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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAEXELTIS USA INC.,
Plaintiff,
v.
FIRST DATABANK, INC.,
Defendant.Case No. [17-cv-04810-HSG](#)**ORDER DENYING MOTIONS TO
FILE UNDER SEAL**

Re: Dkt. Nos. 148, 156

Currently before the Court are two administrative motions to file under seal by Plaintiff Exeltis USA Inc. The administrative motions were filed in connection with Exeltis's motion for leave to file an amended complaint, Dkt. No. 149, which the parties have since stipulated to allowing, Dkt. No. 158. For the following reasons, the Court **DENIES** the motions to file under seal.¹

I. LEGAL STANDARD

Courts generally apply a "compelling reasons" standard when considering motions to seal documents. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). "This standard derives from the common law right 'to inspect and copy public records and documents, including judicial records and documents.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1178). "[A] strong presumption in favor of access is the starting point." *Kamakana*, 447 F.3d at 1178 (quotation omitted). To overcome this strong presumption, the party seeking to seal a judicial record attached to a dispositive motion must "articulate compelling reasons supported by specific factual findings that

¹ The Court finds this matter appropriate for disposition without oral argument and the matter is deemed submitted. See Civil L.R. 7-1(b).

1 outweigh the general history of access and the public policies favoring disclosure, such as the
2 public interest in understanding the judicial process” and “significant public events.” *Id.* at 1178–
3 79 (quotation omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s
4 interest in disclosure and justify sealing court records exist when such ‘court files might have
5 become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
6 promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179
7 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the
8 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
9 litigation will not, without more, compel the court to seal its records.” *Id.*

10 The Court must “balance[] the competing interests of the public and the party who seeks to
11 keep certain judicial records secret. After considering these interests, if the court decides to seal
12 certain judicial records, it must base its decision on a compelling reason and articulate the factual
13 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5
14 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a
15 document or portions of it under seal must “establish[] that the document, or portions thereof, are
16 privileged, protectable as a trade secret or otherwise entitled to protection under the law . . . The
17 request must be narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b).

18 Records attached to nondispositive motions, however, are not subject to the strong
19 presumption of access. See *Kamakana*, 447 F.3d at 1179. Because such records “are often
20 unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal
21 must meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure.
22 *Id.* at 1179–80 (quotation omitted). This requires only a “particularized showing” that “specific
23 prejudice or harm will result” if the information is disclosed. *Phillips v. Gen. Motors Corp.*, 307
24 F.3d 1206, 1210–11 (9th Cir. 2002); see also Fed. R. Civ. P. 26(c). “Broad allegations of harm,
25 unsubstantiated by specific examples of articulated reasoning” will not suffice. *Beckman Indus.,*
26 *Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

27 **II. DISCUSSION**

28 Exeltis moved to file under temporary seal portions of its motion, reply, declaration, and

1 the proposed amended complaint that had been designated as confidential under the protective
2 order. See Dkt. Nos. 148, 156. First Databank submitted a declaration in support of sealing these
3 materials permanently, asserting that publication would “hamper [its] ability to exercise its
4 independent editorial judgment” and “harm [its] competitive position.” See Dkt. No. 151.


5 The Court applies the good cause standard because the materials are attached to a
6 nondispositive motion. However, these broad and unsubstantiated allegations of harm are
7 insufficient to meet even the good cause standard. The information sought to be sealed refers to
8 First Databank’s internal and third-party communications, but it does not discuss any trade secrets,
9 commercially sensitive information, or other protected personal information. Accordingly, the
10 Court **DENIES** the motions to file under seal. Cf. Dkt. No. 145 (order by Magistrate Judge Kim
11 denying motions to seal).

12 **III. CONCLUSION**

13 Exeltis’s motions to file under seal are **DENIED**. Dkt. Nos. 148, 156. Exeltis shall file
14 unredacted versions of the amended complaint and the documents that were sought to be sealed
15 within three days of this order.

16 **IT IS SO ORDERED.**

17 Dated: 5/28/2019

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19 HAYWOOD S. GILLIAM, JR.
20 United States District Judge
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