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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREDERICK MARCELES COOLEY,  
Plaintiff,  
v.  
CITY OF VALLEJO, et al.,  
Defendants.

No. 2:14-cv-0240 DAD PS

ORDER

Pending before the court is defendant City of Vallejo’s January 5, 2015 Notice of Request and Request to Seal Documents. (Dkt. Nos. 47 and 48.) Defendant’s Request to Seal, seeks not only an order allowing the document labeled FLATER 001 - 003 to be filed with the court under seal but also an order authorizing plaintiff to be precluded from having access to that document which defendant is offering in support of its pending motion for reconsideration of the court’s November 17, 2014 order granting plaintiff’s motion to compel.

There is a presumption in favor of public access to court records. See Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002). “[A]ccess 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 In re Midland Nat’l Life Ins. Co., 686 F.3d 1115 (9th Cir. 2012); Kamakana, 447 F.3d at 1172; Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d

1 1122 (9th Cir. 2003); Phillips, 307 F.3d 1206. To seal documents filed in connection with a  
2 dispositive motion, parties must show there are “compelling reasons” for doing so. Kamakana,  
3 447 F.3d at 1180, 1182 (“[T]he proponent of sealing bears the burden with respect to sealing.”).  
4 To demonstrate compelling reasons justifying sealing of such documents, a party is “required to  
5 present articulable facts identifying the interests favoring continued secrecy and to show that  
6 these specific interests [overcome] the presumption of access by outweighing the public interest  
7 in understanding the judicial process.” Id. at 1181 (internal citations, quotation marks, and  
8 emphasis omitted). “When sealing documents attached to a dispositive pleading, a district court  
9 must base its decision on a compelling reason and articulate the factual basis for its ruling,  
10 without relying on hypothesis or conjecture.” Id. at 1182 (internal citation, quotation marks, and  
11 emphasis omitted). See also Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 679 (9th Cir. 2010),  
12 cert. denied Sub nom. Experian Info. Solutions, Inc. v. Pintos, \_\_\_ U.S. \_\_\_, 131 S. Ct. 900  
13 (2011) (vacating and remanding district court’s denial of a sealing request where the court applied  
14 merely a good cause standard in addressing documents filed in connection with summary  
15 judgment motions). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest  
16 in disclosure and justify sealing court records exist when such ‘court files might become a vehicle  
17 for improper purposes,’ such as the use of records to gratify private spite, promote public scandal,  
18 circulate libelous statements, or release trade secrets.” Kamakana, 447 F.3d at 1179 (quoting  
19 Nixon v. Warner Communs., Inc., 435 U.S. 589, 589 (1978)). “The ‘compelling reasons’  
20 standard is invoked even if the dispositive motion, or its attachments, were previously filed under  
21 seal or protective order.” Id.

22 On the other hand, parties seeking to file documents under seal in connection with a  
23 nondispositive motion must show only “good cause” for the requested sealing. Kamakana, 447  
24 F.3d at 1180; In re Midland, 686 F.3d at 1119 (“[A] particularized showing of ‘good cause’ under  
25 Federal Rule of Civil Procedure 26(c) is sufficient to preserve the secrecy of sealed discovery  
26 documents attached to non-dispositive motions.” (citing Foltz, 331 F.3d at 1138)). The  
27 presumption of public access is rebutted by a showing of good cause because “of the weaker  
28 public interest in nondispositive materials,” Pintos, 605 F.3d at 678, and “[a]pplying a strong

1 presumption of access to documents a court has already decided should be shielded from the  
2 public [by issuing a protective order] would surely undermine, and possibly eviscerate, the broad  
3 power of the district court to fashion protective orders.” Phillips, 307 F.3d at 1213 (addressing an  
4 intervenor’s request to access confidential settlement information produced during discovery  
5 under a protective order). See also Foltz, 331 F.3d at 1135; Pintos, 605 F.3d at 678 (discussing  
6 the parties’ interest in keeping discovery documents under seal in light of the public’s lesser  
7 interest in nondispositive motions); Kamakana, 447 F.3d at 1180. “For good cause to exist, the  
8 party seeking protection bears the burden of showing specific prejudice or harm will result . . . .  
9 If a court finds particularized harm will result from disclosure of information to the public, then it  
10 balances the public and private interests to decide whether a protective order is necessary.”  
11 Phillips, 307 F.3d at 1210-11 (citations omitted).

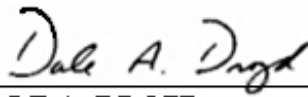
12 Here, the document defendant seeks to file under seal is being submitted by defendant in  
13 support of its motion for reconsideration of an order granting discovery, which is a nondispositive  
14 motion. Therefore, the court considers whether the defendant has shown good cause for sealing  
15 the documents at issue. Foltz, 331 F.3d at 1135. Upon consideration of defendant’s arguments  
16 and having reviewed the documents sought to be filed under seal, the court finds that the  
17 defendant has not shown that good cause exists for filing the document labeled FLATER 001-003  
18 under seal. In this regard, defendant’s request to seal offers only a broad and vague allegation of  
19 potential harm posed by the disclosure of the document, unsubstantiated by specific examples or  
20 articulated reasoning.

21 Moreover, a reading of the document sought to be filed under seal reveals that it does not  
22 contain information that could be properly characterized as sensitive investigative or personnel  
23 information. Instead, the documents merely discuss the City of Vallejo Police Department’s  
24 records and retention policy, the number of documents that would potentially be required to be  
25 produced to plaintiff under the court’s order granting the motion to compel and the amount of  
26 work and time necessary to prepare those documents for production. In no way can that routine  
27 information be accurately characterized as “confidential documents” that “contain sensitive  
28 investigation and personnel information” as claimed by defendant. (Dkt. No. 48 at 2.)

1 Accordingly, for the reasons stated above, it is HEREBY ORDERED AS FOLLOWS:

- 2 1. Defendant's January 5, 2015 request to seal is denied;
- 3 2. If defendant wishes the court to consider the document labeled "FLATER 001 – 003"
- 4 in connection with its pending motion for reconsideration, it shall file the document
- 5 with this court and serve it on plaintiff forthwith.
- 6 3. The hearing on defendant's motion for reconsideration is continued from February 13,
- 7 2015 to **February 20, 2015 at 10:00 a.m.**
- 8 4. Plaintiff is directed to file opposition, if any, to defendant's motion to reconsider by
- 9 February 6, 2015.<sup>1</sup>
- 10 5. Defendant shall file any reply by February 13, 2015.

11 Dated: January 27, 2015

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>1</sup> The court is aware that plaintiff has already filed opposition to defendant's motion for  
28 reconsideration. Plaintiff may elect to file new opposition in light of this order or may stand on  
his opposition filed January 22, 2015. (Dkt. No. 51.)