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11UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIASERGIO L. RAMIREZ,
Plaintiff,
v.
TRANS UNION, LLC,
Defendant.Case No. [12-cv-00632-JSC](#)**ORDER ON DEFENDANT'S MOTION
TO SEAL OPPOSITION TO
PLAINTIFF'S MOTION TO CERTIFY**

Re: Dkt. No. 119

United States District Court
Northern District of California

12 In this putative class action, Plaintiff Sergio Ramirez alleges that he was denied an auto
13 loan after Defendant Trans Union, LLC mistakenly informed a car dealership that Plaintiff was on
14 the federal government's Office of Foreign Assets Control ("OFAC") list. Plaintiff contends that
15 Defendant violated the Federal Credit Reporting Act ("FCRA") and the California Consumer
16 Credit Reporting Agencies Act ("CCRAA") by failing to ensure "maximum possible accuracy" of
17 its credit reports, and failing to provide consumers with proper disclosures. (Dkt. No. 1 ¶ 1.) Now
18 pending before the Court is Defendant's Motion to File under seal portions of its Opposition to
19 Plaintiff's Motion to Certify Class, and portions of declarations and deposition testimony it
20 submits in support of its Opposition. For the reasons explained below, Defendant's Motion is
21 GRANTED in part and DENIED in part.

LEGAL STANDARD

22
23 "[T]he courts of this country recognize a general right to inspect and copy public records
24 and documents, including judicial records and documents." *Nixon v. Warner Comm'ns, Inc.*, 435
25 U.S. 589, 597 n.7 (1978); *see also Foltz v. State Farm Mutual Auto Ins. Co.*, 331 F.3d 1124, 1134
26 (9th Cir. 2003) ("In this circuit, we start with a strong presumption in favor of access to court
27 records."). The right is justified by the interest of citizens in "keep[ing] a watchful eye on the
28 workings of public agencies." *Nixon*, 435 U.S. at 598. The right, however, "is not absolute and

1 can be overridden given sufficiently compelling reasons for doing so.” *Foltz*, 331 F.3d at 1135;
2 *see, e.g., Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir. 1989). “A narrow
3 range of documents is not subject to the right of public access at all because the records have
4 traditionally been kept secret for important policy reasons.” *Kamakana v. City and Cty. of*
5 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal citations omitted); *see, e.g., Times Mirror*
6 *Co.*, 873 F.2d at 1219 (grand jury transcripts and warrant materials in the midst of a pre-
7 indictment investigation not subject to right of public access).

8 The right of public access to judicial records “applies fully to dispositive pleadings,
9 including motions for summary judgment and related attachments.” *Kamakana*, 447 F.3d at 1179.
10 The Ninth Circuit “adopted this principle of disclosure because the resolution of a dispute on the
11 merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the
12 public’s understanding of the judicial process and of significant public events.” *Id.* (internal
13 citations and quotation marks omitted). Thus, “[a] party seeking to seal a judicial record then
14 bears the burden of overcoming this strong presumption by meeting the ‘compelling reasons’
15 standard.” *Id.* at 1178-79. The reasons must “outweigh the general history of access and the
16 public policies favoring disclosure.” *Id.* at 1179 (internal quotation marks and citations omitted).
17 Such compelling reasons include “the use of records to gratify private spite, promote public
18 scandal, circulate libelous statements, or release trade secrets.” *Id.* (internal quotation marks and
19 citation omitted). “The mere fact that the production of records may lead to a litigant’s
20 embarrassment, incrimination, or exposure to further litigation will not, without more, compel the
21 court to seal its records.” *Id.* A parties’ request for sealing must be “narrowly tailored” and
22 establish that the “document, or portions thereof, are privileged, protectable as trade secret or
23 otherwise entitled to protection under the law.” L.R. 79-5(b).

24 The Court must “conscientiously balance[] the competing interests” of the public and
25 those of the party seeking to keep certain judicial records secret. *Foltz*, 331 F.3d at 1135. In
26 considering these interests, the court must “base its decision on a compelling reason and articulate
27 the factual basis for its ruling, without relying on hypothesis or conjecture.” *Hagestad v.*
28 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (internal citations omitted).

1 In contrast to the “compelling reasons” required to overcome the presumption of public
2 access to dispositive pleadings, the Ninth Circuit imposes a lower “good cause” standard for
3 keeping judicial records attached to non-dispositive motions. *Pintos v. Pac. Creditors Ass’n*, 605
4 F.3d 665, 678 (9th Cir. 2010) (internal quotation marks omitted). Because non-dispositive
5 motions “are often unrelated, or only tangentially related, to the underlying cause of action,” there
6 is a “weaker public interest” in accessing these materials. *Id.*

7 “The Ninth Circuit has not ruled as to whether a motion for class certification is a
8 dispositive motion for the purposes of determining whether the ‘compelling reasons’ standard
9 applies.” *Labrador v. Seattle Mortgage Co.*, 08-2270 SC, 2010 WL 3448523, at *2 (N.D. Cal.
10 Sept. 1, 2010). Although courts in the Northern District “have generally considered motions for
11 class certification nondispositive,” *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*,
12 09-CV-01967 CW NC, 2013 WL 3014138, at *3 (N.D. Cal. June 17, 2013), some have recognized
13 that “there may be circumstances in which a motion for class certification is case dispositive,” *In*
14 *re High-Tech Emp. Antitrust Litig.*, 11-CV-02509-LHK, 2013 WL 163779, at *2 n.1 (N.D. Cal.
15 Jan. 15, 2013). For example, “a motion for class certification might be dispositive if ‘a denial of
16 class status means that the stakes are too low for the named plaintiffs to continue the matter.’” *Id.*
17 (quoting *Prado v. Bush*, 221 F.3d 1266, 1274 (11th Cir. 2000)); *see also Dugan v. Lloyds TSB*
18 *Bank, PLC*, 12-CV-02549-WHA NJV, 2013 WL 1435223 (N.D. Cal. Apr. 9, 2013) (recognizing
19 that courts in the Ninth Circuit generally treat class certification motions as non-dispositive unless
20 the motion’s denial “would constitute the death knell of a case.”).

21 **DISCUSSION**

22 Defendant seeks to seal portions of ten deposition transcripts and five declarations, and the
23 exhibits thereto, submitted in support of its opposition to Plaintiff’s motion to certify. In its earlier
24 ruling on Plaintiff’s motion to seal (Dkt. No. 121), the Court sealed “discussions about consumer
25 disputes and related policies and procedures and the search logic and functioning of the OFAC
26 product.” (*id.* at 5), but declined to seal discussions that merely stated that TransUnion continued
27 to use Accuity’s OFAC product post-*Cortez* or that its OFAC matching is based on name only.
28 (*Id.* at 5-6.) Upon consideration of the present motion, the Court will seal two additional

1 categories of information: discussion of internal decision-making or strategy at TransUnion or
2 Accuity, and Plaintiff’s private financial and personal information. The Court applies these
3 general principles to each deposition and exhibit in Defendant’s motion in turn.

4 **I. Deposition Testimony**

5 **(1) Robert Lytle (Dkt. No. 119-19)**

6 Defendant seeks to seal approximately 20 pages of the deposition of TransUnion employee
7 Robert Lytle (Dkt. No. 119-19), as well as Exhibits 3 and 9 to the deposition. Of this excerpt of
8 Lytle’s deposition now proffered, the Court has already considered and declined to seal pages 70
9 and 299 (Dkt. 121 at 8) and sealed pages 221, 223-224 (*id.* at 10.) The Court addresses the
10 remaining pages.

11 On page 97, Lytle testified that TransUnion sells a product with the term “OFAC” in its
12 name, a TransUnion product called OFAC Name Screen is an add-on to a credit report that
13 presents that data that is a possible match in the OFAC database, and creditors can purchase a
14 credit report from TransUnion with or without OFAC add-on. Besides having been made public
15 in *Cortez v. TransUnion*, 617 F.3d 688 (3rd Cir. 2010), none of this testimony concerns
16 confidential information.

17 In the portion including pages 131 through 134, the Court seals only page 132:10-18 and
18 134:4-22, in which Lytle discusses TransUnion’s rationale for obtaining OFAC information from
19 Accuity and how it processes that data. For the same reasons, pages 169 and 171 will be sealed.

20 Lytle’s testimony on page 137:15 through 138:2 describes the interaction between
21 TransUnion and Accuity and will therefore be sealed. The remainder of these pages describes the
22 process in very general “layman’s terms” and provides no confidential information.

23 Pages 256 through 258 need not be sealed. Most of the testimony concerns Exhibit 9 to
24 the deposition, a “Release Announcement” from November 2010, Bates numbered TU 0000494-
25 95. Although the document is marked “TransUnion Confidential — For Internal Use Only,” the
26 Court finds no reason to seal it. The document announces that the term “potential” would be
27 added when reporting an OFAC match, but provides no explanation for the change. Unlike
28 Exhibit A to Colleen Gill’s Declaration, titled Technical General Announcement #92 (Dkt. No.

1 119-16), which the Court addresses below, Lytle Exhibit 9 contains no proprietary technical
2 information.

3 On page 287, Lytle states that his only knowledge about *Cortez* is that it led to
4 TransUnion’s OFAC project, which was its response to the *Cortez* ruling. No specifics about the
5 project are offered, and the fact that TransUnion responded to *Cortez* is not confidential.

6 Lytle is asked about Exhibit 3, which appears to be a credit report for Plaintiff from
7 TransUnion. (Dkt. No. 119-19 at 29-30.) The Exhibit itself will be sealed because it contains
8 sensitive financial and personal information about Plaintiff, but Lytle’s testimony on pages 294
9 through 297 about the format of the report reveals nothing confidential.

10 In sum, the Court seals Lytle deposition pages 132:10-18, 134:4-22, 137:15-138:2, 169,
11 171, 221, and 223-224, and Exhibit 3.

12 **(2) Dublin Nissan (Annette Coito) (Dkt. 119-21)**

13 Defendant seeks to seal approximately 18 pages of the deposition of Dublin Nissan
14 representative Annette Coito, as well as Exhibits 4, 5, and 7 to the deposition. (Dkt. No. 119-21 at
15 24-57.) The Court seals Exhibit 4 (Dublin Nissan’s contract with DealerTrack) and Exhibit 5
16 (Dublin Nissan’s contract with ADP to obtain credit reports) because they contain confidential and
17 proprietary information, as well as pages 73:17 through 74:1 of the deposition transcript because
18 counsel reads from Exhibit 5. Exhibit 7, which is Plaintiff’s credit report, will also be sealed. The
19 Court finds no reason to seal the remaining portions of Coito’s testimony.

20 **(3) Michael O’Connell (Dkt. No. 119-23)**

21 The Court already addressed portions of O’Connell’s deposition testimony in connection
22 with Plaintiff’s motion to seal portions of its motion to certify. Of the testimony Defendant now
23 proffers, the Court has already sealed pages 43:7-46, 122:10-13, 134, and 135. (Dkt. No. 121 at
24 8.) The Court already considered and declined to seal 66, 67, 122:1-9, 14-25, and 160-61. The
25 Court addresses the remaining pages in this excerpt.

26 O’Connell states that TransUnion decided to obtain OFAC data from a third-party like
27 Accuity rather than directly from the Treasury because Accuity could provide consistency in the
28 data formatting. (O’Connell Dep. at 37-38, 40-41.) O’Connell does not describe the particular

1 way in which the data is formatted, nor reveal any other information that the Court would consider
2 confidential. O’Connell did not recall the language of *Cortez* nor its significance to TransUnion’s
3 matching procedures, (*id.* at 47, 49:1-7), nor did he know the technical details of how
4 TransUnion’s computers and Accuity’s software interact to with the computers of TransUnion’s
5 customers to deliver reports (*id.* at 76-77). O’Connell was generally aware that TransUnion keeps
6 track of which consumers were marked as OFAC hits, but did not know of any changes to such
7 tracking. (*Id.* at 156.) O’Connell acknowledges having seen one page of a slide presentation
8 shown to him, but did not know who prepared it or recall being at the presentation. (*Id.* at 157.)
9 These facts need not be kept confidential.

10 On the other hand, the Court will seal pages 49:8-50, 82:8-9, 121:14-122:3, 189-93, 195-
11 96, and 213 because in these portions O’Connell testifies about TransUnion’s internal strategy and
12 decision-making, as well as the search logic and functioning of TransUnion’s and Accuity’s
13 products. Exhibit 5 (an email exchange Bates numbered TU0009229) and Exhibit 10 (an email
14 chain Bates numbered TU0009283) will be sealed for the same reasons. (Dkt. No. 119-23 at 40-
15 44.)

16 In sum, the Court seals O’Connell deposition pages 43:7-46, 49:8-50, 82:8-9, 121:14-
17 122:3,122:10-13, 134, 135, 189-93, 195-96, and 213 and Exhibits 5 and 10.

18 **(4) Sergio Ramirez (Dkt. No. 119-25)**

19 The Court finds no reason to seal any portion of Plaintiff’s testimony, but several of the
20 exhibits to his deposition contain sensitive information. The Court will seal Exhibit 3, Plaintiff’s
21 credit application, in its entirety. Exhibit 6 consists of Plaintiff’s credit report with a cover letter
22 from TransUnion, Bates numbered TU0000004-12. Plaintiff’s address should be redacted from
23 page TY0000004, and pages TY0000005-08 will be sealed because they provide confidential
24 personal financial information. Pages TY0000009-12 are generic and need not be sealed.

25 Neither Exhibit 5, which appears to be the same call log as Briddell Exhibit 3, nor Exhibit
26 9, a letter from Plaintiff to TransUnion requesting removal from OFAC list, requires sealing.
27 Plaintiff’s address should be redacted from Exhibits 7 and 8, but they contain no other sensitive
28 information.

1 **(5) Accuity (Brent Newman) (Dkt. No. 119-27)**

2 Of the pages submitted, the Court already sealed 60, and declined to seal 100 and 101.
3 (Dkt. No. 121 at 11.) Page 75 will not be sealed because Newman describes only the OFAC
4 search results Dublin Nissan received for Plaintiff, and how, in general, a user could narrow search
5 results by looking at birthdates in the hits. This information is not confidential. The Court will,
6 however, seal pages 99:13-100:2 because in this testimony Newman discusses Accuity internal
7 strategy and search logic.

8 **(6) Bharat Acharya (Dkt. No. 119-29)**

9 In the single page of Acharya’s deposition submitted, he testified that he implemented the
10 programming change to add “potential” to report. The process took about a day and was finished
11 in October 2010. None of this information is confidential.

12 **(7) Colleen Gill (Dkt. No. 119-31):**

13 Gill, a former TransUnion employee, does not provide any confidential information in the
14 two pages of testimony submitted. Gill stated only that she reviewed a document in which there
15 was a request to change the wording of the OFAC message on all OFAC products.

16 **(8) Sean Walker (Dkt. No. 119-33)**

17 Walker, a TransUnion employee, testified that TransUnion had sent letters to consumers
18 who were potential OFAC matches, then in July 2011, began disclosing OFAC information in
19 individual consumers’ files. (Walker Dep. at 52-53.) This testimony does not warrant sealing.
20 On pages 135 through 140, Walker discusses how the report he is shown differs from a typical
21 TransUnion report, and does not disclose any confidential information from the report. The Court
22 will, however, seal pages 67:16 through 68:12 because this testimony reflects internal decision-
23 making at TransUnion about changing OFAC disclosures via letters to reports.

24 **(9) Liseth Villegas (Dkt. No. 119-35)**

25 The testimony of Villegas, Plaintiff’s wife, does not cover any confidential information
26 and will not be sealed.

27 **(10) Steven Katz (Dkt. No. 119-37)**

28 In the one page of Katz’s deposition submitted, he states only that he helped draft the letter

1 to disclose OFAC information to consumers. The letter was used until approximately July 2011,
2 when TransUnion began providing the OFAC information directly on the consumer’s report. As
3 discussed in the context of the Lytle and Walker depositions, this information does not warrant
4 sealing. (Dkt. No. 121 at 8.)

5 **II. Declarations**

6 **(1) Denise Briddell (Dkt. No. 119-6)**

7 Briddell attests to the frequency of consumer disputes about the OFAC product. Aside
8 from the actual number of disputes in ¶ 3, which can be redacted, nothing else in the declaration is
9 sensitive and need not be sealed. Exhibit A provides specific data about dispute activity and
10 should therefore be sealed. Exhibit B does not reveal any confidential information: it simply notes
11 that Plaintiff called, asked to speak to a supervisor due to an OFAC alert, was told that he would
12 get a report, and the details of one of the hits listed, unsealed, on page 6 of Plaintiff’s motion to
13 certify. In sum, the Court will seal only the numbers that appear in parentheses in paragraph 3 and
14 Exhibit A (Dkt. No. 119-7) in its entirety.

15 **(2) Michael O’Connell (Dkt. No. 119-10)**

16 O’Connell attests to his familiarity with TransUnion’s OFAC product, NameScreen (Dkt.
17 No. 119-10 ¶¶ 1-3); the Treasury Department’s instructions to businesses who discover a potential
18 OFAC match (*id.* ¶ 4); and Accuity as the source of TransUnion’s OFAC data (*id.* at ¶ 6). None of
19 this information warrants sealing, but the Court will seal O’Connell’s discussion of the search
20 logic and functioning in paragraph 6. Accordingly, except for the first sentence, the text of
21 paragraph 6 will be sealed.

22 **(3) Colleen Gill (Dkt. No. 119-15)**

23 Gill attests that she was responsible for implementing the addition of the word “potential”
24 to the results displayed for OFAC Name Screen matches. The Court finds nothing in Gill’s
25 Declaration that must be sealed. According to Gill, Exhibit A, titled Technical General
26 Announcement #92, Bates numbered TU0000491-93, is the announcement TransUnion provided
27 to all of its customers to inform them that the output would state “potential match” or match.
28 Because this document appears to contain proprietary technical information, it will be sealed.

1 (Dkt. No. 119-16.)

2 **(4) Lynn Romanowski (Dkt. No. 119-38)**

3 TransUnion employee Romanowski reviewed the credit report Dublin Nissan obtained
4 about Plaintiff and discusses differences between the report and the TransUnion’s standard credit
5 report form, Form 2000. The non-bolded information in paragraph 6, sections (d), (k), and (l) of
6 Romanowski’s Declaration shall be sealed. The first contains credit scores and the second two list
7 residential addresses. In addition, Exhibits A and B, which are two different credit reports for
8 Plaintiff, will be sealed. (Dkt. Nos. 119-39, 119-40). The Court finds no other information in this
9 declaration that must be kept confidential.

10 **(5) Peter Turek (Dkt. No. 119-41)**

11 The Court will seal Exhibit A, titled “OFAC Advisor Amendment to Reseller Service
12 Agreement” (Dkt. No. 119-42 at 2), which is an agreement between TransUnion and Open Dealer
13 Exchange (“ODE”), but nothing in the Declaration itself. Exhibit B is the affidavit of Piyush
14 Bhatia, the Director of Information Security and Risk Management for Dealertrack, Inc. Although
15 the Bhatia affidavit does not require sealing, the Court will seal the two credit reports attached as
16 exhibits to the affidavit. (Dkt. No. 119-43 at 5-11.)

17 **(6) Francine Cronshaw (Dkt. No. 119-12)**

18 In this declaration, Cronshaw, an expert retained by TransUnion, provides her opinions on
19 TransUnion’s screening of Spanish-derived names. The Court will seal the following excerpts in
20 which Cronshaw discusses TransUnion’s search logic: 5:22-25, 6:5-11, 8:8-10, 13:22-24, 17:12-
21 20, 19:10-14. No other parts of the declaration warrant sealing.

22 **III. Opposition to Motion to Certify**

23 In accordance with the Court’s rulings with respect to these deposition transcripts,
24 declarations, and exhibits, the following portions of Defendant’s Opposition (Dkt. No. 120) shall
25 be redacted: 7:14-20, 26-28; 8:15-20; 9:25-10:2 (starting with “Moreover”); 18:21-22; and
26 footnote 15.

27 **CONCLUSION**

28 For the foregoing reasons, Defendant’s motion to seal is GRANTED in part and DENIED

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in part.

IT IS SO ORDERED.

Dated: May 15, 2014



JACQUELINE SCOTT CORLEY
United States Magistrate Judge