

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 WILLIAMS & COCHRANE, LLP,
12 Plaintiff,

Case No.: 3:17-cv-1436-GPC-MDD

13 v.

**ORDER DENYING *EX PARTE*
MOTION TO SEAL CASE AND
COMPLAINT**

14 QUECHAN TRIBE OF THE FORT
15 YUMA INDIAN RESERVATION, a
16 federally-recognized Indian tribe;
17 ROBERT ROSETTE; ROSETTE &
18 ASSOCIATES, PC; ROSETTE, LLP;
19 RICHARD ARMSTRONG; KEENY
20 ESCALANTI, SR.; MARK WILLIAM
21 WHITE II, A/K/A WILLIE WHITE; and
22 DOES 1 THROUGH 10,

Defendants.

23 Before the Court is an *ex parte* motion to seal the case and the complaint, along
24 with its exhibits, by Plaintiff Williams & Cochrane, LLP (“Williams & Cochrane”).
25 EPM “Ex Parte Motion” at 1. Plaintiff argues that there are compelling reasons to seal
26 the case and the complaint because “this controversy involves confidential client
27 information, confidential dispute resolution communications with the State of California,
28 proprietary attorney-work product, and sensitive matters involving another client of the

1 Firm.” *Id.* Upon review of Plaintiff’s motion, the relevant law, and for the following
2 reasons, the Court hereby **DENIES** Plaintiff’s ex parte motion.

3 **BACKGROUND**

4 The instant dispute arises out of an attorney-client fee agreement that Plaintiff
5 entered into with Defendant Quechan Tribe of the Fort Yuma Indian Reservation (“the
6 Quechan Tribe.”) *Id.* at 2. Years ago, the Quechan Tribe reached out to Plaintiff about
7 representing the tribe in a dispute with California over “overpayments under an allegedly
8 void compact.” *Id.* After weeks of discussion and negotiation, Plaintiff agreed to
9 represent the Quechan Tribe on the contingency that the tribe pay Plaintiff a 15%
10 contingency fee if the tribe prevailed in recovering the \$40 million in overpayments
11 allegedly owed. *Id.*

12 In their capacity as counsel to the Quechan Tribe, Plaintiff alleges that it “was able
13 to convince the Officer of the Governor to provide Quechan with a replacement compact
14 that would eliminate over \$120 million in revenue sharing fees during the next 28 years
15 and provide the tribe with the ability to generate another \$660 million in additional
16 revenue as a result of new gaming rights.” *Id.* at 3. This compact, however, was never
17 executed, Plaintiff alleges, because “just three days before the parties were supposed to
18 execute the compact” the tribe “terminat[ed] the firm effective immediately and would
19 not pay either the contingency fee or a reasonable fee in lieu thereof based upon the value
20 of the services the tribe had received.” *Id.* This lawsuit against the Quechan tribe, along
21 with the individuals allegedly responsible for interfering in Plaintiff’s agreement with the
22 tribe, followed thereafter.

23 **LEGAL STANDARD**

24 There is a presumptive right of public access to court records based upon the
25 common law and the first amendment. *See Nixon v. Warner Comm., Inc.*, 435 U.S. 589,
26 597 (1978); *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206,
27 1212-13 (9th Cir. 2002). Nonetheless, access may be denied to protect sensitive
28 confidential information. Courts are more likely to protect information covered by Rule

1 26(c) of the Federal Rules of Civil Procedure, but are not limited by items listed in
2 protective orders. *See KL Group v. Case, Kay, & Lynch*, 829 F.2d 909, 917-19 (9th Cir.
3 1987) (letter to client from attorney); *Kalinauskas v. Wong*, 151 F.R.D. 363, 365-67 (D.
4 Nev. 1993) (confidential settlement agreement).

5 “Unless a particular court record is one traditionally kept secret, a strong
6 presumption in favor of access is the starting point.” *Kamakana v. City and County of*
7 *Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir. 2006) (citing *Foltz v. State Farm Mut. Auto.*
8 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “In order to overcome this strong
9 presumption, a party seeking to seal a judicial record must articulate justifications for
10 sealing that outweigh the historical right of access and the public policies favoring
11 disclosure.” *Id.* at 1178-79.

12 Parties seeking to seal documents in a dispositive motion must meet the high
13 threshold requiring “compelling reasons” with specific factual findings to support a
14 sealing. *Kamakana*, 447 F.3d at 1178-80 (9th Cir. 2006). However, for non-dispositive
15 motions, the parties must show a lesser “particularized showing” under the “good cause”
16 standard pursuant to Federal Rule of Civil Procedure 26(c). *Id.* at 1180. The
17 “compelling reasons” test requires showing more than just “good cause.” *Id.* Documents
18 filed under seal will be limited to only those documents, or portions thereof, necessary to
19 protect such sensitive information.

20 Although the “Ninth Circuit has yet to specify whether a party seeking to seal a
21 complaint . . . must meet the ‘compelling reasons’ or ‘good cause’ standard,” *see Harrell*
22 *v. Cal. Forensic Med. Grp., Inc.*, 2015 WL 1405567, *1 (E.D. Cal. Mar. 26, 2015),
23 district courts generally conclude that the “compelling reasons” standard applies because
24 the complaint initiates the civil action. *See, e.g., Baldwin v. U.S.*, 732 F. Supp. 2d 1142,
25 1145 (D.N. Mar. 1, 2010); *Robert Half Intern., v. Ainsworth*, 2015 WL 4394805, *3 n.2
26 (S.D. Cal. July 15, 2015); *In re NVIDIA Corp. Deriv. Litig.*, 2008 WL 1859067 (N.D.
27 Cal. Apr. 23, 2008). Accordingly, and especially considering the public’s interest in
28

1 being able to access civil actions filed in the courts, the Court will apply the “compelling
2 reasons” standard to Plaintiff’s request.

3 Plaintiff argues that there are “important policy reasons” for denying the general
4 right to access documents. EPM at 3 (citing *Times Mirror Co. v. U.S.*, 873 F.2d 1210,
5 1219 (9th Cir. 1989) (“there is no right of access to documents which have traditionally
6 been kept secret for important policy reasons”). Chief among them, Plaintiffs argue, is
7 the right to keep attorney-client communications secret. *Id.* at 5. Plaintiff goes on to
8 argue the unique circumstances of this dispute justify sealing the complaint for four
9 reasons: namely, that the allegations contain (1) information that Plaintiff obtained
10 during its representation of the Quechan tribe; (2) disclosures made by the State of
11 California during confidential negotiations with the Quechan Tribe; (3) attorney work
12 product; and that sealing the complaint will alleviate and avoid “internal strife” for the
13 tribe. *Id.* at 5-8.

14 The Court generally agrees that is appropriate to seal privileged attorney-client
15 information and attorney work-product that arose out of Plaintiff’s representation of the
16 Quechan Tribe and that it is, moreover, equally fitting to seal confidential information
17 involving the Quechan Tribe’s negotiations with the State of California. The Court,
18 however, is not persuaded that these reasons justify sealing the entire complaint from
19 public view. Plaintiff has offered no compelling reason why every paragraph in its 91-
20 page complaint and why each of its thirty-nine exhibits must be filed under seal. The
21 Court further concludes that it does not even find good cause for sealing the entire
22 complaint. The Court, therefore, **DENIES** Plaintiff’s motion because it finds that sealing
23 the entire complaint is not necessary to protect the sensitive information raised therein.

24 Accordingly, to the extent that Plaintiff wishes to protect the confidential and
25 privileged information contained within the complaint, it must redact those portions of
26 the complaint (and those portions of the exhibits) and file the redacted version on the
27 public docket. Simultaneously, it may file a motion to seal the unredacted version of the
28 complaint and preliminarily lodge an unredacted version under seal. The unredacted

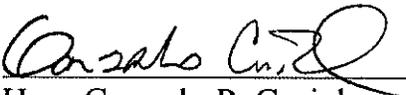
1 version, in turn, will remain under seal until the Court has the opportunity to issue an
2 order on Plaintiff's motion to seal.

3 **CONCLUSION**

4 The clerk of court shall unseal the case, strike the complaint from the record, and
5 file the motion to seal on the public docket.

6 **IT IS SO ORDERED.**

7
8 Dated: August 17, 2017

9 
10 Hon. Gonzalo P. Curiel
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28