

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  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

TOTAL WEALTH  
MANAGEMENT, INC. and JACOB  
KEITH COOPER,

Defendants.

Case No. 15-cv-0226-BAS-DHB

**ORDER:**

- (1) GRANTING IN PART AND DENYING IN PART AMENDED RENEWED MOTION TO SEAL [ECF No. 92],**
- (2) GRANTING SECOND MOTION TO SEAL [ECF No. 117],**
- (3) DENYING AS MOOT RENEWED MOTION TO SEAL [ECF No. 89]**

**INTRODUCTION**

Presently before the Court in this SEC receivership proceeding is Defendant Cooper’s Amended Renewed Motion to Seal Documentation Regarding the Source of Funds for Retention of Counsel (ECF No. 92) and a related Second Motion to Seal (ECF No. 117). Cooper seeks to file under seal an Amended Motion for Determination Assets are Untainted by Alleged Fraud and related exhibits. The SEC does not oppose. (ECF No. 96.) For the reasons set forth below, the Court GRANTS

1 IN PART and DENIES IN PART Cooper’s amended renewed motion to seal  
2 documentation regarding the source of funds (ECF No. 92) and GRANTS the related  
3 second motion (ECF No. 117).

#### 4 LEGAL STANDARD

5 “[T]he courts of this country recognize a general right to inspect and copy  
6 public records and documents, including judicial records and documents.” *Nixon v.*  
7 *Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record  
8 is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the  
9 starting point.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.  
10 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.  
11 2003)). “The presumption of access is ‘based on the need for federal courts, although  
12 independent—indeed, particularly because they are independent—to have a measure  
13 of accountability and for the public to have confidence in the administration of  
14 justice.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir.  
15 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

16 A party seeking to seal a judicial record bears the burden of overcoming the  
17 strong presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet  
18 this burden depends upon whether the documents to be sealed relate to a motion that  
19 is “more than tangentially related to the merits of the case.” *Ctr. for Auto Safety v.*  
20 *Chrysler Grp., LLC*, 809 F.3d 1092, 1102 (9th Cir. 2016). When the underlying  
21 motion is more than tangentially related to the merits, the “compelling reasons”  
22 standard applies. *Id.* at 1096–98. When the underlying motion does not surpass the  
23 tangential relevance threshold, the “good cause” standard applies. *Id.*

24 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest  
25 in disclosure and justify sealing court records exists when such ‘court files might  
26 have become a vehicle for improper purposes,’ such as the use of records to gratify  
27 private spite, promote public scandal, circulate libelous statements, or release trade  
28 secrets.” *Kamakana*, 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). “The mere

1 fact that the production of records may lead to a litigant’s embarrassment,  
2 incrimination, or exposure to further litigation will not, without more, compel the  
3 court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). The decision to seal  
4 documents is “one best left to the sound discretion of the trial court” upon  
5 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*,  
6 435 U.S. at 599.

## 7 DISCUSSION

8 As an initial matter, the Court finds that Cooper’s Amended Motion for  
9 Determination Assets are Untainted by Alleged Fraud is more than tangentially  
10 related to the merits of the case. The SEC has alleged a pervasive fraud by Cooper  
11 involving the alleged misappropriation of advisory client funds to settle a prior SEC  
12 enforcement proceeding, as well as to pay attorneys Cooper hired to defend him in a  
13 class action brought by injured investors. Thus, Cooper’s motion for a determination  
14 that certain assets are untainted by fraud implicates the very conduct of which Cooper  
15 has been accused. The compelling reasons standard applies.

16 Under the circumstances presented, the Court finds the compelling reasons  
17 standard satisfied as to ECF No. 93–1 (Exhibit); ECF No. 93–2 (Declaration of  
18 Michael Cooper); ECF No. 118 (Second Declaration of Michael Cooper); ECF No.  
19 118–1; and ECF No. 118–2. These documents contain non-party Michael Cooper’s  
20 personal financial information—including bank account numbers and balances—and  
21 are thus not entitled to the common law presumption of access. *See, e.g., In re Boston*  
22 *Herald, Inc.*, 321 F.3d 174, 190 (1st Cir. 2003) (“Personal financial information, such  
23 as one’s income or bank account balance, is universally presumed to be private, not  
24 public.”) (citation omitted); *Chapman v. Krutonog*, Civil No. 08–00579 HG–LEK,  
25 2010 WL 727577, at \*5 (D. Haw. Feb. 26, 2010) (noting that litigants “certainly have  
26 a privacy interest in financial information such as their bank account or credit card  
27 numbers” because “[s]uch information is not publicly available and could lead to  
28 irreparable harm if it became publicly available”). Although the motion at issue is



1 is instructed to file under seal the documents currently lodged as ECF No. 118  
2 (Second Declaration of Michael Cooper), ECF No. 118-1, and ECF No. 118-2.

3 Finally, the Court **DENIES AS MOOT** Defendant Cooper's Renewed Motion  
4 to Seal filed on March 18, 2016 (the "March 18 motion"). (ECF No. 89.) The  
5 Amended Renewed Motion to Seal considered by the Court in this Order (ECF No.  
6 92) duplicates the March 18 motion in its entirety, rendering the March 18 motion  
7 inoperative.

8 **IT IS SO ORDERED.**

9

10 **DATED: January 30, 2017**

11

12

  
**Hon. Cynthia Bashant**  
**United States District Judge**

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28