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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIKA GREGORY and LOREN  
MOLLNER,  
  
                                Plaintiffs,  
  
                                v.  
  
CITY OF VALLEJO, et al.,  
  
                                Defendants.

No. 2:13-cv-00320-KJM-KJN

ORDER

                                This matter is before the court on plaintiffs’ August 7, 2014 request to seal. ECF No. 35. On August 12, 2014, the court issued a minute order directing defendants to respond to the request no later than August 15, 2014. ECF No. 40. Defendants did not file a reply. The court considers the request unopposed but now DENIES it.

I. INTRODUCTION

                                Plaintiffs seek to seal two exhibits in support of their opposition to defendants’ July 25, 2014 motion for summary judgment. They also seek to redact portions of the following opposition papers to defendants’ motion for summary judgment that reference these exhibits: (1) the memorandum of points and authorities, (2) response to defendants’ separate statement of undisputed facts; and (3) separate statement of undisputed material facts. ECF No. 35. The exhibits concern twenty-eight pages of defendant Calhoun’s personnel file that are related to an

1 internal investigation and reasons for his termination. *See* ECF No. 28 at 2. Plaintiffs contend  
2 sealing is appropriate because the parties have entered into a protective order signed by the  
3 magistrate judge assigned to this action. ECF No. 35 at 1 (citing ECF Nos. 17, 28). Plaintiffs  
4 also argue in support of sealing based on a police officer’s reasonable expectation of privacy of  
5 information contained in his personnel file and internal affairs materials under California Penal  
6 Code section 832.7, California Government Code section 6254 and California Evidence Code  
7 section 1043; and because public access to the documents would “remove the protections for  
8 officers to be candid in order to improve the department.”

## 9 II. AMENDED PROTECTIVE ORDER

10 On June 19, 2014, the magistrate judge assigned to this action entered an amended  
11 stipulation and protective order designating the following records subject to the protective order:

- 12 a. Critical Incident Report- CI 2012-02
- 13 b. Internal Affairs Files Report as to Officer Calhoun in the last five  
14 years, related to excessive force, if any exists.
- 15 c. A selected portion of Officer Calhoun’s personnel file related to  
16 the investigation and reasons for his termination.

17 ECF No. 28. These designated confidential materials may only be disclosed to specified  
18 individuals. *Id.* ¶ 2. Any individual to whom disclosure is made shall, *inter alia*, be provided  
19 with a copy of the amended protective order. *Id.* ¶ 3. Following the conclusion of the trial the  
20 confidential materials shall be delivered back to the City of Vallejo. *Id.* ¶ 4. With regard to  
21 sealing, the amended protective order provides:

22 In the event that either party wishes to file Confidential Material  
23 with the court, as an exhibit to a pleading or otherwise, the filing  
24 party shall first seek an order to file under seal pursuant to Local  
25 Rule 141. The Request to Seal Documents shall refer to this  
26 stipulation and protective order.

27 *Id.* ¶ 5.

## 28 III. LEGAL STANDARDS

As a threshold matter, the parties are reminded of this court’s standing order  
regarding sealing motions, which provides:

1  
2 Sealing and Protective Orders: No document will be sealed, nor  
3 shall a redacted document be filed, without the prior approval of the  
4 court. . . . All requests to seal or redact shall be governed by Local  
5 Rules 141 (sealing) and 140 (redaction); protective orders covering  
6 the discovery phase of litigation shall not govern the filing of sealed  
7 or redacted documents on the public docket. The court will only  
8 consider requests to seal or redact filed by the proponent of sealing  
9 or redaction. If a party plans to make a filing that includes material  
10 an opposing party has identified as confidential and potentially  
11 subject to sealing, the filing party shall provide the opposing party  
12 with sufficient notice in advance of filing to allow for the seeking  
13 of an order of sealing or redaction from the court.

14 Civil Standing Orders of Judge Kimberly J. Mueller (available on the court's web page); *see also*  
15 ECF 15 at 3-4. Here, the documents plaintiffs seek to seal are related to defendant Calhoun's  
16 personnel records. Thus, defendants, and more specifically defendant Calhoun, are the proper  
17 proponents of sealing or redaction. *Id.* Plaintiffs had a duty to provide defendants with sufficient  
18 notice in advance of filing their opposition papers so defendants could elect to seek an order of  
19 sealing or redaction. *Id.* Instead, plaintiffs, who did not identify the documents at issue as  
20 confidential during discovery, filed the instant request to seal. Nevertheless, considering the  
21 posture of plaintiffs' request at the impending hearing date of August 29, the court declines to  
22 strike plaintiffs' request to seal and addresses the merits of the request.

23 The Local Rules of the Eastern District of California provide that "[d]ocuments  
24 may be sealed only by written order of the Court." L.R. 141(a). A request to seal "shall set forth  
25 the statutory or other authority for sealing, the requested duration, the identity, by name or  
26 category, of persons to be permitted access to the documents, and all other relevant information."  
27 *Id.* 141(b).

28 There is a strong presumption in favor of public access to court records. *See*  
*Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002). However, "access to judicial  
records is not absolute." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.  
2006). The Ninth Circuit has distinguished between the public's interest in accessing court  
records filed in connection with nondispositive and dispositive motions. *See Phillips*, 307 F.3d

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1 1206; *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003); *Kamakana*, 447  
2 F.3d at 1172; *In re Midland Nat'l Life Ins. Co.*, 686 F.3d 1115, 1119 (9th Cir. 2012).

3 To seal documents filed in connection with a dispositive motion, parties must  
4 show there are “compelling reasons” for doing so. *Kamakana*, 447 F.3d at 1180, 1182 (“[T]he  
5 proponent of sealing bears the burden with respect to sealing.”). To demonstrate compelling  
6 reasons, a party is “required to present articulable facts identifying the interests favoring  
7 continued secrecy and to show that these specific interests [overcome] the presumption of access  
8 by outweighing the public interest in understanding the judicial process.” *Id.* at 1181 (internal  
9 citations, quotation marks, and emphasis omitted). “When sealing documents attached to a  
10 dispositive pleading, a district court must base its decision on a compelling reason and articulate  
11 the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.* at 1182 (internal  
12 citation, quotation marks, and emphasis omitted); *see also Pintos v. Pac. Creditors Ass’n*, 605  
13 F.3d 665, 679 (9th Cir. 2007, amended 2010), cert. denied, *Experian Info. Solutions, Inc. v.*  
14 *Pintos*, 131 S.Ct. 900 (2011) (vacating and remanding district court’s denial of sealing where  
15 court applied good cause standard to documents filed in connection with summary judgment  
16 motions). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in  
17 disclosure and justify sealing court records exist when such ‘court files might become a vehicle  
18 for improper purposes,’ such as the use of records to gratify private spite, promote public scandal,  
19 circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (quoting  
20 *Nixon v. Warner Communs., Inc.*, 435 U.S. 589, 589 (1978)). “The ‘compelling reasons’ standard  
21 is invoked even if the dispositive motion, or its attachments, were previously filed under seal or  
22 protective order.” *Id.*

#### 23 IV. ANALYSIS

24 To the extent plaintiffs argue that sealing is proper in light of the parties’ existing  
25 protective order, this argument is without merit. Here, the issuance of the protective order under  
26 which plaintiffs seek to seal the discovery documents at issue did not involve the court identifying  
27 and discussing the “compelling reasons” standard. Accordingly, the presumption of access to  
28 court records is not rebutted simply because the court has entered the stipulated protective order.

1 *Kamakana*, 447 F.3d at 1183 (concluding that “[a]lthough the magistrate judge expressly  
2 approved and entered the protective order, the order contained no good cause findings as to  
3 specific documents that would justify reliance by the United States” and, therefore, “the claimed  
4 reliance on the order is not a compelling reason that rebuts the presumption of access” (citations  
5 and internal quotation marks omitted)); *see also Foltz*, 331 F.3d at 1136, 1138.

6 Plaintiffs also argue in favor of sealing based on a police officer’s reasonable  
7 expectation of privacy of information contained in his personnel files. While courts have  
8 recognized police officers’ privacy interest in their personnel files, a generalized assertion of a  
9 privacy interest is not sufficient to bar disclosure of a judicial record. *Kamakana*, 447 F.3d at  
10 1184 (“Simply mentioning a general category of privilege [such as privacy], without any further  
11 elaboration or any specific linkage with the documents, does not satisfy the burden” to show  
12 compelling reasons to seal information from public access.). This argument too fails to establish  
13 a sufficient basis for sealing.

14 To the extent plaintiffs rely on California Penal Code section 832.7,<sup>1</sup> California  
15 Government Code section 6254<sup>2</sup> and California Evidence Code section 1043<sup>3</sup> for the proposition  
16 these statutes protect defendant Calhoun’s right to privacy, this argument also fails. This action  
17 seeks damages for the violation of plaintiffs’ “rights protected by the Fourth Amendment” and is  
18 brought under 42 U.S.C. section 1983. First Am. Compl. ¶ 1, ECF No. 10. “Plaintiffs also seek  
19 damages under California State law against those defendants whose conduct gave rise to claims  
20 cognizable by California law.” *Id.* In a federal question case, however, federal common law

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22 <sup>1</sup> Section 832.7 of the California Penal Code provides: “Peace officer or custodial officer  
23 personnel records and records maintained by any state or local agency . . . , or information  
24 obtained from these records, are confidential and shall not be disclosed in any criminal or civil  
25 proceeding, [with some exceptions].” CAL. PENAL CODE § 832.7.

26 <sup>2</sup> Section 6254(c) of the California Government Code provides that “this chapter does not require  
27 the disclosure of . . . [p]ersonnel, medical, or similar files , the disclosure of which would  
28 constitute an unwarranted invasion of personal privacy. CAL. GOV’T CODE § 6254(c).

<sup>3</sup> Section 1043 of the California Evidence Code requires a party seeking discovery of peace or  
custodial officer personnel records to file a motion with the appropriate court identifying the  
discovery sought, the party seeking discovery, the officer whose records are sought, and the  
agency which has custody and control of the records, along with an affidavit showing good cause  
for the discovery. CAL. EVID. CODE § 1043.

1 applies and a state statute, without more, does not shield disclosure in federal court or rebut the  
2 strong presumption in favor of public access to judicial records. *Garrett v. City & Cnty. of S.F.*,  
3 818 F.2d 1515, 1519 n.6 (9th Cir. 1987); *see also Kamakana*, 447 F.3d at 1178 (rejecting claim  
4 that documents relating to “law enforcement” and “official information privileges” are  
5 categorically exempt from the compelling interest test).

6 Other than their reliance on the stipulated protective order and state statutes,  
7 plaintiffs fail to articulate any support for, or point to any authority in support of, their remaining  
8 conclusory argument that “[p]ublic filing of these records would chill that [privacy] interest and  
9 remove the protections for officers to be candid in order to improve the department.” *See*  
10 *Kamakana*, 447 F.3d at 1182 (when ruling on a request to seal a court must not base its decision  
11 on “hypothesis or conjecture”). Without more, plaintiffs have failed to meet the requirement that  
12 a party make a particularized showing that demonstrates compelling reasons to seal documents  
13 submitted in connection with a dispositive motion. *Cf. Pryor v. City of Clearlake*, No. C 11–0954  
14 CW, 2012 WL 2711032, at \*1–2 (N.D. Cal. July 6, 2012) (noting “a generalized assertion of a  
15 privacy interest is not sufficient to warrant barring disclosure of a judicial record” but finding  
16 sealing proper where it concerned information that was irrelevant to the dispositive motion,  
17 sensitive, private and where there was a likelihood that “it was filed . . . because of private spite  
18 or a desire to scandalize the public”). Unlike the moving party in *Pryor*, plaintiffs failed to  
19 articulate any specific reasons for sealing the exhibits. Nor did defendants file a reply despite  
20 being provided the opportunity to do so.

21 Because plaintiffs have not borne the burden of establishing a compelling reason  
22 for the court to grant their request to seal the two exhibits and redact references to these exhibits  
23 in their opposition papers, the court DENIES the request.

24 At the same time, the court is cognizant of the potential that limited information in  
25 the documents covered by plaintiffs’ request may serve to circulate libelous statements regarding  
26 third parties. *Kamakana*, 447 F.3d at 1179. Therefore, the court will permit redaction of the two  
27 exhibits and plaintiffs’ opposition papers only to the extent the documents set forth the names of  
28 third parties.

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V. CONCLUSION

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. Plaintiffs' request to seal and to redact portions of the opposition papers is DENIED.
2. The Clerk of the Court "will return to the submitting party the documents for which sealing has been denied," L.R. 141(e)(1), and any electronically transmitted documents are deemed returned, *United States v. Chanthaboury*, No. 2:12-cr-00188-GEB, 2013 WL 6404989, at \*2 (E.D. Cal. Dec. 6, 2013).
3. Within one day from the date of this order, plaintiffs shall file their opposition papers in accordance with this order, redacting only the names of third parties.

IT IS SO ORDERED.

DATED: August 20, 2014.

  
UNITED STATES DISTRICT JUDGE