

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY LABRADOR, individually and on	)	Case No. 08-2270 SC
behalf of all others similarly	)	
situated,	)	ORDER RE:
	)	<u>ADMINISTRATIVE MOTIONS</u>
Plaintiff,	)	
	)	
v.	)	
	)	
SEATTLE MORTGAGE COMPANY,	)	
	)	
Defendant.	)	
	)	

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**I. INTRODUCTION**

Before the Court is an Administrative Motion by Defendant Seattle Mortgage Company ("Defendant") to file documents under seal. ECF No. 83 ("Def.'s Admin. Mot."). Plaintiff Mary Labrador ("Plaintiff") has not opposed this motion. For the following reasons, the Court DENIES Defendant's Administrative Motion, and ORDERS Plaintiff to refile its earlier Administrative Motion.

**II. BACKGROUND**

This is a putative class action arising out of Defendant's sale of reverse-mortgage loans to Plaintiff and others similarly situated. First Amended Complaint, ECF No. 65 ("FAC"). On July 23, 2010, Plaintiff filed her Motion to Certify the Class. ECF No. 75 ("Mot. to Certify the Class"). On the same day, Plaintiff filed

1 an Administrative Motion to file documents under seal in support of  
2 her Motion to Certify the Class; these documents were produced by  
3 Defendant in discovery. ECF No. 76 ("Pl.'s Admin Mot."). Because  
4 no protective order was in place, the Court denied Plaintiff's  
5 Administrative Motion. ECF No. 79. On August 26, 2010, the  
6 parties filed a Stipulated Protective Order, ECF No. 80, which the  
7 Court granted on August 30, 2010, ECF No. 85. On August 25, 2010,  
8 Defendant filed an ex parte motion for additional time to file its  
9 Opposition to Plaintiff's Motion to Certify the Class. ECF No. 81.  
10 The Court granted this ex parte motion, citing Defendant's  
11 excusable neglect, and provided Defendant with an additional seven  
12 days to file its Opposition. ECF No. 86. Now Defendant brings its  
13 own Administrative Motion to file this Opposition under seal, as  
14 well as a declaration supporting the Opposition ("Supporting  
15 Decl.") and two exhibits ("Supporting Decl. Exs. A and B").

16

17 **III. LEGAL STANDARD**

18 Because of the "strong presumption in favor of access" to  
19 court documents, the court's power to seal documents is limited.  
20 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79  
21 (9th Cir. 2006). Civil Local Rule 79-5(a) provides:

22

23 No document may be filed under seal, i.e.,  
24 closed to inspection by the public, except  
25 pursuant to a Court order that authorizes the  
26 sealing of the particular document, or portions  
27 thereof. A sealing order may issue only upon a  
28 request that establishes that the document, or  
portions thereof, is privileged or protectable  
as a trade secret or otherwise entitled to  
protection under the law. . . . The request  
must be narrowly tailored to seek sealing only  
of sealable material, and must conform with  
Civil L.R. 79-5(b) or (c).

1 If the motion is dispositive, the Ninth Circuit additionally  
2 mandates that parties "articulate compelling reasons supported by  
3 specific factual findings . . . that outweigh the general history  
4 of access and the public policies favoring disclosure." Kamakana,  
5 447 F.3d at 1178-79 (internal quotations omitted). Compelling  
6 reasons exist if publicly filing the information would "result in  
7 improper use of the material for scandalous or libelous purposes or  
8 infringement upon trade secrets." Pintos v. Pac. Creditors Ass'n,  
9 565 F.3d 1106, 1116 (9th Cir. 2009).

10  
11 **IV. DISCUSSION**

12 Defendant seeks to file under seal its entire Opposition to  
13 Plaintiff's Motion to Certify the Class, as well as the Supporting  
14 Declaration, and two exhibits. Def.'s Admin. Mot. at 1. Under  
15 Rule 79-5(b), counsel seeking to file an entire document under seal  
16 must "[f]ile and serve an Administrative Motion to File Under Seal,  
17 in conformance with Civil L.R. 7-11, accompanied by a declaration  
18 establishing that the entire document is sealable." Pursuant to  
19 Northern District of California General Order Number 62, this  
20 declaration should be e-filed under seal and served manually.

21 In accordance with this procedure, Defendant has e-filed under  
22 seal the declaration of Michael Hasen ("Hasen"), counsel for  
23 Defendant. ECF No. 83-1. In this one-page declaration, Hasen  
24 makes the conclusory statement that the documents are "highly  
25 confidential by their very nature and disclosure would be  
26 problematic for a variety of reasons." Id. ¶ 4. Hasen states:  
27 "providing more detail in this public filing would defeat the  
28 purpose of this request." Id.

1 In this last statement, Defendant evinces a misunderstanding  
2 of Civil Local Rule 79-5 and General Order 62. Under General Order  
3 62, a motion to file documents under seal should be supported with  
4 a declaration, and this declaration should be e-filed under seal.  
5 This provides the movant with a private channel to establish the  
6 documents are privileged or otherwise protectable, outside the  
7 public record. In accordance with General Order 62, the Hasen  
8 Declaration was e-filed under seal; as such, it is an appropriate  
9 forum for a candid and detailed discussion of why the Opposition  
10 and supporting documents should be sealed.

11 The Ninth Circuit has not ruled as to whether a motion for  
12 class certification is a dispositive motion for the purposes of  
13 determining whether the "compelling reasons" standard applies.  
14 However, the Court finds that many of the concerns the Ninth  
15 Circuit identified in Kamakana for applying the "compelling  
16 reasons" test to dispositive motions are present here. If the  
17 Court sealed Defendant's Opposition and then ruled in favor of  
18 Defendant on Plaintiff's Motion, the grounds for the ruling would  
19 be kept secret from the public. This would not only hinder "the  
20 public's understanding of the judicial process," id., it would also  
21 slow the development of the law on class certification.

22 Even if Kamakana does not apply, the threadbare assertions  
23 Defendant makes in the Hasen Declaration fall far short of what our  
24 district's local rules require: that the party establish that the  
25 documents "are privileged or protectable as a trade secret or  
26 otherwise entitled to protection under the law." Civ. L. R. 79-  
27 5(a). The two documents attached as exhibits were produced by a  
28 government agency, and at least one, Supporting Decl. Ex. A, is

1 publicly available on the agency's web site. Defendant has not  
2 alleged that the second document, id. Ex. B, is not also publicly  
3 available. Defendant's Opposition and Supporting Declaration also  
4 recite information about Defendant's company. Def.'s Admin. Mot.  
5 at 6, Supporting Decl. ¶ 6. However, Defendant never claims that  
6 this specific information is confidential or privileged. Nor does  
7 Defendant's Administrative Motion satisfy Civil Local Rule 79-5's  
8 "narrowly tailored" requirement -- rather than simply redacting  
9 privileged or confidential information, Defendant seeks to seal the  
10 entire Opposition, Supporting Declaration, and attached exhibits.  
11 The bulk of Defendant's thirteen-page Opposition bears no  
12 connection to what Defendant implicitly suggests is confidential  
13 business information. See Opp'n at 2-4, 10-13.

14 For these reasons, the Court DENIES Defendant's Administrative  
15 Motion. Under General Order 62, Defendant now has two options. It  
16 may retain the documents and not make them part of the record in  
17 the case, which would leave Plaintiff's Motion to Certify the Class  
18 unopposed. Plaintiff may also, within four days, e-file the  
19 documents unsealed. Because General Order 62 was recently enacted  
20 and because Defendant argues that it will be greatly harmed if the  
21 documents are filed unsealed, the Court gives Defendant a third  
22 option: Defendant may, by 5 p.m. on Friday, September 3, 2010,  
23 submit a second administrative motion to file under seal portions  
24 of its Opposition and supporting documents under Civil Local Rules  
25 79-5(a) and (c). Defendant may file redacted versions of its  
26 Opposition, Supporting Declaration, and exhibits, but it may not  
27 otherwise alter the text of these documents. Defendant's sealing  
28 request should be narrowly tailored, and the declaration in support

1 of the motion should be detailed and candid enough for the Court to  
2 determine if the information is privileged or protectable as a  
3 trade secret or otherwise entitled to protection under the law.  
4 The Court also notes that this is the second occasion in three days  
5 in which the Court has chalked up Defendant's improper filings to  
6 "excusable neglect," and places Defendant on notice that it will be  
7 less tolerant of procedural errors as the case moves forward. In  
8 addition, because a protective order is now in place, Plaintiff  
9 shall re-file her July 23, 2010 Administrative Motion to file  
10 documents under seal, and Defendant shall respond in accordance  
11 with Rule 79-5 and General Order 62.

12

13 **V. CONCLUSION**

14 For the foregoing reasons, Defendant Seattle Mortgage  
15 Company's Administrative Motion to file under seal is DENIED. As  
16 explained above, Defendant must e-file the document unsealed or  
17 submit an administrative motion to file under seal portions of its  
18 Opposition and supporting documents. If Defendant takes no action,  
19 the Court will assume Defendant has elected to retain the documents  
20 and not file an opposition to Plaintiff Mary Labrador's Motion to  
21 Certify the Class. The Court also orders Plaintiff to refile her  
22 July 23, 2010 Administrative Motion.

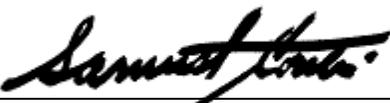
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24 IT IS SO ORDERED.

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26 Dated: September 1, 2010

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UNITED STATES DISTRICT JUDGE

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