

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

FREDERICK J. CASISSA,
Plaintiff,

v.

FIRST REPUBLIC BANK, a division
of MERRILL LYNCH BANK AND TRUST
FSB; and DOES 1-20,
Defendants.

No. C 09-4129 CW
ORDER REGARDING
MOTION AND
STIPULATION TO
FILE UNDER SEAL
(Docket No. 127)

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ELIZABETH RIGGINS,
Plaintiff,

v.

FIRST REPUBLIC BANK, a division
of MERRILL LYNCH BANK AND TRUST
FSB; and DOES 1-20,
Defendants.

No. C 09-4130 CW

_____/

On May 24, 2012, Plaintiffs Frederick J. Casissa and Elizabeth Riggins filed a motion to file under seal all of the evidence they offer in connection with their opposition to the motion for summary judgment filed by Defendant Bank of America, N.A. Docket No. 127. The parties have also filed a stipulation agreeing that these documents should be filed under seal. Docket No. 127-2. In their stipulation, the parties stated that the documents had been "designated as confidential by one or more parties in the course of this litigation," but did not state which party had made the designation. Id. at ¶ 2.

United States District Court
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1 On May 30, 2012, the Court ordered Plaintiffs to file a
2 supplemental declaration, demonstrating with particularity the
3 need to file each document or portion thereof under seal. Docket
4 No. 130.

5 On June 4, 2012, Plaintiffs filed a supplemental declaration,
6 limiting the documents that they seek to file under seal to the
7 entirety of Exhibits B and C to the Murphy declaration, portions
8 of Exhibits D and E to the Murphy declaration, paragraphs five
9 through seven of the Casissa declaration, paragraphs three through
10 nine of the Riggins declaration and Exhibit C¹ to the Riggins
11 declaration. Plaintiffs state that Defendant has designated the
12 exhibits to the Murphy declaration as confidential. Plaintiffs do
13 not state which party designated the information in the remainder
14 of the documents as confidential.

15 Plaintiffs' filings are connected with a dispositive motion.
16 Thus, to establish that the documents are sealable, the parties
17 "must overcome a strong presumption of access by showing that
18 'compelling reasons supported by specific factual findings . . .
19 outweigh the general history of access and the public policies

20 _____
21 ¹ Plaintiffs appear to have inadvertently switched the
22 contents of Exhibits B and C to the Riggins Declaration. In the
23 chambers copy provided to the Court, Plaintiffs included Riggins's
24 termination letter in Exhibit C and an email from Riggins to
25 Casissa, with an attached news article, in Exhibit B. However, in
the declaration itself, Riggins states that her termination letter
is attached Exhibit B and the email and article are in Exhibit C.
Riggins Decl. ¶¶ 2-3.

26 When referring to Exhibit C to the Riggins Declaration in
27 this Order, the Court refers to the document that it appears
28 Plaintiffs intended to include in Exhibit C, the email from
Riggins to Casissa and the attached article.

1 favoring disclosure.'" Pintos v. Pac. Creditors Ass'n, 605 F.3d
2 665, 679 (9th Cir. 2010) (citation omitted). This cannot be
3 established simply by showing that the document is subject to a
4 protective order or by stating in general terms that the material
5 is considered to be confidential, but rather must be supported by
6 a sworn declaration demonstrating with particularity the need to
7 file each document under seal. Civil Local Rule 79-5(a). If a
8 document has been designated as confidential by another party,
9 that party must file a declaration establishing that the document
10 is sealable. Civil Local Rule 79-5(d).

11 In their supplemental declaration, Plaintiffs represent that
12 the documents that they seek to file under seal contain several
13 types of confidential information. First, they state that these
14 documents "concern non-public personal information of bank
15 customers." Shukla Suppl. Decl. ¶ 7. Second, the documents
16 include information regarding "aspects of Defendant's Anti-Money
17 Laundering/Bank Secrecy Act operations." Id. Defendant has
18 previously maintained that disclosure of such information would
19 provide the general public insight into how banks detect
20 suspicious activity. Finally, the documents concern an
21 investigation into a bank customer, for which the parties agreed
22 to a limited waiver of attorney-client privilege and attorney work
23 product protection, for the purposes of this litigation, regarding
24 Defendant's response to a grand jury subpoena. Id.

25 However, Plaintiffs have not identified with particularity
26 the specific reason or reasons that they believe support the
27 sealing of each declaration and exhibit or portion thereof.
28 Plaintiffs do not state to which documents or portions thereof

1 each of their proffered reasons for sealing pertain. Further, it
2 does not appear that all of the exhibits that they seek to seal
3 are sealable. For example, Exhibit C to the Riggins Declaration
4 contains an email between Plaintiffs attaching a news article,
5 apparently published in Bloomberg. Plaintiffs seek to seal
6 Exhibit C in its entirety. Shukla Suppl. Decl. ¶ 4. Plaintiffs
7 provide no compelling reasons that would prevent public disclosure
8 of this news article, in light of the fact that the information in
9 the article is already publicly known.

10 The declarations submitted by Plaintiffs and the parties'
11 stipulation are insufficient to support the sealing of these
12 documents at this time.

13 Within one day of the date of this Order, Plaintiffs shall
14 file a declaration stating which party has designated as
15 confidential the portions of the Casissa declaration, the portions
16 of the Riggins declaration and Exhibit C to the Riggins
17 declaration. Within two days of this Order, the party who has
18 designated each document as confidential shall file a declaration
19 setting forth with particularity the reasons that would support
20 the sealing of that document. The designating party's failure to
21 comply with this Order may result in the filing of these documents
22 in the public record.

23 IT IS SO ORDERED.

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25 Dated: 6/7/2012



CLAUDIA WILKEN
United States District Judge

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