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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SHEILA DASHNAW *et al.*,  
  
Plaintiffs,  
  
v.  
  
NEW BALANCE ATHLETICS, INC.,  
  
Defendant.

Case No. 3:17-cv-00159-L-JLB

**ORDER DENYING PLAINTIFF'S  
EX PARTE APPLICATION TO  
SEAL**

Pending before the Court is Plaintiffs' *Ex Parte* Application to File Under Seal Portions of Motion for Class Certification (“Application”). Defendant has not filed an opposition. Plaintiffs request sealing of portions of their memorandum of points and authorities in support of motion for class certification, the entirety of exhibits A, D, G, H, I and K to the declaration of Jason H. Kim in support of the class certification motion, as well as the entirety of Douglas A. Kysar's and Colin B. Weir's declarations. The only reason cited in support of sealing is a stipulated protective order. For the reasons stated below, Plaintiffs' Application is denied without prejudice.

Sealing court records implicates the "general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner*

1 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). The lack of opposition to a motion  
2 to seal therefore does not automatically resolve it. *See Foltz v. State Farm Mut. Auto*  
3 *Ins. Co.*, 331 F.3d 1128, 1130 & *passim* (9th Cir. 2003).

4 Aside from “grand jury transcripts and warrant materials in the midst of a pre-  
5 indictment investigation,” a strong presumption applies in favor of public access to  
6 judicial records. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178  
7 (9<sup>th</sup> Cir. 2006). This principle was adopted “because the resolution of a dispute on  
8 the merits, whether by trial or summary judgment, is at the heart of the interest in  
9 ensuring the public’s understanding of the judicial process and of significant public  
10 events.” *Id.* at 1179 (internal quotation marks and citations omitted).

11 A party seeking to seal a judicial record then bears the  
12 burden of overcoming this strong presumption by meeting  
13 the “compelling reasons” standard. That is, the party must  
14 articulate compelling reasons supported by specific factual  
15 findings that outweigh the general history of access and  
16 the public policies favoring disclosure, such as the public  
17 interest in understanding the judicial process. In turn, the  
18 court must conscientiously balance the competing interests  
19 of the public and the party who seeks to keep certain  
20 judicial records secret. After considering these interests, if  
21 the court decides to seal certain judicial records, it must  
22 base its decision on a compelling reason and articulate the  
23 factual basis for its ruling, without relying on hypothesis  
24 or conjecture.

25 In general, “compelling reasons” sufficient to outweigh  
26 the public's interest in disclosure and justify sealing court  
27 records exist when such court files might have become a  
28 vehicle for improper purposes, such as the use of records  
to gratify private spite, promote public scandal, circulate  
libelous statements, or release trade secrets. The mere fact  
that the production of records may lead to a litigant's  
embarrassment, incrimination, or exposure to further  
litigation will not, without more, compel the court to seal  
its records.

*Id.* at 1178-79 (internal quotation marks, brackets and citations omitted).

1 Plaintiffs point to a stipulated protective order as the basis for the request.  
2 That a document is designated confidential pursuant to a protective order is of little  
3 weight when it comes to sealing documents which are filed with the Court. *See San*  
4 *Jose Mercury News, Inc. v. U.S. Dist. Ct.(Saldivar)*, 187 F.3d 1096, 1103 (9th Cir.  
5 1999); *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470, 475-76 (9th Cir. 1992);  
6 *Confederated Tribes of Siletz Indians of Or. v. Weyerhaeuser Co.*, 340 F. Supp. 2d  
7 1118, 1121 (D. Or. 2003). By nature, protective orders are over inclusive, *see*  
8 *Beckman*, 966 F.2d at 476, because prior to signing, the judge typically does not  
9 have the opportunity to analyze whether any particular document should be sealed.  
10 *See San Jose Mercury News*, 187 F.3d at 1103; *Foltz*, 331 F.3d at 1133. Whether a  
11 document designated as confidential pursuant to a protective order should be sealed  
12 must therefore usually be determined *de novo*. *See Weyerhaeuser*, 340 F. Supp. 2d  
13 at 1121. Plaintiffs' reliance on the protective order is insufficient to meet the  
14 compelling reasons standard for sealing court filings related to a class certification  
15 motion.

16 Plaintiffs' Application is therefore denied. The Court will consider only the  
17 public portions of documents filed in support of Plaintiffs' motion for class  
18 certification. If Plaintiffs wish the Court to consider their unredacted memorandum  
19 of points and authorities or any other documents they sought to seal, they must  
20 either file them publicly or secure leave to file them under seal. Any new  
21 Application to seal must include the requisite factual support and designate specific  
22 portions of the documents for sealing.<sup>1</sup> The Court is not inclined to seal any  
23 documents in their entirety, unless Plaintiffs make the requisite showing to seal

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28 <sup>1</sup> If Plaintiffs renew the application, they must provide chambers with a courtesy copy of the documents they are proposing to seal. *See Electronic Case Filing Administrative Policies and Procedures Manual ¶ 2.e.*

1 every portion of the document. If Plaintiffs intend to renew their Application, they  
2 must comply with this order no later than October 2, 2017.

3 **IT IS SO ORDERED.**

4 Dated: September 12, 2017

5   
6 Hon. M. James Lorenz  
7 United States District Judge  
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