissed defendants Eastern Sierra Unified School District, Jason Reed and Don Clark (“dismissed defendants”) was present. At the commencement of the evidentiary hearing, plaintiffs’ counsel requested that the hearing be sealed.¹ Mr. Herr asked to be recognized on the sealing issue and opposed that request.

¹ Plaintiffs filed no motion to seal the hearing prior to start of the hearing itself.

1 Although dismissed defendants no longer have standing in this action as parties,
2 their standing to oppose sealing would exist, at the very least, as interested members of the
3 public. Where a party seeks to seal judicial records pertaining to a dispositive motion from
4 public scrutiny, a “compelling reasons” standard applies.² Pintos v. Pacific Creditors Ass’n., 605
5 F.3d 665, 678 (9th Cir. 2010). “Consequently, [the moving party] must overcome a strong
6 presumption of access by showing that “compelling reasons supported by specific factual
7 findings ... outweigh the general history of access and the public policies favoring disclosure.”
8 Id. at 679, (quoting Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir.
9 2006)) (internal quotation marks and citations omitted). The court is tasked with weighing
10 factors such as the “public interest in understanding the judicial process and whether disclosure
11 of the material could result in improper use of the material for scandalous or libelous purposes or
12 infringement upon trade secrets.” Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir.1995)
13 (citing E.E.O.C. v. Erection Co., 900 F.2d 168, 170 (9th Cir.1990)). Examples of compelling
14 reasons include the necessity to keep personal information protected from exposure to harm or
15 identity theft and to protect an individual’s important privacy interest. Kamakana, 447 F.3d at
16 1184. If the witness may be susceptible to retaliation or harassment based on disclosure of his or
17 her private information, protection is warranted. Nursing Home Pension Fund v. Oracle Corp.,
18 2007 WL 3232267, *2 (N.D. Cal. 2007).

19 At the start of the hearing, out of an abundance of caution, and because there was
20 no opportunity for briefing on this issue, the courtroom was sealed and Mr. Herr left the
21 courtroom after argument on this issue.³ The undersigned has now considered the matter. First,

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23 ² The compelling reasons standard applies even to dispositive matters that were
24 previously filed under seal. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1136 (9th
25 Cir. 2003).

26 ³ The undersigned determined in his mind that the dismissed defendants would not be
prejudiced by Mr. Herr’s absence at the hearing in that a transcript will be prepared of the entire
hearing, which, if ordered unsealed, will be of better use than Mr. Herr’s notes of the proceeding.
If the court ultimately seals the transcript, Mr. Herr’s absence was properly ordered.

