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\*\*E-Filed 7/20/2009\*\*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CARL K. RICH and DAVID DURAN,  
individually and on behalf of all others similarly  
situated,

Plaintiffs.

v.

HEWLETT-PACKARD COMPANY, et al.,

Defendant.

Case No. C06-03361-JF

ORDER<sup>1</sup> GRANTING PLAINTIFFS'  
MOTION TO FILE DOCUMENTS  
UNDER SEAL

[Re: Docket No. 68]

Plaintiffs move to file certain documents in support of their motion for class certification under seal. The motion is brought pursuant to Civil Local Rules 7-11 and 79-5(d) and the Joint Stipulation and Protective Order as Amended ("Protective Order") filed by the parties on August 27, 2008. Plaintiffs seek to file the following documents under seal:

- (1) the declaration of Justin T. Berger in support of Plaintiffs' motion for class certification, in its entirety ("the Berger Declaration"); and
- (2) portions of Plaintiffs' memorandum in support of their motion for class certification.

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 Certain exhibits attached to the Berger Declaration were produced by Defendant and  
2 designated as either “Restricted Information” or “Restricted Outside Counsel Only Information”,  
3 making them subject to the terms of the Protective Order. Portions of the plaintiff’s  
4 memorandum quote, refer to or analyze these exhibits. In its response to the instant motion,  
5 Defendant Hewlett-Packard (“HP”) requests that newly redacted versions of Exhibits 2 and 3 and  
6 the memorandum be filed to reflect its withdrawal of certain designations and to include  
7 additional redactions.

### 8 LEGAL STANDARD

9 “A party seeking to seal a judicial record bears the burden of overcoming the strong  
10 presumption in favor of public access to records by meeting the compelling reasons standard.  
11 That is, the party must articulate compelling reasons supported by specific factual findings.”  
12 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2008).

13 “[T]he presumption of access is not rebutted where. . . documents subject to a protective  
14 order are filed under seal as attachments to a dispositive motion. The. . . ‘compelling reasons’  
15 standard continues to apply.” *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d  
16 1122, 1136 (9th Cir. 2003) (internal citations omitted). However, to preserve the secrecy of  
17 sealed discovery material attached to non-dispositive motions, a “good cause” showing under  
18 Rule 26(c) will suffice. *Kamakana*, 447 F.3d at 1180.

### 19 DISCUSSION

20 To determine the standard of review, the Court first must determine whether the class  
21 certification motion to which the documents are attached is dispositive. The Eleventh Circuit has  
22 observed that a motion for class certification might be dispositive if “a denial of class status  
23 means that the stakes are too low for the named plaintiffs to continue the matter.” *Prado v. Bush*,  
24 221 F.3d 1266, 1274 (11th Cir. 2000). The instant case presents such a situation. However, the  
25 rationale for distinguishing between dispositive and non-dispositive motions in the present  
26 context is that “the public has less of a need for access to court records attached only to  
27 non-dispositive motions because those documents are often unrelated, or only tangentially  
28 related, to the underlying cause of action.” *Kamakana*, 447 F.3d at 1180. The contested issues

1 in Plaintiffs' motion for class certification involve the procedural requirements of F. R. Civ. Pro.  
2 23 and relate only tangentially to the underlying merits of Plaintiffs' claim. The motion thus is  
3 not "dispositive" in the relevant sense, and a showing of good cause is sufficient to justify filing  
4 these documents under seal.

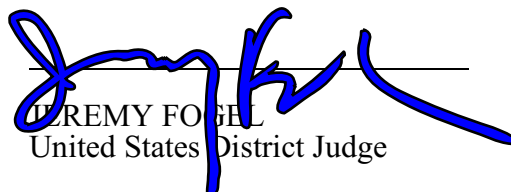
5 "When a district court grants a protective order to seal documents during discovery, it  
6 already has determined that good cause exists to protect this information from being disclosed to  
7 the public by balancing the needs for discovery against the need for confidentiality." *Kamakana*,  
8 447 F.3d at 1179. Exhibits 1, 2 and 3 to the Berger Declaration are subject to the Protective  
9 Order, and the Declaration contains no other material content. Accordingly, the Berger  
10 Declaration and the portions of the motion for class certification that discuss it should be filed  
11 under seal. Because Plaintiff proposes to file the entire Berger Declaration under seal, HP's  
12 requested relief is unnecessary.

13 **ORDER**

14 Good cause therefor appearing, Plaintiffs' motion to file documents under seal is  
15 GRANTED.

16 IT IS SO ORDERED.

17  
18 DATED: July 20, 2009

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22 JEREMY FOGEL  
United States District Judge

1 Copies of Order served on:  
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3 Brian Stephen Kabateck bsk@kbklawyers.com  
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