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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERMAINE PADILLA,

Plaintiff,

v.

JEFFREY BEARD, et al.,

Defendants.

No. 2:14-cv-01118-KJM-CKD

ORDER

Plaintiff Padilla’s motion to seal the entire declaration of Cynthia Gonzalez, in connection with Padilla’s motion to approve settlement and establish a special needs trust, is pending before the court. ECF No. 291; ECF No. 290. The court DENIES the request to seal, as explained below.

I. LEGAL STANDARD

“[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). While “the right to inspect and copy judicial records is not absolute,” access in civil cases is properly denied for clearly justifiable reasons: to protect against

1 “gratification of] private spite or promot[ion of] public scandal,” or to preclude court dockets  
2 from becoming “reservoirs of libelous statements,” or “sources of business information that might  
3 harm a litigant’s competitive standing.” *Id.* at 598. As the Ninth Circuit instructs, a “strong  
4 presumption in favor of access” to the record governs in a court of law unless the case or a part of  
5 it qualifies for one of the relatively few exceptions that have been “traditionally kept secret,” with  
6 secrecy allowed for good reasons. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134–  
7 35 (9th Cir. 2003). “Those who seek to maintain the secrecy of documents attached to dispositive  
8 motions must meet the high threshold of showing that ‘compelling reasons’ support secrecy.”  
9 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (citing *Foltz*, 331  
10 F.3d at 1136). The compelling-reasons standard applies even if contents of the dispositive motion  
11 or its attachments have previously been filed under seal or are covered by a generalized protective  
12 order, including a discovery phase protective order. *See Foltz*, 331 F.3d at 1136.

13           The Ninth Circuit has repeatedly confirmed, however, that the traditional  
14 compelling-reasons standard applies only “to dispositive pleadings, including motions for  
15 summary judgment and related attachments.” *Kamakana*, 447 F.3d at 1179 (citing *Foltz*, 331  
16 F.3d at 1136 and *San Jose Mercury News, Inc. v. U.S. Dist. Court—N. Dist. (San Jose)*, 187 F.3d  
17 1096, 1102 (9th Cir.1999)). “[F]or a *sealed discovery document* attached to a *non-*  
18 *dispositive* motion,” the “usual presumption of the public’s right of access is rebutted.” *Id.* at  
19 1179 (quoting *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir.2002) (internal  
20 quotation marks and alterations omitted) (emphasis in *Kamakana*). Rather than “compelling  
21 reasons,” only “good cause” to withhold the information must be shown. *Kamakana*, 447 F.3d at  
22 1180. The “good cause” standard requires a “particularized showing” that “specific prejudice or  
23 harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors*  
24 *Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002) (internal quotation marks omitted); *see Fed. R.*  
25 *Civ. P.* 26(c). “Broad allegations of harm, unsubstantiated by specific examples of articulated  
26 reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir.  
27 1992).

1           The Eastern District of California has adopted rules to clarify procedures for  
2 parties' compliance with the law reviewed above. Local Rule 141 provides that documents may  
3 be sealed only by a written order of the court after a particularized request to seal has been made.  
4 E.D. Cal. L.R. 141(a). A mere request to seal is not enough under the local rules. Local Rule  
5 141(b) expressly requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or  
6 other authority for sealing, the requested duration, the identity, by name or category, of persons to  
7 be permitted access to the document, and all relevant information." The court's own Standing  
8 Order, available on its web page, and its Pretrial Scheduling Order issued in this case, ECF  
9 No. 78 at 6, emphasize the requirement that parties comply with the law and the rules in making  
10 any sealing request, which they should do lightly and only rarely if at all.

## 11       II.     DISCUSSION

12           As this court previously has observed, the Ninth Circuit has not provided detailed  
13 guidance on the distinction between dispositive and non-dispositive motions. *AT & T Mobility*  
14 *LLC v. Yeager*, No. 2:13-CV-0007-KJM-DAD, 2015 WL 5687701, at \*2 (E.D. Cal. Sept. 25,  
15 2015) (citing *Traylor Bros. v. San Diego Unified Port Dist.*, No. 08cv1019-L(JMA), 2009 U.S.  
16 Dist. LEXIS 53827, at \*3–4 (S.D. Cal. June 25, 2009)). It is clear, nevertheless, that dispositive  
17 matters include at least those that resolve the merits of an underlying dispute. *See, e.g.*,  
18 *Kamakana*, 447 F.3d at 1179 (motions for summary judgment are dispositive); *Foltz*, 331 F.3d at  
19 1135–36 (summary judgment is dispositive because it "adjudicates substantive rights and serves  
20 as a substitute for trial"). Non-dispositive matters do not resolve the case, or are only  
21 "tangentially related" to it. *See Kamakana*, 447 F.3d at 1179; *see also Digital Reg of Texas, LLC*  
22 *v. Adobe Sys., Inc.*, No. 12–1971 CW, 2015 WL 604055, at \*1 (N.D. Cal. Feb.11, 2015) (petitions  
23 for attorneys' fees are not dispositive); *Traylor Bros.*, 2009 U.S. Dist. LEXIS 53827, at \*3–5 (a  
24 motion to disqualify is not dispositive).

25           The Ninth Circuit's decision in *Center for Auto Safety v. Chrysler Group, LLC*,  
26 809 F.3d 1092 (9th Cir. 2016), provides the court's most thorough discussion of what constitutes  
27 a dispositive motion for sealing purposes. The court summarized its precedent as focusing not on  
28 whether the motion is "technically dispositive," but rather "on whether the motion at issue is

1 more than tangentially related to the underlying cause of action.” *Id.* at 1099 (citations omitted).  
2 The court reasoned that, although “nondispositive motions are sometimes not related, or only  
3 tangentially related, to the merits of the case . . . . plenty of technically nondispositive motions . . .  
4 are strongly correlative to the merits of a case.” *Id.* (footnote omitted). Accordingly, “public  
5 access [to motions and their attachments] will turn on whether the motion is more than  
6 tangentially related to the merits of a case.” *Id.* at 1101.

7 District courts in this circuit differ on whether a motion to approve a settlement  
8 agreement that releases parties from a case is a dispositive or non-dispositive motion for sealing  
9 purposes. *Compare In re Sepracor Inc. Fair Labor Standards Act Litig.*, No. CV-09-1409-PHX-  
10 DGC, 2009 WL 3253947, at \*1 (D. Ariz. Oct.8, 2009) (applying the *Kamakana* compelling  
11 reasons standard after finding that a motion to approve a Fair Labor Standards Act settlement  
12 agreement is dispositive), *and White v. Sabatino*, No. CIV. 04-00500 ACK/LE, 2007 WL  
13 2750604, at \*2 (D. Haw. Sept.17, 2007) (applying the *Kamakana* compelling reasons standard  
14 after finding that a motion to set aside a settlement agreement is dispositive), *with Prosurance*  
15 *Grp., Inc. v. Liberty Mut. Grp., Inc.*, No. 10-CV-02600-LHK, 2011 WL 704456, at \*1 (N.D. Cal.  
16 Feb.18, 2011) (“Because a motion to determine good faith settlement is only tangentially related  
17 to the merits of the underlying cause of action, it constitutes a non-dispositive motion.”).

18 Padilla’s request fails to meet either the good cause or compelling-reasons  
19 standards, the court declines to resolve at this point the issue of whether Padilla’s motion is  
20 dispositive or nondispositive.

21 Padilla’s request merely states, in a perfunctory fashion:

22 This declaration provides information to the Court concerning, *inter*  
23 *alia*, Plaintiff’s current health, and personal information about Ms.  
24 Gonzalez, who is Plaintiff’s guardian *ad litem*, and Plaintiff’s and  
25 Ms. Gonzalez’s family members (who are not parties to this  
26 litigation) that is not relevant to the underlying substantive issues in  
this litigation. In order to protect this personal and sensitive  
information, including of non-parties, from public disclosure to the  
extent possible, permission is hereby requested to file Ms.  
Gonzalez’s declaration under seal.

27 Req. to Seal Decl. at 1; *see* Notice of Req. to Seal Decl. at 1, ECF No. 291.

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1           This request is not a “particularized showing” that “specific prejudice or harm will  
2 result” if the information is disclosed. *Phillips*, 307 F.3d at 1210–11 (internal quotation marks  
3 omitted). Padilla’s request fails to provide “specific examples or articulated reasoning” required  
4 to show good cause. *Beckman Indus.*, 966 F.2d at 476. Padilla has failed to specify what  
5 qualifies as personal or sensitive information in the request to seal, and Padilla has not requested  
6 redaction of any specific information in the declaration of Cynthia Gonzalez. The court’s own  
7 review of the declaration of Cynthia Gonzalez has not identified the presence of personal or  
8 sensitive information that could justify granting a request to seal the entire declaration. *Cf.*  
9 *Ramirez v. Burwell*, No. 2:16-CV-1511-TLN-EFB P, 2016 WL 5234613, at \*4 (E.D. Cal. Sept.  
10 22, 2016) (“Any interest the public may have in the disclosure of these records in this case is  
11 outweighed by P.A.’s interest in the privacy of his medical records, psychiatric records, and  
12 behavioral history.”); *Macias v. Cleaver*, No. 1:13-CV-01819-BAM, 2016 WL 3549257, at \*6  
13 (E.D. Cal. June 30, 2016) (“The redactions should include third party address, date of birth, social  
14 security number, and driver’s license information.”); *Bratset v. Davis Joint Unified Sch. Dist.*,  
15 No. 2:16-CV-0035-GEB-DB-PS, 2017 WL 3478988, at \*1 (E.D. Cal. Aug. 14, 2017) (“[T]he  
16 undersigned finds good cause to file the documents under seal as the documents concern  
17 plaintiff’s sensitive financial information.”).

18           The request to seal is DENIED without prejudice. The Clerk of the Court is  
19 directed to destroy the documents submitted in support of the request. Upon any resubmission,  
20 plaintiff shall brief the standard applicable to his request and the proper characterization of his  
21 submission in support of a motion to approve a good faith settlement. If redaction is sufficient to  
22 address plaintiff’s legitimate concerns, he shall propose a redacted filing.

23           IT IS SO ORDERED.

24           DATED: September 27, 2017.

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27           UNITED STATES DISTRICT JUDGE  
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