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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, and the  
STATE OF CALIFORNIA, et al., ex rel  
LOYD F. SCHMUCKLEY, JR.,

Plaintiffs,

v.

RITE AID CORPORATION,

Defendant.

No. 2:12-cv-1699-KJM-EFB

ORDER

Before the court is defendant Rite Aid Corporation's unopposed request to redact and seal material contained within its expert report, which Rite Aid seeks to attach as an exhibit to the Declaration of Michael Q. Eagan, Jr. in support of Rite Aid's Motion to Exclude Plaintiff's Proposed Sampling Methodology ("Motion to Exclude"). See Notice of Req. to Seal ("Notice"), ECF No. 194. For the foregoing reasons, the court GRANTS the request to seal.

I. LEGAL STANDARD

"[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) (footnotes omitted). Because "the right to inspect and copy judicial records is not absolute," access in civil cases is properly denied for clearly

1 justifiable reasons: to protect against “gratif[ication of] private spite or promot[ion of] public  
2 scandal,” or to preclude court dockets from becoming “reservoirs of libelous statements,” or  
3 “sources of business information that might harm a litigant’s competitive standing.” *Id.* at 598  
4 (citations omitted). As the Ninth Circuit instructs, a “strong presumption in favor of access” to  
5 the record governs in a court of law unless the case or a part of it qualifies for one of the relatively  
6 few exceptions “traditionally kept secret,” with secrecy allowed for good reasons. *Foltz v. State*  
7 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citation omitted). “Those who  
8 seek to maintain the secrecy of documents attached to dispositive motions must meet the high  
9 threshold of showing that ‘compelling reasons’ support secrecy.” *Kamakana v. City and County*  
10 *of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*, 331 F.3d at 1136). The  
11 compelling-reasons standard applies even if the contents of the dispositive motion or its  
12 attachments have previously been filed under seal or are covered by a generalized protective  
13 order, including a discovery phase protective order. *See Foltz*, 331 F.3d at 1136 (citation  
14 omitted).

15           “The Ninth Circuit has determined that the public’s interest in non-dispositive  
16 motions is relatively lower than its interest in trial or a dispositive motion. Accordingly, a party  
17 seeking to seal a document attached to a non-dispositive motion need only demonstrate ‘good  
18 cause’ to justify sealing.” *Williams v. U.S. Bank Nat. Ass’n*, 290 F.R.D. 600, 604 (E.D. Cal.  
19 2013) (*quoting Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying “good  
20 cause” standard to all non-dispositive motions because such motions “are often unrelated, or only  
21 tangentially related, to the underlying cause of action”) (internal quotation marks and citation  
22 omitted). “For good cause to exist, the party seeking protection bears the burden of showing  
23 specific prejudice or harm will result” if the sealing request is denied. *Phillips ex rel. Estates of*  
24 *Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002) (citation omitted). “Broad  
25 allegations of harm, unsubstantiated by specific examples or articulated reasoning” are  
26 insufficient. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (citation  
27 omitted).

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1           The Eastern District of California has adopted rules to clarify procedures for  
2 parties' compliance with the law reviewed above. Local Rule 141 provides that documents may  
3 be sealed only by a written order of the court after a particularized request to seal has been made.  
4 L.R. 141(a). A mere request to seal is not enough under the local rules. Local Rule 141(b)  
5 expressly requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other  
6 authority for sealing, the requested duration, the identity, by name or category, of persons to be  
7 permitted access to the document, and all relevant information." Local Rule 140(a)(vi) provides  
8 for redaction, by "counsel and the Court . . . . when federal law *requires* redaction." L.R.  
9 140(a)(vi) (emphasis in original). Moreover, redaction is appropriate to protect "proprietary or  
10 trade secret information." L.R. 140(b). The court's own Standing Order emphasizes the  
11 requirement that parties comply with the law and the rules in making any sealing request, which  
12 they should do lightly and only rarely if at all. ECF No. 6-1 at ¶ 10.

## 13       II.     DISCUSSION

14           Defendant Rite Aid Corporation (Rite Aid) "seeks leave to file a minimally  
15 redacted version of the [Dr. Roy J.] Epstein report in the public file, while [lodging] the  
16 unredacted Epstein Report with the Court under seal" in order to protect the personal health  
17 information (PHI) of certain Medi-Cal beneficiaries. Notice at 2 (emphases in original). Rite Aid  
18 further seeks leave to redact "images of Rite Aid's proprietary internal computer system" to  
19 protect proprietary information. *Id.* at 3. Rite Aid seeks to redact and seal the documents as  
20 attachments to its Motion to Exclude Plaintiffs' Proposed Sampling Methodology, ECF No. 195,  
21 which, given the importance of the methodology to plaintiffs' case, is properly considered a  
22 dispositive motion. *See Open Text S.A. v. Box, Inc.*, No. 13-CV-04910-JD, 2014 WL 7368594, at  
23 \*2 (N.D. Cal. Dec. 26, 2014) (*Daubert* motions considered dispositive because "aimed squarely  
24 at the other side's damages methodology" and "exclusion of this testimony could cause a  
25 crippling blow to the sponsoring party's ability to prove its case"); *AFL Telecommunications LLC*  
26 *v. SurplusEQ.com Inc.*, 946 F. Supp. 2d 928, 946 (D. Ariz. 2013) (motion to exclude expert  
27 opinions considered dispositive motion for sealing purposes); *but see Albee v. Cont'l Tire N. Am.*,  
28 No. CIV. S-09-1145, 2010 WL 5418885, at \*1 (E.D. Cal. Dec. 23, 2010) (motion to exclude

1 plaintiff's tire expert considered non-dispositive motion for sealing analysis). Thus, the  
2 compelling-reasons standard applies.

3 A. Personal Health Information (PHI)

4 Rite Aid correctly asserts that "PHI of Medi-Cal beneficiaries is prohibited from  
5 public disclosure under the Health Insurance Portability and Accountability Act of 1996  
6 (HIPPA)." Notice at 2 (emphasis in original); *see* 45 C.F.R. § 164.502.<sup>1</sup> Thus, federal law  
7 requires redaction of the PHI of Medi-Cal beneficiaries in the Epstein Report, and therefore  
8 redaction is permitted under the local rules. *See* L.R. 140(a)(vi) ("Redact when federal law  
9 *requires* redaction" (emphasis in original)). Further, Rite Aid's request complies with the  
10 requirements of Local Rule 141(b), and the redactions appear to be narrowly tailored to cover  
11 only the PHI. Therefore, Rite Aid has established a compelling reason for redacting the PHI in  
12 the Epstein report, and the request to redact the PHI information is GRANTED.

13 B. Proprietary Information

14 Additionally, Rite Aid seeks to redact "images of Rite Aid's proprietary internal  
15 computer system." *Id.* at 3. Redaction is appropriate where disclosure compromises "sources of  
16 business information that might harm a litigant's competitive standing." *Nixon*, 435 U.S. at 598  
17 (citations omitted). The images of the computer system contain business information related to  
18 Rite Aid's "dispensing drugs and maintaining customer prescription records." Notice at 3. From  
19 the court's review of the unredacted version of the report, the screenshots Rite Aid wishes to  
20 redact do contain "detailed, non-public information" regarding Rite Aid's "internal data systems,  
21 processes, and practices," *Lane v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2013 WL  
22 2627487, at \*1 (N.D. Cal. 2013), consisting primarily of the layout, organization, and content of  
23 Rite Aid's "internal computer system for dispensing drugs and maintaining customer prescription  
24 records," Notice at 3. In its Request to Seal, Rite Aid sufficiently explains the proprietary nature  
25 of the computer system and the potential competitive harm from public disclosure of the

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27 <sup>1</sup> "A covered entity or business associate may not use or disclose protected health  
28 information, except as permitted or required by this subpart or by subpart C of part 160 of this  
subchapter. . . ."

1 screenshots, such that the court finds there are compelling reasons to redact the images. *See*  
2 *Esquivel v. Bank of Am., N.A.*, No. 2:12-CV-02502-GEB, 2015 WL 4224712, at \*4 (E.D. Cal.  
3 July 10, 2015) (compelling reasons existed to seal exhibit where public dissemination “may allow  
4 Defendants’ competitors to reap the benefit of the [content] without having to incur the costs  
5 associated with developing the[m]” (citation omitted)). Rite Aid’s request to redact the  
6 screenshots of its computer system is GRANTED.

7 **III. CONCLUSION**

8 Rite Aid’s unopposed request to file the redacted Epstein Report on the docket and  
9 file the unredacted report with the court under seal is GRANTED. Accordingly, the Clerk will  
10 file the unredacted version of the document under seal, and defendant shall file the redacted  
11 version on the docket within seven (7) days. *See* L.R. 141(e)(2)(i).

12 **IT IS SO ORDERED.**

13 **DATED:** April 29, 2019.

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16 UNITED STATES DISTRICT JUDGE  
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