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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES BRADY, *et al.*,
Plaintiffs,

v.

DELOITTE & TOUCHE LLP,
Defendant.

Case No. [08-cv-00177-SI](#)

**ORDER DENYING DEFENDANT'S
ADMINISTRATIVE MOTION TO SEAL**

Re: Dkt. Nos. 316, 317

On January 12, 2016, defendant filed the present motion to seal. Dkt. No. 316. Defendant moves the Court to keep sealed a number of documents and/or portions of documents relating to: (a) plaintiffs' 2009 motion for class certification; (b) plaintiffs' 2010 motion for partial summary judgment; (c) defendant's 2011 motion for decertification; and (d) plaintiffs' 2015 motion for class certification.¹

Defendant contends that the material should be permanently sealed because "[t]he information in question pertains to Deloitte's trade secrets and other highly confidential proprietary business information, relating to its internal finances, proprietary procedures and methodologies, private employee records, and confidential documents and information relating to

¹ Although plaintiffs did not previously challenge defendant's designations of various documents as "confidential," in 2015 plaintiffs did challenge defendant's designations and the parties engaged in a meet and confer process prior to the filing of the instant motion to seal.

1 services and advice provided by Defendant to its clients." *Id.* at 5:2-5. Plaintiffs argue that
2 defendant has not met its burden to show that any of the documents should be sealed, and that
3 none of the documents contain confidential proprietary information or confidential client
4 information.

5 With the exception of a narrow range of documents that are "traditionally [] kept secret,"
6 courts begin their sealing analysis with "a strong presumption in favor of access to court records."
7 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1134-35 (9th Cir. 2003). "Reference to a
8 stipulation or protective order that allows a party to designate certain documents as confidential is
9 not sufficient to establish that a document, or portions thereof, are sealable." Civ. L.R. 79-
10 5(d)(1)(A). In addition, all requests to file under seal "must be narrowly tailored," such that only
11 sealable information is sought to be redacted from public access. Civ. L.R. 79-5(b).

12 Where a party seeks to seal documents attached to a non-dispositive motion, a showing of
13 "good cause" under Federal Rule of Civil Procedure 26(c) is required. *Kamakana v. City &*
14 *County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006); *see also* Fed. R. Civ. P. 26(c). To
15 show good cause, the moving party must make a "particularized showing" that "specific harm or
16 prejudice will result if the information is disclosed." *Kamakana*, 447 F.3d at 1179-80; *Apple, Inc.*
17 *v. Samsung Elecs. Co. Ltd.*, Case No. 11-cv-01846, 2012 WL 4120541, at *1 (N.D. Cal. Sept. 18,
18 2012). "Simply mentioning a general category of privilege, without any further elaboration or any
19 specific linkage with the documents, does not satisfy the burden." *Kamakana*, 447 F.3d at 1184.
20 Neither do "broad allegations of harm, unsubstantiated by specific examples or articulated
21 reasoning" *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th
22 Cir. 2002) (quoting *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992)).
23 When applying to file documents under seal in connection with a dispositive motion, the
24 submitting party bears the burden of "articulating compelling reasons supported by specific factual
25 findings that outweigh the general history of access and the public policies favoring disclosure,
26 such as the public interest in understanding the judicial process." *Kamakana*, 447 F.3d at 1178-
27 79. The fact that documents were previously filed under seal does not lessen a party's burden to
28 demonstrate that the documents should be filed under seal. *Id.* at 1179.

1 The parties agree that the "compelling reasons" standard applies to the documents related
2 to plaintiffs' motion for partial summary judgment, and they disagree regarding what standard
3 applies to the various class certification documents. The Court finds that defendant has not met its
4 burden to obtain a sealing order for all of the documents even under the lower "good cause"
5 standard. In many documents, defendant seeks to seal language that is identical to or almost
6 identical to language that is already public. *Compare* Dkt. No. 316, Items 1, 2, 45 & 60 with Dkt.
7 Nos. 281, 281-2 & 281-3. For many other documents, defendant seeks to seal information where
8 the same type of information is already publicly filed. *Compare* Dkt. No. 316, Items 3, 4, 23, 42,
9 44, and 47-51 with Dkt. Nos. 200, 207, 214, 219, 226, 281, 281-1, 281-2, 281-3, 287, 291.

10 Further, although defendant generally asserts that most of the documents contain highly
11 confidential proprietary information, defendant does not demonstrate, on a document by document
12 basis, how this is so, nor does defendant make a particularized showing regarding the harm that
13 would flow from the disclosure of the material at issue. To the contrary, much of the information
14 that defendant seeks to seal is generic in nature. Defendant seeks to seal documents containing
15 generic descriptions of work performed by Deloitte employees, as well as documents containing
16 generalized descriptions of training and audit tasks. For example, defendant seeks to seal the
17 sentences "The nature of audit work to be performed by the [audit] staff will vary, depending on
18 the complexity of the audit staff; their ability, training, and experience; and the extent of
19 supervision provided." (Dkt. 316, Item 3 at n. 4) and "Staff are also required to assist with
20 inventories of audit clients, which entails watching and re-performing on a test basis the counting
21 of the client's inventory to see if the count is correct." (Dkt. 316, Item 45 at Ex. 1 ¶ 16). There is
22 no apparent privilege or trade secret matter at stake if these and similar documents are disclosed.
23 In addition, although defendant asserts that some of the documents contain confidential client
24 information, defendant has not identified any specific information that should be kept under seal.

25 For the above reasons, the Court DENIES the motion to seal. Defendant may file a new
26 motion, keeping in mind that the Court will not take at face value that a given document is
27 sealable, simply because defendant says it is so. The motion must comply with Civil Local Rule
28 79-5, must be narrowly tailored to seal only sealable material, and must describe what specific

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harm or prejudice will result as to each exhibit if that exhibit is not sealed.

IT IS SO ORDERED.

Dated: February 26, 2016



SUSAN ILLSTON
United States District Judge