

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

SEAN L. GILBERT, et al.,
Plaintiffs,
v.
MONEYMUTUAL, LLC, et al.,
Defendants.

Case No. 13-cv-01171-JSW (LB)

ORDER RE SEALING MOTION

The court denies the current motion to seal without prejudice and directs the parties to address the issues in this order within four business days, which is the ordinary time to address administrative matters under the civil local rules.

A party requesting that court documents be sealed must first establish that the documents are “sealable” — that is, the party must show “that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law[.]” N.D. Cal. Civ. L.R. 79-5(b), 79-5(d)(1)(A). “The request must be *narrowly tailored* to seek sealing only of sealable material” and must conform to the Local Rules’ procedural requirements. *Id.* 79-5(b), 79-5(d) (emphasis added).

To show that documents are “sealable,” the proponent must overcome the strong presumption of public access to court documents. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1151 (9th Cir. 2011).
ORDER (No. 13-cv-01171-JSW)

1 1172, 178-79 (9th Cir. 2006). In the context of dispositive motions, the proponent must show
 2 “compelling reasons.” *Id.* Where, as here, the proponent seeks to seal a non-dispositive motion,
 3 the burden is satisfied by a “particularized showing” under the “good cause” standard of Federal
 4 Rule of Civil Procedure 26(c). *Id.* at 1179-80. “Rule 26(c) gives the district court much flexibility
 5 in balancing and protecting the interests of private parties.” *Kamakana*, 447 F.3d at 1180; Fed. R.
 6 Civ. P. 26(c) (“The court may, for good cause, issue an order to protect a party or person from
 7 annoyance, embarrassment, oppression, or undue burden or expense”)

8 Here, the MoneyMutual defendants fail to make a particularized showing of good cause to seal
 9 the motion to depose Mr. Wilens. They presumably argue that the allegations, if made public, will
 10 cause a certain degree of annoyance, embarrassment, or other discomfort. They cite two cases for
 11 the proposition that the motion should be sealed “until the court is able to adjudicate the
 12 underlying factual allegations contained” therein:¹ *Times Mirror Co. v. United States*, 873 F.2d
 13 1210, 1219 (9th Cir. 1989); *United States v. Smith*, 776 F.2d 1104 (3d Cir. 1985). Although the
 14 allegations may conceivably cause embarrassment or other discomfort, this alone does not satisfy
 15 the MoneyMutual defendants’ burden under the circumstances.

16 The problem is that the defendants fail to identify how the proposed redacted motion — which
 17 is *completely* redacted — is narrowly tailored to the “sealable” material contained in the
 18 document. This is particularly troublesome given that they publicly filed a Supplemental
 19 Memorandum of Points and Authorities that contains many of the same factual and legal
 20 allegations.² *See Kamakana*, 447 F.3d at 1184 (in the dispositive-motion context, the court
 21 emphasized that some of the information unsuccessfully sought to be kept under seal was “either
 22 already publicly available or [was] available in other documents being produced”). As currently
 23 proposed, then, and in light of the public Supplemental Memorandum, the MoneyMutual
 24 defendants “fail to demonstrate any specific prejudice or harm” that will result if their motion is
 25 denied. *Id.* at 1186. The court cannot tell what is now in the public record (*i.e.* in their
 26 Supplemental Memorandum) and what is still secret and potentially damaging. If the motion

27 _____
 28 ¹ Administrative Motion to File Under Seal – ECF No. 262 at 2.
² Supplemental Memorandum of Points and Authorities – ECF No. 294.
 ORDER (No. 13-cv-01171-JSW) 2

1 contains distinct, potentially burdensome information that warrants sealing, the defendants must
2 establish good cause to redact this information with greater particularity and tailoring. Or at least,
3 address the tension between the documents filed completely under seal and those that are not.

4 The court therefore denies the MoneyMutual defendants' administrative motion to file under
5 seal their motion to depose Mr. Wilens. They may renew their motion within four business days to
6 redact more particularized information that is not already available on the public docket.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: April 29, 2016



LAUREL BEELER
United States Magistrate Judge