

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

3
4 ARMANDO PLASCENCIA; and MELANIA
5 PLASCENCIA, individually and on
6 behalf of all others similarly
7 situated,

8 Plaintiffs,

9 v.

10 LENDING 1ST MORTGAGE; LENDING 1ST
11 MORTGAGE, LLC; EMC MORTGAGE
12 CORPORATION; and DOES 1-10,

13 Defendants.

No. C 07-4485 CW

ORDER GRANTING IN
PART AND DENYING
IN PART
PLAINTIFFS'
ADMINISTRATIVE
MOTION TO FILE
UNDER SEAL
(Docket No. 350)

14 _____/

15 On July 2, 2012, Plaintiffs Armando and Melania Plascencia
16 moved to file under seal their unredacted motion for summary
17 judgment and Exhibits A through K to the declaration of Mark R.
18 Cuker in support of their motion for summary judgment. Plaintiffs
19 have filed a redacted version of their motion for summary judgment
20 in the public record. See Docket No. 349. In their motion to
21 seal, Plaintiffs state that the materials that they seek to seal
22 have been "designated 'Confidential' under the terms of the
23 Stipulated Protective Order and/or contain information from said
24 materials." Mot. at 2. Plaintiffs represent that they do not
25 believe that the information in Exhibits A through K is sealable.
26 Berns Decl. ¶ 4.

27 On July 9, 2012, Defendant EMC Mortgage LLC, formerly known
28 as EMC Mortgage Corporation, filed a declaration in support of the
motion to seal. See Overbey Decl., Docket No. 354. EMC withdraws

1 its confidentiality designation for Exhibits B, C, and E through
2 J. Overbey Decl. ¶ 4. EMC states that Exhibits A, D and K

3 are internal EMC documents or documents produced by EMC
4 in this case containing confidential borrower
5 information regarding Plaintiffs, including their loan
6 number, credit scores, loan amount, and details
7 regarding their loan terms, and confidential information
8 regarding the class members, including their names, loan
amounts, and details and data regarding their loans,
which is [sic] protected by federal law under the Gramm-
Leach-Bliley Act, 15 U.S.C. § 6801(a); 17 C.F.R.
§ 248.3(t)(1)(i)-(ii) & (u)(2)(i)(C), and by California
law.

9 Id. at ¶ 5. EMC asks that these exhibits and the portions of
10 Plaintiffs' motion that refer to them be placed under seal. Id.

11 Plaintiffs' filings are connected to a dispositive motion.
12 Because Defendants designated the documents at issue as
13 confidential, they must file a declaration establishing that the
14 documents are sealable. Civil Local Rule 79-5(d). To do so,
15 Defendants "must overcome a strong presumption of access by
16 showing that 'compelling reasons supported by specific factual
17 findings . . . outweigh the general history of access and the
18 public policies favoring disclosure.'" Pintos v. Pac. Creditors
19 Ass'n, 605 F.3d 665, 679 (9th Cir. 2010) (citation omitted). This
20 cannot be established simply by showing that the document is
21 subject to a protective order or by stating in general terms that
22 the material is considered to be confidential, but rather must be
23 supported by a sworn declaration demonstrating with particularity
24 the need to file each document under seal. Civil Local Rule 79-
25 5(a).

26 Exhibits A and K contain information concerning Plaintiffs'
27 loan only and not that of absent class members. Although the
28 cited authority prevents Defendants from disclosing this

1 information publicly without Plaintiffs' consent, EMC cites no
2 authority or compelling reason that would prevent Plaintiffs from
3 publicly disclosing this information themselves. Plaintiffs have
4 voluntarily offered these exhibits into evidence and do not
5 support filing them under seal.

6 EMC has established compelling reasons to support the sealing
7 of Exhibit D and references in the motion thereto. This exhibit
8 contains personally identifiable financial information of absent
9 class members, including their names and loan amounts. The motion
10 contains descriptions of class members based on this exhibit. See
11 17 C.F.R. § 248.3(t)(1)(ii) (defining "nonpublic personal
12 information" to include "any . . . description . . . of consumers
13 . . . that is derived using any personally identifiable financial
14 information that is not publicly available information").

15 Accordingly, Plaintiffs' motion for leave to file documents
16 under seal is GRANTED in part and DENIED in part (Docket No. 350).
17 Within four days of the date of this Order, Plaintiffs shall file
18 their unredacted motion and Exhibit D to the Cuker declaration
19 under seal and Exhibits A through C and E through K to the Cuker
20 declaration in the public record. By that date, Plaintiffs shall
21 also refile their redacted motion for summary judgment, removing
22 any redactions related to Exhibits A through C and E through K to
23 the Cuker declaration.

24 IT IS SO ORDERED.

25

26 Dated: 7/20/2012



CLAUDIA WILKEN
United States District Judge

27

28