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 CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
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 8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SCOTT A. MCMILLAN, an  
 11 individual; THE MCMILLAN LAW  
 12 FIRM, APC, a California professional  
 13 corporation,

Plaintiffs,

v.

14 DARREN D. CHAKER, an individual,  
 15 and as trustee of PLATINUM  
 16 HOLDINGS GROUP TRUST doing  
 business as Counter Forensics, *et al.*,

Defendants.

CASE NO. 16cv2186-WQH-MDD  
 ORDER

17 HAYES, Judge:

18 The matter before the Court is the Motion to Seal or for Protective Order filed  
 19 by Defendant Darren D. Chaker. (ECF No. 78).

20 **I. BACKGROUND**

21 On August 29, 2016, Plaintiffs Scott A. McMillan and The McMillan Law Firm  
 22 (“Plaintiffs”) initiated this action by filing a complaint alleging causes of action for  
 23 violations of the Racketeer Influenced and Corrupt Organizations Act and civil  
 24 extortion against Defendant Darren D. Chaker (“Defendant”) and other defendants.  
 25 (ECF No. 1). On December 5, 2016, Plaintiffs filed the First Amended Complaint  
 26 alleging the same causes of action.<sup>1</sup> (ECF No. 25).

27  
 28 <sup>1</sup> The Court granted a motion to dismiss the First Amended Complaint on August  
 28, 2017. (ECF No. 83).

1 On May 22, 2017, Defendant filed the Motion to Seal or for Protective Order.  
2 (ECF No. 78). Defendant requests that the Court seal the following three previously  
3 filed documents: (1) Exhibit FF to the Original Complaint (ECF No. 1-30); (2) Exhibit  
4 FF to the First Amended Complaint (ECF No. 25-29); and (3) Exhibit C attached to the  
5 declaration of Plaintiff Scott McMillan in support of his opposition to Defendant's  
6 motion for sanctions (ECF No. 75-1 at 121-141). Alternatively, Defendant moves the  
7 Court for a protective order pursuant to Federal Rule of Civil Procedure 5.2(e). On  
8 June 12, 2017, Plaintiff filed a response in opposition. (ECF No. 80). On June 19,  
9 2017, Defendant filed a reply. (ECF No. 81).

## 10 **II. CONTENTIONS**

11 Defendant contends that the Court should seal the three exhibits pursuant to  
12 common law or Federal Rule of Civil Procedure 5.2. Defendant contends that Exhibit  
13 FF to the original complaint and Exhibit FF to the first amended complaint contain  
14 personal and confidential information and could expose Defendant to identify theft.  
15 Defendant contends that the two Exhibits FF contain his date of birth, social security  
16 number, driver's license numbers, and other personal identifying details. Defendant  
17 contends that Plaintiff violated Rule 5.2 by filing Exhibit FF because Plaintiff did not  
18 redact the month and date of birth and the first five digits of Defendant's social security  
19 number. Defendant contends that the personal information in the exhibits is immaterial  
20 to this litigation and its inclusion in the record serves no public interest. Defendant  
21 contends that Exhibit C contains personal information such as addresses, dates of birth,  
22 driver's license information of Defendant's sister, medical information, and other  
23 personal information. Further, Defendant requests that the Court order that all counsel  
24 be restrained from publicly disseminating any portion of the sealed documents in this  
25 matter and that all documents shall be filed in compliance with Federal Rule of Civil  
26 Procedure 5.2. (ECF No. 78-1). Defendant contends that Exhibits 1, 2, 4, 6, 7 and 8  
27 to Plaintiff's opposition to this motion (ECF No. 80) should be stricken or  
28 alternatively, sealed and/or fully redacted because these exhibits contain the same

1 personal information that is the subject of the motion to seal. (ECF No. 81 at 7).  
2 Defendant contends that Plaintiffs should be sanctioned for knowingly refileing this  
3 information in bad faith. *Id.*

4 Plaintiffs contend that there is no compelling reason to seal Exhibit FF or Exhibit  
5 C. (ECF No. 80 at 7, 15). Plaintiffs contend that there are no social security numbers  
6 listed in Exhibit FF and the addresses included in the exhibit are “primarily  
7 thoroughfares or commercial buildings.” *Id.* at 8. Plaintiffs contend that the month and  
8 dates of birth can be redacted and driver’s license numbers are not protected  
9 information. *Id.* at 11. Plaintiffs contend that sensitive information in Exhibit C was  
10 redacted prior to filing and that the exhibit does not list Defendant’s personal address  
11 or full date of birth. *Id.* at 15–18. Plaintiffs contend that Defendant does not have  
12 standing to request the Court seal documents containing personal information about  
13 Vania Chaker. *Id.* Plaintiffs contend that Exhibit FF and Exhibit C were not filed for  
14 an improper purpose. Plaintiffs contend that sealing the documents is an overbroad  
15 measure and “proposes that the best way to balance the interests of Defendant and the  
16 public access would be to file the original exhibits under seal, and file the attached  
17 proposed redacted versions on the public record.” *Id.* at 8.

### 18 **III. LEGAL STANDARDS**

19 “Historically, courts have recognized a ‘general right to inspect and copy public  
20 records and documents, including judicial records and documents.’” *Kamakana v. City*  
21 *and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner*  
22 *Comm’ns., Inc.*, 435 U.S. 589, 597 & n.7 (1978). “A party seeking to seal a judicial  
23 record then bears the burden of overcoming this strong presumption by meeting the  
24 compelling reasons standard. That is, the party must articulate compelling reasons  
25 supported by specific factual findings . . . that outweigh the general history of access  
26 and the public policies favoring disclosure . . . .” *Id.* at 1178–79 (citations and  
27 quotation marks omitted). The presumed right to access court proceedings and  
28 documents can be overcome “only by an overriding right or interest ‘based on findings

1 that closure is essential to preserve higher values and is narrowly tailored to serve that  
2 interest.” *Oregonian Publ’g Co. v. United States District Court*, 920 F.2d 1462, 1465  
3 (9th Cir. 1990) (quoting *Press-Enterprise Co. v. Superior Court*, 446 U.S. 501, 510  
4 (1985)).

5 “Under the compelling reasons standard, the district court must weigh relevant  
6 factors, base its decision on a compelling reason, and articulate the factual basis for its  
7 ruling, without relying on hypothesis or conjecture.” *Pintos v. Pac. Creditors Ass’n*,  
8 605 F.3d 665, 679 (9th Cir. 2010) (quotations omitted). “‘Relevant factors’ include the  
9 ‘public interest in understanding the judicial process and whether disclosures of the  
10 material could result in improper use of the material for scandalous or libelous  
11 purposes or infringement upon trade secrets.’” *Id.* at 659 n.6 (quoting *Hagestad v.*  
12 *Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)); *see also Kamakana*, 447 F.3d at 1179  
13 (“In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in  
14 disclosure and justify sealing court records exist when such ‘court files might have  
15 become a vehicle for improper purposes,’ such as the use of records to gratify private  
16 spite, promote public scandal, circulate libelous statements, or release trade secrets.”).

17 Further, Rule 5.2 provides,

18 Unless the court orders otherwise, in an electronic or paper filing with the  
19 court that contains an individual’s social-security number,  
20 taxpayer-identification number, or birth date, the name of an individual  
known to be a minor, or a financial-account number, a party or nonparty  
making the filing may include only:

- 21 (1) the last four digits of the social-security number and  
22 taxpayer-identification number;  
23 (2) the year of the individual’s birth;  
24 (3) the minor’s initials; and  
25 (4) the last four digits of the financial-account number.

26 Fed. R. Civ. P. 5.2(a). Rule 5.2 provides exemptions from this redaction requirement  
27 for certain documents, including “the official record of a state-court proceeding.” Fed.  
28 R. Civ. P. 5.2(b).

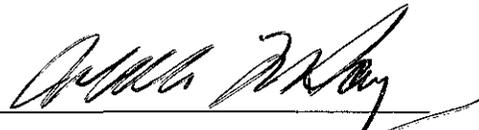
1 **IV. RULING OF THE COURT**

2 The Court has reviewed the three exhibits. Exhibit FF to the Original Complaint  
3 (ECF No. 1-30), Exhibit FF to the First Amended Complaint (ECF No. 25-29), and  
4 Exhibit C attached to the declaration of Plaintiff Scott McMillan in support of his  
5 opposition to Defendant's motion for sanctions (ECF No. 75-1 at 121-141) contain  
6 personal and confidential identifying information related to Defendant. The  
7 confidential information contained in these exhibits, such as addresses, financial  
8 information, driver's license information, and a possible social security number, "could  
9 become a vehicle for improper purposes" and justifies sealing the exhibits. *Kamakana*,  
10 447 F.3d at 1179. The Court finds that Defendant has carried his burden of  
11 overcoming the strong presumption in favor of public access by articulating compelling  
12 reasons, supported by specific factual findings, for sealing the documents. Further,  
13 because Exhibits 1, 2, 4, 5, 6, 7 and 8 attached to Plaintiffs' response in opposition to  
14 the motion to seal contain most of the same personal information, the Court finds that  
15 Defendant has carried his burden to seal these exhibits as well.

16 IT IS HEREBY ORDERED that the motion is GRANTED with respect to the  
17 request to seal and denied as to all other requests. (ECF No. 78). The Clerk of Court  
18 shall seal the following previously filed documents: (1) Exhibit FF to the Original  
19 Complaint (ECF No. 1-30); (2) Exhibit FF to the First Amended Complaint (ECF No.  
20 25-29); (3) Exhibit C attached to the declaration of Plaintiff Scott McMillan in support  
21 of his opposition to Defendant's motion for sanctions (ECF No. 75-1 at 121-141); and,  
22 (4) Exhibits 1, 2, 4, 5, 6, 7, and 8 attached to Plaintiffs' response in opposition to the  
23 motion to seal (ECF Nos. 80-2, 80-3, 80-5, 80-6, 80-7, 80-8, 80-9).

24  
25 DATED:

9/29/17

  
WILLIAM O. HAYES  
United States District Judge