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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOAN RESOLUTION CORPORATION
et al.,

Plaintiffs,

v.

U.S.BANK NATIONAL ASSOCIATION,
Defendant.

Case No. 3:17-cv-01691-L-VWG

**ORDER DENYING JOINT MOTION
TO SEAL**

Pending before the Court is Joint Motion to Seal Confidential Documents Previously Filed as Exhibits A Through D to the Complaint and First Amended Complaint ("Joint Motion"). The parties request sealing of four exhibits in their entirety totaling approximately 65 pages. For the reasons stated below, the Joint Motion 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 Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978). The lack of opposition to a motion to seal therefore does not automatically resolve it. See *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1128, 1130 & passim (9th Cir. 2003).

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

11 The courts have carved out an exception to the presumption of access to
12 judicial records for sealed discovery documents attached to a non-dispositive
13 motion, such that the usual presumption of the public’s right of access is rebutted.
14 *Id.* (internal quotation marks, citations and brackets omitted). The party seeking to
15 seal a document attached to a non-dispositive motion must meet the lower “good
16 cause” standard stated in Federal Rule of Civil Procedure 26(c). *Foltz*, 331 F.3d at
17 1135.

18 The parties request sealing of exhibits attached to the complaint rather than
19 documents attached to a dispositive or non-dispositive motion. There is a split of
20 authority among district courts in the Ninth Circuit whether sealing documents
21 attached to a pleading must meet the good cause or compelling reasons standard.
22 *Cf. MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 101, 106 (D. Ariz. 2010) (good cause);
23 *NVIDIA Corp. Derivative Litig.*, 2008 WL 1859067 (N.D. Cal. Apr. 23, 2008).
24 Because the Joint Motion does not meet the lower good cause standard, the Court
25 need not address the conflict among the districts.

26 A pre-litigation confidentiality agreement between the parties is analogous to
27 a stipulated protective order. That a document is designated confidential pursuant to
28 a protective order is of little weight when it comes to sealing documents which are

1 filed with the Court. See *San Jose Mercury News, Inc. v. U.S. Dist. Ct. (Saldivar)*,
2 187 F.3d 1096, 1103 (9th Cir. 1999); *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470,
3 475-76 (9th Cir. 1992); *Confederated Tribes of Siletz Indians of Or. v.*
4 *Weyerhaeuser Co.*, 340 F. Supp. 2d 1118, 1121 (D. Or. 2003). By their nature,
5 private agreements, like protective orders, do not provide advance opportunity for
6 the Court to analyze whether any particular document should be sealed. See *San*
7 *Jose Mercury News*, 187 F.3d at 1103; *Foltz*, 331 F.3d at 1133. Whether a document
8 designated as confidential pursuant to a protective order should be sealed must
9 therefore usually be determined de novo. See *Weyerhaeuser*, 340 F. Supp. 2d at
10 1121. Same applies to pre-litigation agreements. The parties' reliance on their
11 confidentiality agreement is therefore insufficient to meet the good cause standard.

12 Moreover, "[a] party asserting good cause bears the burden, for each
13 particular document it seeks to protect, of showing that specific prejudice or harm
14 will result if no protective order is granted." *Foltz*, 331 F.3d at 1130. "[B]road
15 allegations of harm, unsubstantiated by specific examples or articulated reasoning,
16 do not satisfy the Rule 26(c) test." *Beckman Indus. v. Int'l Ins. Co.*, 966 F.2d 470,
17 476 (9th Cir. 1992). The parties' conclusory assertions regarding the sensitive
18 nature of the documents, unsupported by a declaration, are insufficient to meet the
19 good cause standard of Rule 26(c), and are a fortiori insufficient to meet the higher
20 compelling reasons requirement.

21 The Joint Motion is therefore denied. Denial is without prejudice to renewing
22 the request to seal only those portions of the exhibits for which the requisite
23 showing is made. The Court is not inclined to seal the exhibits in their entirety.

24 **IT IS SO ORDERED.**

25 Dated: September 21, 2017

26 
27 Hon. M. James Lorenz
28 United States District Judge