

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO ESQUIVEL and BEATRIZ
ESQUIVEL, individually, on
behalf of all others
similarly situated, and on
behalf of the general public,

No. 2:12-cv-02502-GEB-KJN

**ORDER DENYING PLAINTIFFS'
SEALING REQUEST**

Plaintiffs,

V.

BANK OF AMERICA, N.A.; BANK OF AMERICA CORPORATION,

Defendants.

On March 30, 2015, Plaintiffs submitted for in camera consideration a Request to Seal Documents, a proposed sealing order, and the documents sought to be sealed. The documents requested to be sealed are referenced in a publicly filed Notice of Request to Seal Documents as certain, itemized "exhibits . . . included as . . . attachment[s] to the declaration of Noah Zinner, Esq. in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel[,] and "Plaintiffs' unredacted Motion for Class Certification and Appointment of Class Counsel[,¹ which] contain[s] information taken from these exhibits." (Pls.' Notice of Req. to Seal 2:10-

¹ A redacted version of Plaintiffs' class certification motion was filed on the public docket. (See ECF No. 64.)

1 14, ECF No. 65.) Plaintiffs seek to file the referenced documents
2 under seal, arguing they are obligated to do so since each of the
3 itemized exhibits was designated as "confidential" by Bank of
4 America, N.A. under "the Stipulated Protective Order in this
5 action (Dkt. #58)." (Id. at 2:2-10.)

6 "Two standards generally govern [requests] to seal
7 documents like the one at issue here." Pintos v. Pac. Creditors
8 Ass'n, 605 F.3d 665, 677 (9th Cir. 2010). "[J]udicial records
9 attached to dispositive motions [are treated] differently from
10 records attached to non-dispositive motions." Kamakana v. City &
11 Cnty. of Honolulu, 447 F.3d 1172, 1180 (9th Cir. 2006). "Those
12 who seek to maintain the secrecy of documents attached to
13 dispositive motions must meet the high threshold of showing that
14 'compelling reasons' support secrecy." Id. Whereas, "[a] 'good

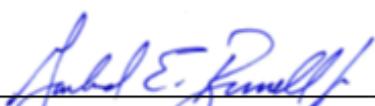
15 cause' showing under Rule 26(c) will suffice to keep sealed
16 records attached to non-dispositive motions." Id. "The Ninth
17 Circuit has not yet addressed whether or not, or under what
18 circumstances, a motion for class certification is a dispositive
19 motion for purposes of deciding what standard applies on sealing
20 motions, and . . . [district] courts in [the Ninth Circuit] have
21 reached different conclusions." Herskowitz v. Apple, Inc., No.
22 12-cv-02131-LHK, 2014 WL 3920036, at *2 (N.D. Cal. Aug. 7, 2014)
23 (internal quotation marks, citation, and brackets omitted).

24 Here, Plaintiffs have neither shown which sealing
25 standard applies to their sealing request, nor demonstrated that
26 the applicable standard has been met. Even under the lesser "good
27 cause" standard, "'the party seeking protection bears the burden
28 of showing specific prejudice or harm will result' if the request

1 to seal is denied." Ross v. Bar None Enterprises, No. 2:13-cv-
2 00234-KJM-KJN, 2014 WL 2700901, at *2 (E.D. Cal. June 13, 2014)
3 (quoting Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.,
4 307 F.3d 1206, 1210-11 (9th Cir. 2002)); see also Herskowitz,
5 2014 WL 3920036, at *2 ("Even under the 'good cause' standard . .
6 . , a party must make a 'particularized showing' with respect to
7 any individual document in order to justify sealing the relevant
8 document." (quoting Kamakana, 447 F.3d at 1180)). "'Broad
9 allegations of harm, unsubstantiated by specific examples or
10 articulated reasoning' are insufficient." Ross, 2014 WL 2700901,
11 at *2 (quoting Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d
12 470, 476 (9th Cir. 1992)).

13 For the stated reasons, Plaintiffs' sealing request is
14 DENIED. Further, since Local Rule 141(e)(1) prescribes that if a
15 sealing "[r]equest is denied in full or in part, the Clerk will
16 return to the submitting party the documents for which sealing
17 has been denied," the documents emailed to the courtroom deputy
18 clerk for judicial in camera consideration are treated as having
19 been returned to the Plaintiffs. United States v. Baez-Alcaino,
20 718 F. Supp. 1503, 1507 (M.D. Fla. 1989) (indicating that when a
21 judge denies a sealing request the party submitting the request
22 then decides how to proceed in light of the ruling).

23 Dated: March 31, 2015

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26 GARIAND E. BURRELL, JR.
27 Senior United States District Judge
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