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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 ANTONIO ESQUIVEL and BEATRIZ
9 ESQUIVEL, individually, on
10 behalf of all others
11 similarly situated, and on
12 behalf of the general public,

13 Plaintiffs,

14 v.

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

17 Defendants.
18

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

**ORDER REGARDING JULY 31, 2015
SEALING REQUEST**

19 On July 31, 2015, the parties submitted for in camera
20 consideration a Stipulated Request to Seal Class Certification
21 Opposition Documents, a declaration in support thereof, the
22 documents sought to be sealed, a proposed redacted version of
23 Defendants' Opposition to Plaintiffs' Motion for Class
24 Certification ("Opposition"), and a proposed sealing order.

25 The parties seek to file the following documents under
26 seal for a period of no less than six years: an unredacted
27 version of Defendants' Opposition, the Declaration of Sandra
28 Evans in Support thereof, and exhibits 1-3, 5, 7, and 13-17 to
the Declaration of Alyssa Sussman in support thereof. The parties
argue:

1 All of [these] documents have been
2 designated as "CONFIDENTIAL" pursuant to the
3 Parties' Stipulated Protective Order and
4 there is good cause to seal these documents.
5 Some of these documents contain [Defendants']
6 confidential and proprietary
7 information . . . that is not available to
8 [their] competitors or the public at large.
9 Public disclosure of this information would
10 harm [Defendants] and put [them] at a
11 competitive disadvantage. Other of these
12 documents contain personal financial
13 information of Plaintiffs.

14 (Notice Stipulated Req. to Seal ("Notice") 1:24-2:2, ECF No. 85.)

15 Specifically, the parties argue:

16 These documents contain information that
17 constitutes a trade secret, and/or reflecting
18 non-public business strategies, and/or
19 confidential competitive information which,
20 if disclosed, would result in competitive
21 harm to [Defendants]. Courts regularly find
22 that confidential and proprietary information
23 is properly designated confidential and
24 should be filed under seal.

25 Exhibits 1-3, 5, 7, and 13-17[,] and the
26 Declaration of Sandra Evans in support of the
27 Opposition meet this standard. These
28 documents contain information related to
[Defendants'] loan servicing and modification
practices that are proprietary to
[Defendants]. [Defendants'] loan servicing
and modification practices are complex
business operations that depend on a
sophisticated body of internal policies and
procedures that require significant time and
human resources to develop and thus have
substantial value to the bank. Filing them on
a public docket would disadvantage
[Defendants] by making information about
[their] proprietary, internal policies
available to other institutions that have not
invested the time and resources necessary to
develop them.

[Defendants] take[] reasonable efforts
to maintain the secrecy of this valuable and
sensitive information, which is not generally
known to the public or to [Defendants']
competitors. Because the disclosure of these
documents would be harmful to [Defendants] by
providing [their] competitors the opportunity

1 to create or modify their own practices and
2 procedures to match (or beat) [Defendants'],
3 good cause exists to file these documents
4 under seal.

5 In addition, Exhibits 5, 7, 13, and 17
6 contain individual personal information that
7 is protected from disclosure, borrower
8 specific and/or credit applicant specific
9 information that is derived using nonpublic
10 personal information, and/or information
11 regarding Plaintiffs' banking or lending
12 relationships, including . . . information
13 regarding [Plaintiffs'] mortgage or credit
14 history.

15 (Id. at 4:4-4:10, 5:6-6:8 (internal quotation marks, citations,
16 and alteration omitted).)

17 The parties also "request an order permitting
18 [Defendant] to file a redacted version of its Opposition . . . ,
19 because portions of the brief reference or discuss confidential
20 or proprietary information contained in the aforementioned
21 exhibits and declaration." (Notice 2:5-9.)

22 I. LEGAL STANDARD

23 "Two standards generally govern [requests] to seal
24 documents" Pintos v. Pac. Creditors Ass'n, 605 F.3d 665,
25 677 (9th Cir. 2010). "[J]udicial records attached to dispositive
26 motions [are treated] differently from records attached to non-
27 dispositive motions." Kamakana v. City and Cnty. of Honolulu, 447
28 F.3d 1172, 1180 (9th Cir. 2006). "[A] party seeking to seal a
judicial record attached to a dispositive motion or one that is
presented at trial must articulate 'compelling reasons' in favor
of sealing." Williams v. U.S. Bank Nat'l Ass'n, 290 F.R.D. 600,
604 (E.D. Cal. 2013) (citing Kamakana, 447 F.3d at 1178). In
contrast, "a party seeking to seal a document attached to a non-
dispositive motion need only demonstrate 'good cause' to justify

1 sealing." Williams, 290 F.R.D. at 604 (citing Pintos, 605 F.3d at
2 678).

3 Even under the lesser "good cause" standard, "'the
4 party seeking protection bears the burden of showing specific
5 prejudice or harm will result' if the request to seal is denied."
6 Ross v. Bar None Enters., No. 2:13-cv-00234-KJM-KJN, 2014 WL
7 2700901, at *2 (E.D. Cal. June 13, 2014) (quoting Phillips ex
8 rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1210-11
9 (9th Cir. 2002)). The movant "must make a 'particularized
10 showing' with respect to any individual document in order to
11 justify [its] sealing" Herskowitz v. Apple, Inc., No. 12-
12 CV-02131-LHK, 2014 WL 3920036, at *2 (N.D. Cal. Aug. 7, 2014)
13 (quoting Kamakana, 447 F.3d at 1180). "'Broad allegations of
14 harm, unsubstantiated by specific examples or articulated
15 reasoning' are insufficient." Ross, 2014 WL 2700901, at *2
16 (quoting Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470,
17 476 (9th Cir. 1992)).

18 The Court need not decide which standard applies to the
19 instant request since the parties have not provided sufficient
20 justification to seal any document under the lesser good cause
21 standard.

22 II. DISCUSSION

23 Defendants have not shown good cause to seal Exhibits 2
24 and 3 (portions of certain deposition transcripts) and Sandra
25 Evans' Declaration. Although these documents reference
26 Defendants' loan servicing and modification practices, the
27 information discussed is too general to warrant sealing.
28 Therefore, Defendants' request to seal these documents is DENIED.

1 Defendants also have not shown good cause to seal
2 Exhibits 14-16 (sample Bank of America loan modification
3 agreements). "Although [Defendants] identif[y] the [documents] as
4 proprietary and confidential, [Defendants have] not provide[d]
5 reasons beyond the boilerplate references to competitive
6 disadvantage if the [documents] were publically available." Welle
7 v. Provident Life & Accident Ins. Co., No. 3:12-cv-3016 EMC
8 (KAW), 2013 WL 6055369, at *2 (N.D. Cal. Nov. 14, 2013). "[W]hile
9 [Defendants] assert[] competitive harm may result, [they] ha[ve]
10 not shown why that is likely to be the case." Id.; see also
11 Martin v. Wells Fargo Bank, N.A., No. CV 12-06030 SI, 2013 WL
12 5441973, at *2-3 (N.D. Cal. Sept. 30, 2013) ("Simply mentioning a
13 general category of privilege without any further elaboration or
14 any specific linkage with the documents does not satisfy the
15 burden. Neither do broad allegations of harm, unsubstantiated by
16 specific examples or articulated reasoning." (internal quotation
17 marks, citations, and alteration omitted)). Therefore,
18 Defendants' request to seal Exhibits 14-16 is DENIED.

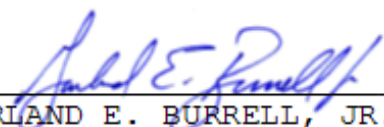
19 The remainder of Defendants' June 2, 2015 sealing
20 request, i.e., the request to seal Exhibits 1, 5, 7, 13, and 17,
21 is overbroad since Defendants have not shown why targeted
22 redactions would not adequately protect the privacy interests
23 concerning credit histories and personal financial information.¹
24 "Because of the strong presumption of access to [court]
25 records[,] " "[s]ealing orders . . . must be narrowly tailored."
26 Perry v. City & Cnty. of S.F., No. 10-16696, 2011 WL 2419868, at

27 ¹ Federal Rule of Civil Procedure 5.2(a) authorizes parties to redact,
28 without obtaining a court order, portions of a person's financial-account
number.

1 *21 (9th Cir. 2011). Therefore, "any interest justifying closure
2 must be specified with particularity, and there must be [a
3 showing] that the [sealing requested] is narrowly confined to
4 protect that interest." Id. (internal quotation marks, citation,
5 and emphasis omitted). "For this reason, any sealing order
6 must . . . use less restrictive alternatives that do not
7 completely frustrate the public's . . . right[] of access." Id.
8 For example, "[i]n many cases, courts can accommodate [privacy]
9 concerns by redacting sensitive information rather than [sealing]
10 the materials entirely." United States v. Bus. of Custer
11 Battlefield Museum & Store, 658 F.3d 1188, 1195 n.5 (9th Cir.
12 2011); see also Press-Enterprise Co. v. Sup. Ct., 464 U.S. 501,
13 513 (1984) ("Those parts of the transcript reasonably entitled to
14 privacy could have been sealed without such a sweeping
15 order"). Therefore, Defendants' request to seal Exhibits
16 1, 5, 7, 13, and 17 is DENIED.

17 Further, Defendants' request to file a redacted version
18 of their Opposition is DENIED since Defendants have not shown
19 that any referenced exhibit or declaration should be sealed.

20 Dated: August 5, 2015

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24 GARIAND E. BURRELL, JR.
25 Senior United States District Judge
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