

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 JOSE DIVISION

SANDRA LEE JACOBSON,
Plaintiff,
v.
PERSOLVE, LLC, et al.,
Defendants.

Case No. 14-cv-00735-LHK
**ORDER DENYING SEALING
MOTIONS**
Re: Dkt. Nos. 98, 100

Before the Court are administrative motions to seal brought by Plaintiff Sandra Jacobson, ECF No. 98, and by Defendants Persolve, LLC and Stride Card, LLC. (“Defendants”), ECF No. 100. The parties seek to seal exhibits filed by the parties in connection with Plaintiff’s motion for class certification, ECF No. 96.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a strong presumption in favor of access is the starting point.” *Id.* (internal quotation marks omitted).

Parties seeking to seal judicial records relating to dispositive motions bear the burden of

1 overcoming the presumption with “compelling reasons supported by specific factual findings” that
2 outweigh the general history of access and the public policies favoring disclosure. *Kamakana*, 447
3 F.3d at 1178–79. Compelling reasons justifying the sealing of court records generally exist “when
4 such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to
5 gratify private spite, promote public scandal, circulate libelous statements, or release trade secret.”
6 *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the production of
7 records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will
8 not, without more, compel the court to seal its records.” *Id.* Dispositive motions include “motions
9 for summary judgment.” *Id.*

10 Records attached to nondispositive motions are not subject to the strong presumption of
11 access. *See Kamakana*, 447 F.3d at 1179. Because the documents attached to nondispositive
12 motions “are often unrelated, or only tangentially related, to the underlying cause of action,”
13 parties moving to seal must meet the lower “good cause” standard of Rule 26(c) of the Federal
14 Rules of Civil Procedure. *Id.* at 1179–80 (internal quotation marks omitted). The “good cause”
15 standard requires a “particularized showing” that “specific prejudice or harm will result” if the
16 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
17 1210–11 (9th Cir. 2002) (internal quotation marks omitted); *see Fed. R. Civ. P. 26(c)*. “Broad
18 allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not
19 suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

20 In general, motions for class certification are considered nondispositive. *See In re High-*
21 *Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2013 WL 5486230, at *2 (N.D. Cal. Sept. 30,
22 2013) (“As Plaintiffs’ Motion for Class Certification is a non-dispositive motion, the Court finds
23 that the parties need only demonstrate ‘good cause’ in order to support their requests to seal.”).
24 The Court therefore applies the “good cause” standard to the parties’ requests.

25 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court
26 documents for, inter alia, the protection of “a trade secret or other confidential research,
27 development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has

1 adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a]
2 trade secret may consist of any formula, pattern, device or compilation of information which is
3 used in one’s business, and which gives him an opportunity to obtain an advantage over
4 competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)
5 (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the
6 production of goods. . . . It may, however, relate to the sale of goods or to other operations in the
7 business. . . .” *Id.* (ellipses in original). In addition, the Supreme Court has recognized that sealing
8 may be justified to prevent judicial documents from being used “as sources of business
9 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598.

10 In addition, parties moving to seal documents must comply with the procedures established
11 by Civil Local Rule 79-5. Pursuant to that rule, a sealing order is appropriate only upon a request
12 that establishes the document is “sealable,” or “privileged or protectable as a trade secret or
13 otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). “The request must be narrowly
14 tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” *Id.*
15 Civil Local Rule 79-5(d), moreover, requires the submitting party to attach a “proposed order that
16 is narrowly tailored to seal only the sealable material” and that “lists in table format each
17 document or portion thereof that is sought to be sealed,” as well as an “unredacted version of the
18 document” that “indicate[s], by highlighting or other clear method, the portions of the document
19 that have been omitted from the redacted version.” *Id.* R. 79-5(d)(1). “Within 4 days of the filing
20 of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as
21 required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”
22 *Id.* R. 79-5(e)(1).

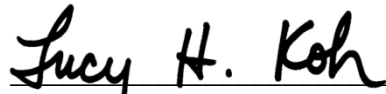
23 Here, the Court DENIES without prejudice both Plaintiff’s motion to seal, ECF No. 98,
24 and Defendants’ motion to seal, ECF No. 100. Applying the “good cause” standard to these
25 motions filed in connection with Plaintiff’s motion for class consideration, the Court finds that the
26 parties have not made the required “particularized showing” that “specific prejudice or harm will
27 result” if the information is disclosed. *Phillips ex rel. Estates of Byrd*, 307 F.3d at 1210–11

1 (internal quotation marks omitted). In support of Plaintiff’s motion to seal, Plaintiff states only
2 that the documents were designated confidential by Defendants under the protective order.
3 However, “[r]eference to a stipulation or protective order that allows a party to designate certain
4 documents as confidential is not sufficient to establish that a document, or portions thereof, are
5 sealable.” Civ. L.R. 79-5(d)(1)(A). Moreover, Defendants’ bald statement that disclosure of their
6 balance sheets will “potentially compromise their business advantage” is insufficient. *See*
7 *Beckman*, 966 F.2d at 476 (“Broad allegations of harm, unsubstantiated by specific examples of
8 articulated reasoning” will not suffice.).

9 The Court therefore DENIES without prejudice the parties’ sealing requests. Any renewed
10 sealing motions shall be filed within 7 days of this Order.

11 **IT IS SO ORDERED.**

12 Dated: June 8, 2015



13 _____
14 LUCY H. KOH
15 United States District Judge

16
17
18
19
20
21
22
23
24
25
26
27
28