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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

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11 **LOUISIANA PACIFIC CORP.,**

12 **Plaintiff,**

13 **v.**

14 **MONEY MARKET 1 INSTITUTIONAL**
15 **INVESTMENT DEALER, and others,**

16 **Defendants.**

Case No. 09-cv-03529 JSW (NC)

ORDER DENYING
ADMINISTRATIVE MOTION TO
SEAL

Re: Dkt. No. 279

17 Plaintiff Louisiana Pacific moves again to seal portions of its motion for default
18 judgment, a declaration in support of its motion, and its statement of damages. The issue is
19 whether Louisiana Pacific has shown compelling reasons to overcome the presumption of
20 public access and to warrant filing these documents under seal. Because Louisiana Pacific
21 fails to state a compelling reason why the specific portions of its motion should be sealed,
22 the Court DENIES its administrative motion to seal.

23 **I. BACKGROUND**

24 On February 1, 2013, Louisiana Pacific submitted to Judge White's chambers a
25 motion for default judgment against defendant Money Market 1 Investment Dealer and an
26 administrative motion to seal certain portions of the motion and supporting documents.
27 Dkt. No. 276. Judge White referred the motion for default judgment and the motion to seal
28 to this Court. Dkt. No. 277.

Case No. 09-cv-03529 JSW (NC)
ORDER DENYING MOTION TO SEAL

1 This Court found Louisiana Pacific’s justification inadequate to meet the compelling
2 reasons standard and denied its motion to seal. Dkt. No. 278. The Court ordered Louisiana
3 Pacific to submit a declaration that articulated a compelling reason to seal the proposed
4 redactions. On February 14, 2013, Louisiana Pacific filed a second declaration, which the
5 Court now considers.

6 II. STANDARD OF REVIEW

7 There is a presumption of public access to judicial records and documents. *Nixon v.*
8 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). Therefore, a party must demonstrate
9 “compelling reasons” to seal judicial records attached to a dispositive motion. *Kamakana v.*
10 *City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). “[T]he party seeking
11 protection bears the burden of showing specific prejudice or harm will result,” *Phillips ex*
12 *rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), and
13 must make a “particularized showing . . . with respect to any individual document,” *San*
14 *Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th
15 Cir. 1999). “Broad allegations of harm, unsubstantiated by specific examples or articulated
16 reasoning” are insufficient. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th
17 Cir. 1992).

18 III. DISCUSSION

19 In its second declaration, Louisiana Pacific gives two reasons to justify its proposed
20 redactions to its motion for default: (1) that the redactions are the product of court ordered
21 mediation, and the parties agreed the resulting agreement would be confidential, and (2) that
22 full disclosure may expose it to liability under the terms of the confidentiality agreement.
23 Confidential settlement agreements are the type of discovery contemplated by Federal Rule
24 of Civil Procedure 26(c), which courts have discretion to protect. *Phillips*, 307 F.3d at
25 1212. But, a party seeking to seal discovery subject to a confidentiality agreement must still
26 meet its burden. *Id.* (holding that “lower courts have the authority to grant protective orders
27 for confidential settlement agreements” but remanding to the district court to apply the
28 proper standard to a motion to seal). The existence of a confidentiality provision, without

1 more, does not constitute good cause, “let alone a compelling reason,” to seal. *Foltz v. State*
2 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003).

3 First, Louisiana Pacific again fails to state any articulable facts—for example that the
4 material contains trade secrets or competitively sensitive information—that would create a
5 compelling reason to seal portions of its motion. Without such facts, the confidentiality
6 provision in its settlement agreement is insufficient justification to seal parts of Louisiana
7 Pacific’s dispositive motion.


8 Equally inapposite is Louisiana Pacific’s argument that its proposed redactions are the
9 product of mediation. ADR Local Rule 6-12 makes confidential “the contents of the written
10 Mediation Statement, anything that happened or was said, any position taken, and any view
11 of the merits of the case expressed by any participant in connection with any mediation.” A
12 mediation statement is submitted prior to the mediation, and includes information that may
13 be useful to the mediator, describes the key liability issues, and provides documents likely
14 to make the mediation more productive. *See* ADR Local Rule 6-7. Nothing in the ADR
15 Local Rules indicates that the *outcome* of mediation is confidential or will not be disclosed
16 in the context of ongoing litigation. And importantly, the outcome of the instant mediation
17 is directly relevant to the relief Louisiana Pacific seeks from Money Market 1 in its motion
18 for default judgment. *See Gamble v. Arpaio*, No. 12-cv-00790 PHX-GMS (LOA), 2013
19 WL 142260, *5 (D. Ariz. Jan. 11, 2013) (finding confidentiality provision in settlement
20 agreement not a compelling reason to seal the settlement agreement, in particular where the
21 agreement was “directly relevant” to a party’s defense in the action.)

22 Second, Louisiana Pacific states that it seeks to seal the information in order to avoid
23 liability for breaching the terms of the confidentiality agreement. But, “[a] litigant is not
24 entitled to the court’s protection from” exposure to “additional liability and litigation.”
25 *Foltz*, 331 F.3d at 1137 (holding that exposure to liability in collateral suits is not a
26 compelling reason to overcome the presumption of public access). Therefore, Louisiana
27 Pacific’s second reason also fails to satisfy its burden to articulate a compelling reason for
28 sealing portions of its dispositive motion.

1 Because Louisiana Pacific has failed to overcome the presumption of public access,
2 the Court DENIES its motion. By February 27, 2013, Louisiana Pacific must file in the
3 public record its motion for default judgment against Money Market 1 and all supporting
4 documents.

5 IT IS SO ORDERED.

6 Date: February 20, 2013

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9 Nathanael M. Cousins
10 United States Magistrate Judge
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