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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARIA DEL CARMEN PENA,  
CONSUELO HERNANDEZ, LETICIA  
SUAREZ, ROSEMARY DAIL, AND  
WENDELL T. MORRIS, on behalf of  
themselves and on behalf of all other  
similarly situated individuals,

Plaintiffs,

v.

TAYLOR FARMS PACIFIC, INC. d/b/a  
TAYLOR FARMS; ABEL MENDOZA,  
INC.; MANPOWER, INC.; QUALITY  
FARM LABOR, INC.; SLINGSHOT  
CONNECTIONS, LLC AND DOES 5-50,  
inclusive,

Defendants.

No.: 2:13-cv-01282-KJM-AC

ORDER

This matter is before the court on plaintiffs’ request to seal documents that they wish the court to consider in support of their motion for class certification. (Pls.’ Notice of Req. Seal, ECF 65.) Specifically, plaintiffs seek to seal two pages of emails that defendant Taylor Farms Pacific, Inc. (“Taylor Farms”) disclosed during discovery and designated as “confidential” according to a stipulated protective order signed off on by the San Joaquin County Superior Court (“Superior Court”). (*Id.* at 1; ECF 2-10, Ex. F.) As explained below, the court DENIES plaintiffs’ request to seal.

1           Local Rule 141(a) provides that “[d]ocuments may be sealed only upon written  
2 order of the Court.” It is an established principle that there is a strong presumption in favor of  
3 public access to court records. *See Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir.  
4 2002). However, “access to judicial records is not absolute.” *Kamakana v. City & Cnty. of*  
5 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). In determining what standard to apply to  
6 requests to seal, the Ninth Circuit distinguishes between non-dispositive and dispositive motions.  
7 *Id.* at 1180.

8           To seal documents filed with a dispositive motion, a party “must meet the high  
9 threshold of showing that ‘compelling reasons’ support secrecy.” *Id.* That is, the party  
10 requesting to seal “must articulate[] compelling reasons supported by specific factual findings  
11 . . . that outweigh . . . public interest in understanding the judicial process.” *Id.* at 1178-79  
12 (internal citation and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to  
13 outweigh the public’s interest in disclosure and justify sealing court records exist when such  
14 ‘court files might become a vehicle for improper purposes,’ such as the use of records to gratify  
15 private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.*  
16 at 1179 (quoting *Nixon v. Warner Communs., Inc.*, 435 U.S. 589, 589 (1978)).

17           On the other hand, a party requesting to seal a document filed with a non-  
18 dispositive motion needs to demonstrate “good cause.” *Id.* at 1180. This is because the public’s  
19 interest in non-dispositive materials is weaker than its interest in dispositive materials. *Pintos v.*  
20 *Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010). To satisfy the “good cause” standard,  
21 “the party seeking protection bears the burden of showing specific prejudice or harm will result  
22 . . .” if the request to seal is denied. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307  
23 F.3d 1206, 1210-11 (9th Cir. 2002). “Broad allegations of harm, unsubstantiated by specific  
24 examples or articulated reasoning” are insufficient. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966  
25 F.2d 470, 476 (9th Cir. 1992) (quoting *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d  
26 Cir. 1986)).

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1 Here, as noted, plaintiffs ask the court to seal two pages of emails that defendant  
2 Taylor Farms disclosed during discovery and designated as “confidential” according to a  
3 stipulated protective order issued by the Superior Court. (ECF 2-10.) Plaintiffs reason they have  
4 satisfied the “good cause” requirement because they will be unduly prejudiced if they are not able  
5 to introduce these emails in light of protections purportedly afforded to the defendant by the  
6 Superior Court order. (Pls.’ Req. Seal at 2.) They will be prejudiced, plaintiffs reason, because  
7 they will not be able to introduce highly relevant information to support their motion for class  
8 certification. (*Id.*) The emails are relevant, plaintiffs argue, because they establish defendants’  
9 knowledge of alleged wage-and-hour violations. (*Id.*)

10 Here, the court finds plaintiffs cannot meet even the lower “good cause”  
11 requirement applicable to non-dispositive motions, and so does not analyze whether the higher  
12 compelling reasons standard applies.<sup>1</sup> Plaintiffs, as required by the court’s scheduling order (*id.*),  
13 have provided defendants with notice of the fact that plaintiffs’ motion for class certification  
14 references the subject emails that Taylor Farms has designated as confidential. (Szeto Decl.  
15 ¶ 30.) The request to seal relies solely on Taylor Farms’ designation. Taylor Farms has not filed  
16 anything with respect to plaintiffs’ request. As explained in the court’s scheduling order, this  
17 court only considers requests to seal made by the party designating a document as confidential:

18 [P]rotective orders covering the discovery phase of litigation shall  
19 not govern the filing of sealed or redacted documents on the public  
20 docket. The court will only consider requests to seal or redact filed  
21 by the proponent of sealing or redaction. If a party plans to make a  
22 filing that includes material an opposing party has identified as  
confidential and potentially subject to sealing, the filing party shall  
provide the opposing party with sufficient notice in advance of  
filing to allow for the seeking of an order of sealing or redaction  
from the court.

23 (ECF 46 at 4.) The court construes Taylor Farms’ silence as a concession that it, and therefore  
24 plaintiffs, cannot meet the “good cause” requirement.

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25 <sup>1</sup> This court previously has applied the higher standard in a class certification context, but  
26 recognizes that the Ninth Circuit has not resolved the question specifically. *See Davis v.*  
27 *Devanlay Retail Group, Inc.*, 2012 U.S. Dist. LEXIS 109798, \*4 (E.D. Cal. 2012); *cf. In re NCAA*  
28 *Student-Athlete Name & Likeness Licensing Litig.*, No. 09-1967, 2012 U.S. Dist. LEXIS 131658,  
at \*9 n.1 (N.D. Cal. Sep. 14, 2012).

1                   Moreover, there is no indication the parties either showed the Superior Court  
2 specific discovery documents to satisfy Rule 26(c)'s good cause standard, or that prior to issuing  
3 the parties' protective order the state court "'identif[ied] and discuss[ed] the factors it considered  
4 in its good cause examination to allow appellate review of the exercise of its discretion,'" *Foltz*,  
5 331 F.3d at 1130-31 (quoting *Phillips*, 307 F.3d at 1212). Rather, it appears the parties stipulated  
6 to the protective order, which the Superior Court judge simply adopted in full. *See Beckman*  
7 *Indus. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) ("[B]ecause the protective order was a  
8 stipulated blanket order, [the movant] never had to make a 'good cause' showing under Fed. R.  
9 Civ. P. 26(c) of the need for protection [for specific documents at issue]."). Under these  
10 circumstances, this court owes no deference to the state court's ministerial act of approving  
11 without comment the stipulated order. *Cf. Tucker v. Ohtsu Tire & Rubber Co., Ltd.*, 191 F.R.D.  
12 495, 500-01 (D. Md. 2000). Accordingly, the protective order issued by the Superior Court does  
13 not govern the instant request to seal, or any other request to seal or redact documents to be filed  
14 on this court's docket.

15                   The court DENIES plaintiffs' request to seal. Because defendant has waived any  
16 argument that the documents should not be filed, the Clerk of the Court is directed to file on the  
17 public docket Plaintiff's Request to Seal Documents, the Declaration of Kitty Szeto in Support  
18 Thereof, and the documents attached to the Szeto declaration.

19                   IT IS SO ORDERED.

20 Dated: October 23, 2013.

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23 UNITED STATES DISTRICT JUDGE  
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