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

6 TODD ASHKER, et al.,

No. C 09-5796 CW

7 Plaintiffs,

ORDER DENYING  
PLAINTIFFS' MOTION  
TO SEAL (Docket  
No. 196)

8 v.

9 GOVERNOR OF THE STATE OF  
10 CALIFORNIA, et al.,

11 Defendants.  
12 \_\_\_\_\_/

13 On May 2, 2013, Plaintiffs moved to seal sections of Dr.  
14 Terry Kupers' declaration in support of their motion for class  
15 certification. Defendants oppose the motion. Because Plaintiffs'  
16 sealing request is overbroad, the Court denies the motion.

17 The public interest favors filing all court documents in the  
18 public record. Thus, any party seeking to file a document under  
19 seal must demonstrate good cause to do so. Pintos v. Pac.  
20 Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010). This cannot  
21 be established simply by showing that the document is subject to a  
22 protective order or by stating in general terms that the material  
23 is considered to be confidential, but rather must be supported by  
24 a sworn declaration demonstrating with particularity the need to  
25 file each document under seal. See Civil Local Rule 79-5(a).

26 Here, Plaintiffs seek to seal paragraphs 11 through 30 of Dr.  
27 Kupers' declaration on the grounds that those paragraphs contain  
28 "information relating to the past, present, and future physical

1 and mental health condition of Plaintiffs." Mot. 2. After  
2 reviewing the relevant excerpt of the declaration, the Court finds  
3 that only paragraphs 18 through 27 -- which summarize the  
4 individual interviews Dr. Kupers conducted with each of the ten  
5 Plaintiffs -- contain potentially sealable information.  
6 Paragraphs 11 through 17, in contrast, describe Plaintiffs' mental  
7 health in general terms without focusing on any individual  
8 Plaintiff's symptoms. These paragraphs disclose information that  
9 is either not sealable (such as the length of time Plaintiffs have  
10 spent in Pelican Bay's Security Housing Unit, see Kupers Decl.  
11 ¶ 11) or that Plaintiffs themselves disclosed in their Second  
12 Amended Complaint (such as their feelings of numbness, anger,  
13 anxiety, fear, and other emotions, see Kupers Decl. ¶¶ 11-17).  
14 Paragraphs 28 through 30 are also not sealable because, rather  
15 than revealing sensitive medical information, these paragraphs  
16 focus on Dr. Kupers' methodology for determining whether or not  
17 Plaintiffs are representative of other inmates in the Security  
18 Housing Unit.

19 Although paragraphs 18 through 27 may contain some sealable  
20 information, they may not be sealed in their entirety. Almost all  
21 of these paragraphs contain information about each Plaintiff's  
22 racial background and length of imprisonment, neither of which  
23 constitutes sealable information. See Kupers Decl. ¶¶ 18-27.  
24 Furthermore, many of these paragraphs describe symptoms and  
25 conditions that Plaintiffs previously disclosed in their  
26 complaint. Although Plaintiffs contend that this information  
27 remains sealable because their complaint merely consists of  
28 allegations, rather than admissible medical evidence, this is a

1 distinction without a difference.<sup>1</sup> When Plaintiffs filed their  
2 complaint, they should have been prepared for the possibility that  
3 they would eventually need to submit evidence supporting the  
4 allegations made publicly therein.

5 If Plaintiffs wish to seal portions of Dr. Kupers'  
6 declaration, they must file a renewed motion to seal. The motion  
7 must be narrowly tailored and should only seek to seal portions of  
8 paragraphs 18 through 27 that do not mirror allegations in the  
9 complaint.

10 CONCLUSION

11 For the reasons set forth above, Plaintiffs' motion to file  
12 under seal (Docket No. 196) is DENIED. Within seven days of this  
13 order, Plaintiffs must either file an unredacted version of Dr.  
14 Kupers' declaration in the public record or submit a renewed  
15 motion to seal consistent with the terms of this order.

16 IT IS SO ORDERED.

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18 Dated: 5/21/2013

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25 CLAUDIA WILKEN  
26 United States District Judge

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<sup>1</sup> In fact, Plaintiffs themselves seem to acknowledge that  
31 information contained in a publicly filed complaint is not sealable. In  
32 their brief, they cite a sealing order issued in Vietnam Veterans of Am.  
33 v. Central Intelligence Agency, where this Court granted a motion to  
34 seal information about the "past, present, or future physical or mental  
35 health or condition of persons not specifically made public in the  
36 Complaint." 2012 WL 1094360, at \*1-\*2 (N.D. Cal.) (emphasis added).  
37 Their brief specifically quotes the highlighted language.