

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

SEAN PRYOR,

No. C 11-0954 CW

Plaintiff,

ORDER GRANTING IN
PART AND DENYING
IN PART
PLAINTIFF'S
ADMINISTRATIVE
MOTION TO SEAL,
Docket No. 69.

v.

CITY OF CLEARLAKE, a governmental
entity; CARL MILLER,
individually, and in his capacity
as a police officer for the City
of Clearlake and acting sergeant;
ALAN WADE McCLAIN, individually
and in his capacity as Chief of
Police for the City of Clearlake;
CRAIG CLAUSEN, individually and
in his capacity as Police
Lieutenant for the City of
Clearlake; MICHAEL RAY,
individually, and in his capacity
as a police officer for the City
of Clearlake; and DOES 1-50,
individually, and in their
capacity as police officers for
the City of Clearlake,

Defendants.

Plaintiff moves to file under seal, pursuant to this Court's
Local Rules 79-5(c) and (d), portions of his brief in opposition
to Defendants' motion for summary judgment and portions of Exhibit
Four to his opposition. Docket No. 69. Defendants' counsel Kevin
P. Allen submitted a declaration in support of sealing certain
pages of Exhibit Four. The Court grants in part and denies in
part the motion to seal portions of Exhibit Four. In addition,
the Court approves Plaintiff's proposed redactions to his
opposition brief to the extent consistent with this Court's order
regarding Exhibit Four.

United States District Court
For the Northern District of California

1 The Ninth Circuit has held that where a party seeks to file
2 under seal documents as part of a dispositive motion, the moving
3 party must demonstrate compelling reasons to seal the documents.
4 Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th
5 Cir. 2006). In general, when "'court files might have become the
6 a vehicle for improper purposes' such as the use of records to
7 gratify private spite, promote public scandal, circulate libelous
8 statements, or release trade secrets," there are "compelling
9 reasons" sufficient to outweigh the public's interest in
10 disclosure. Id. at 1179. "The party requesting the sealing order
11 must articulate compelling reasons supported by specific factual
12 findings that outweigh the general history of access and the
13 public policies favoring disclosure, such as the public interest
14 in understanding the judicial process." Id. at 1178-79 (internal
15 citations and alterations omitted). "In turn, the court must
16 conscientiously balance the competing interests of the public and
17 the party who seeks to keep certain judicial records secret." Id.
18 at 1179 (internal citations and alterations omitted). "The mere
19 fact that the production of records may lead to a litigant's
20 embarrassment, incrimination, or exposure to further litigation
21 will not, without more, compel the court to seal its records."
22 Id. (citing Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d
23 1122, 1136 (9th Cir. 2003)).

24 The Ninth Circuit has held that there are compelling reasons
25 to seal the home addresses and social security numbers of law
26 enforcement officers. Kamakana, 447 F.3d at 1182 (affirming
27 magistrate judge's decision to seal such information to avoid
28

1 "expos[ing] the officers and their families to harm or identity
2 theft). Federal Rule of Civil Procedure 5.2 states,

3 Unless the court orders otherwise, in an electronic or
4 paper filing with the court that contains an
5 individual's social-security number, taxpayer-
6 identification number, or birth date, the name of an
7 individual known to be a minor, or a financial-account
8 number, a party or nonparty making the filing may
9 include only:

- 10 (1) the last four digits of the social-security
11 number and taxpayer-identification number;
- 12 (2) the year of the individual's birth;
- 13 (3) the minor's initials; and
- 14 (4) the last four digits of the financial-
15 account number.

16 Fed. R. Civ. P. 5.2.

17 Pursuant to the standard described above, the Court considers
18 the documents that Plaintiff and Defendants seek to seal.
19 Defendants request that the Court seal documents Bates-stamped D-
20 001336, D-001337, D-001374 and D-001375. Documents D-001374 and
21 D-001375 consist of a two page "Citizen's Personnel Complaint"
22 lodged against Officer Carl Miller, and include the names of the
23 complainant and a witness, as well as the complainant's statement
24 describing the incident, date of birth and personal contact
25 information. Document D-001336 consists of the second page of a
26 different Citizen's Personnel Complaint lodged against Miller and
27 a non-defendant Clearlake Police Department sergeant. Like
28 document D-001375, it contains the complainant's name, date of
birth and personal contact information. It appears that
Defendants intended to request that the Court seal the two page
complaint against Miller and the sergeant but, instead of
requesting that the Court seal documents D-001335 and D-001336,

1 they sought to seal documents D-001336 and Document D-001337, the
2 latter of which is not part of the complaint form. The Court
3 deems Defendants' request as one seeking to seal documents
4 D-001335 and D-001336.

5 Defendants assert that under Kamakana the documents are
6 sealable because they are libelous and serve only to promote
7 scandal. Defendants state that one incident was deemed
8 "unfounded" and the other "unfounded/not substantiated," as
9 evidenced by the document Bates-stamped D-01370. Document
10 D-01370, however, was not attached to Allen's declaration and was
11 not included in Exhibit Four. Nevertheless, Plaintiff did not
12 argue in his opposition or elsewhere that any investigation found
13 that these complaints had merit or were substantiated to any
14 degree. Thus, the documents simply indicate the fact that the
15 complaints were made. Without more, Miller's privacy interest in
16 his personnel information outweighs the public's interest in
17 disclosure. Accordingly, both two-page complaint forms, Bates-
18 stamped D-001335, D-001336, D-001374 and D-001375 are sealable.

19 Defendants request that the Court seal documents Bates-
20 stamped D-001337 through D-001343. These documents contain
21 personal identifying information for the individual who submitted
22 the above-mentioned complaints, as well as forms related to the
23 complainant's arrest, booking and intake. These documents are not
24 relevant to resolving Defendants' motion for summary judgment, and
25 contain personal identity and contact information, as well as
26 arrest information about a non-litigant that will likely cause him
27 embarrassment. Although Kamakana stated that the embarrassment of
28 a litigant, alone, was not sufficient to justify a sealing order,

1 the arrest records pertain to a non-litigant. Together these
2 three factors--irrelevance, personal identification information
3 and likely embarrassing information about the arrest of a non-
4 litigant--outweigh the public's interest in disclosure.
5 Accordingly, the request to seal documents Bates-stamped D-001337
6 through D-001343 is granted.

7 Defendants request that the Court seal documents Bates-
8 stamped D-001403 through D-001411. These documents pertain to an
9 Internal Affairs investigation into a complaint lodged against
10 Miller and a non-defendant related to a party that Miller hosted
11 at his home and include personal identifying information regarding
12 the complainant. The investigator assigned to review the
13 complaint concluded that it was unfounded. The documents are not
14 probative of Plaintiff's claims. The fact that the documents
15 contain Miller's private personnel information regarding an
16 unfounded complaint, and the complainant's personal identification
17 and contact information, and are irrelevant to resolving
18 Defendants' motion for summary judgment demonstrate that there is
19 a compelling interest in sealing the documents, which outweighs
20 the public's interest in disclosure. Therefore, documents
21 D-001403 through D-001411 are sealable.

22 Defendants request that the Court seal documents Bates-
23 stamped D-001424 through D-1433, concerning an Internal Affairs
24 investigation regarding Miller's failure to follow CPD policies
25 related to confidentiality. The Court determined that these
26 incidents were not probative of Plaintiff's claims. Although
27 Miller was reprimanded based on the investigation, the private
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1 nature of the documents and their irrelevance outweigh the
2 public's interest in their disclosure and they may be sealed.

3 Defendants request to seal personal identification and
4 contact information contained in documents Bates-stamped D-001507
5 through D-001516. These documents pertain to an October 2, 2006
6 felony arrest of a purportedly mentally ill individual. During
7 the incident the individual exchanged gunfire with Miller and
8 another officer and evaded attempts to remove him from a house.
9 Defendants concede that documents D-001507 through D-001516
10 include significant identifying information for individuals who
11 are not parties to this action, but were contacted in connection
12 with the felony arrest. The identification information regarding
13 the arrestee, a non-litigant, is also likely to cause him
14 embarrassment. Pursuant to Federal Rule of Civil Procedure 52 and
15 Kamakana, the names, address, telephone numbers, dates of birth
16 and ages for the non-party individuals shall be redacted from
17 documents D-001507 through D-001516.

18 Defendants request to seal documents Bates-stamped D-001517
19 through D-001533. These documents consist of print-outs from
20 Miller's Facebook wall. For the reasons explained in this Court's
21 July 6, 2012 order, Docket No. 79, Defendants' request to seal
22 these pages is denied. Defendants further argue that some
23 postings are by individuals other than Miller. However, there is
24 no indication that such individuals had an expectation of privacy
25 in such communications. Although the Court found that the
26 postings were not probative of Plaintiff's claims, the standard
27 for sealing documents submitted in connection with a motion for
28 summary judgment is the compelling interest standard, in which

1 relevance is not a dispositive factor. Defendants argue that the
2 only purpose of submitting the postings is to serve private spite.
3 However, their submission was consistent with Plaintiff's efforts
4 to demonstrate that Miller was a rogue officer in a department
5 that broadly condoned such behavior within its ranks. The
6 postings concerning parties and drinking may be embarrassing, but
7 apparently not enough to persuade Miller not to post them or to
8 remove them. Under Kamakana, 447 F.3d at 1179, the prevention of
9 public embarrassment of a litigant alone is not sufficient to
10 justify a sealing order.

11 Defendants ask to seal documents Bates-stamped D-001607
12 through D-001616, which consist of a cover sheet and report from a
13 background investigation of Miller in connection with his
14 application for employment with the CPD. On July 6, 2012, the
15 Court found that Miller had a privacy interest in information
16 contained his personnel file, including that which refers to
17 incidents that occurred decades ago and contains personal
18 identification and contact information. As noted earlier, the
19 lack of relevance of the sensitive information is not dispositive
20 as to whether a sealing order is warranted, but underscores the
21 privacy interest in sealing such information. After balancing
22 Miller's privacy interest against the public's interest, the Court
23 approved redactions from Defendants' reply brief in support of the
24 motion for summary judgment.

25 Documents D-001607 through D-001616 underlie the redactions
26 approved for Defendants' reply brief. Consistent with the Court's
27 July 6, 2012 order, Defendants' request to seal documents D-001607
28 through D-01616 is granted. In addition, the Court grants

1 Defendants' request to seal documents Bates-stamped D-001631
2 through D-001633, D-001636, D-001637, D-001642 through D-001644,
3 D-001669 through D-001677, D-001693 through D-001695,¹ D-001702
4 through D-001705 and D-001708 through D-001724 because they
5 provide Miller's personal history submitted in connection with his
6 employment application, including the names and contact
7 information for various non-party relatives and former employers,
8 and serve as the basis for portions of the report concerning his
9 background investigation. The lack of probative value of these
10 documents and their private nature outweigh the public's interest
11 in disclosure. Defendants do not request to seal document
12 D-001606, but Miller's driver's license number shall be redacted.

13 Defendants request that the Court seal documents Bates-
14 stamped D-001759 through D-001763 because they concern an incident
15 that led the CPD to release Miller from his position as a training
16 officer. Because, in this instance, Miller violated CPD policies
17 that did not bear any relation to Plaintiff's claims and the CPD
18 reprimanded Miller, the documents are not relevant to establish
19 any of Plaintiff's claims that were the subject of Defendants'
20 summary judgment motion. Miller's privacy interest and the
21 irrelevance of the documents sufficiently outweigh the public's
22 interest in disclosure so as to satisfy the compelling interest
23 standard. Thus, Defendants' request to seal documents D-001759
24 through D-001763 is granted.

26
27 ¹ Defendants do not request that the Court seal document
28 D-001695, but the omission appears to be an oversight because the
page is a continuation of Miller's employment application.

1 Defendants' request to redact the address information for a
2 non-party witness included in document D-001776 is granted.

3 Defendants ask that the Court seal the names of officers
4 contained in document D-001786 pursuant to Dowell v. Griffin, 275
5 F.R.D. 613 (S.D. Cal. 2011). The document consists of a log of
6 CPD officers who watched a P.O.S.T. training video concerning
7 ethics. Dowell addresses discovery disputes in a § 1983 case
8 alleging an unconstitutional search of a plaintiff's person and
9 prison cell. Apart from noting the privacy interests and
10 privilege associated with official information, which Defendants
11 apparently did not assert in disclosing document D-001786, Dowell
12 is not relevant to the present motion to seal. Document D-001776
13 does not warrant sealing under the compelling interest test.
14 Plaintiff's lawsuit included a Monell claim against the City for
15 failure to provide adequate training to its officers. While not
16 highly probative of CPD practices at issue in this case,
17 Defendants have not asserted any privacy interest sufficient to
18 outweigh the presumption in favor of disclosure. Defendants'
19 request to seal document D-001786 is denied.

20 Defendants ask to seal documents Bates-stamped D-002055 and
21 D-002057, which pertain to Defendant Michael Ray's appointment as
22 a CPD officer. Under Kamakana, Ray's personal address,
23 identification information and birthdate are private, as well as
24 the information concerning his pay, including his pay plan and
25 step. Accordingly, Plaintiff shall file documents D-002055 and
26 D-002057 with the redactions necessary to protect such
27 information.
28

1 Defendants ask to seal documents Bates-stamped D-002069,
2 D-002070, D-002074 through D-002088,² D-002090 through D-002101,
3 D-002103 and D-002105 through D-002108. These documents pertain
4 to Ray's application for employment with the CPD and include forms
5 containing personal identification and contact information for
6 Ray, his references and relatives, as well as background
7 information about his prior experience, education, military
8 service and employment. Given the highly personal nature of this
9 information and its lack of probative value with respect to
10 Plaintiff's claims, the public has relatively little interest in
11 access to these documents as compared to Ray's privacy interests.
12 Accordingly, Defendants have demonstrated a compelling interest in
13 sealing these documents and their request is granted.

14 Defendants ask to seal documents Bates-stamped D-002166
15 through D-002168. These documents relate to Ray's pre-employment
16 polygraph examination and interview for the position of CPD
17 officer trainee. Plaintiff failed to point to any evidence
18 connecting Ray's pre-employment conduct and the incident at issue
19 in this lawsuit. Given the lack of relevance of these documents
20 and their highly personal, sensitive nature, Ray's privacy
21 interest in preventing their disclosure significantly outweighs
22 the public's interest in the information. Defendants' request to
23 seal documents D-002166 through D-002168 is granted.

27 ² Defendants requested that the Court seal documents
28 D-002089, but the document was not contained in Exhibit Four.

1 CONCLUSION

2 Plaintiff shall file a redacted version of Exhibit Four in
3 support of his opposition brief, excluding the following
4 documents: D-001335, D-001336, D-001374, D-001375, D-001337
5 through D-001343, D-001403 through D-001411, D-001424 through
6 D-001433, D-001607 through D-01616, D-001631 through D-001633,
7 D-001636, D-001637, D-001642 through D-001644, D-001669 through
8 D-001677, D-001693 through D-001695, D-001702 through D-001705,
9 D-001708 through D-001724, D-001759 through D-001763, D-002069,
10 D-002070, D-002074 through D-002088, D-002090 through D-002101,
11 D-002103, D-002105 through D-002108, and D-002166 through
12 D-002168. In addition, the names, address, telephone numbers,
13 dates of birth and ages for non-party individuals in documents
14 D-001507 through D-001516, Miller's driver's license number in
15 document D-001606, the address information contained in document
16 D-001776, and Ray's personal identification, address and financial
17 information contained in documents D-002055 and D-002057 shall be
18 redacted.

19 Plaintiff shall file the redacted exhibit and opposition
20 brief within five days. He shall also file the unredacted exhibit
21 and opposition under seal. Instructions for electronically filing
22 documents under seal are provided on this Court's website at
23 https://ecf.cand.uscourts.gov/cand/faq/under_seal.htm.

24 IT IS SO ORDERED.

25
26 Dated: 8/9/2012

27 
28 CLAUDIA WILKEN
United States District Judge