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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROBERT CLEVELAND, an individual,
12 Plaintiff,

13 v.

14 THE BEHEMOTH, a California
15 corporation; and DOES 1 through 10,
16 Defendants.

Case No.: 3:19-cv-00672-RBM-BGS

**ORDER DENYING PLAINTIFF'S
MOTIONS TO SEAL**

[Docs. 66, 69]

17
18 Currently pending before the Court are two motions to seal filed by Plaintiff Robert
19 Cleveland ("Plaintiff"). (Docs. 66, 69.) Defendant The Behemoth ("Defendant") filed a
20 response in opposition to Plaintiff's second motion to seal (Doc. 79), and Plaintiff filed a
21 reply in support of his motion (Doc. 89). For the reasons discussed below, Plaintiff's
22 motions to seal are denied without prejudice.

23 **I. LEGAL STANDARD**

24 "[T]he courts of this country recognize a general right to inspect and copy public
25 records and documents, including judicial records and documents." *Nixon v. Warner*
26 *Comm'ns, Inc.*, 435 U.S. 589, 597 (1978). "Unless a particular court record is one
27 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting point."
28 *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz v.*

1 *State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “The presumption
2 of access is ‘based on the need for federal courts, although independent—indeed,
3 particularly because they are independent—to have a measure of accountability and for the
4 public to have confidence in the administration of justice.’” *Ctr. for Auto Safety v. Chrysler*
5 *Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States v. Amodeo*, 71 F.3d
6 1044, 1048 (2d Cir. 1995)).

7 A party seeking to seal a judicial record bears the burden of overcoming the strong
8 presumption of public access. *Foltz*, 331 F.3d at 1135. The showing required to meet this
9 burden depends upon whether the documents to be sealed relate to a motion that is “more
10 than tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809 F.3d at 1102.
11 When the underlying motion is more than tangentially related to the merits, the
12 “compelling reasons” standard applies. *Id.* at 1096–98. When the underlying motion does
13 not surpass the tangential relevance threshold, the “good cause” standard applies. *Id.* The
14 decision to seal documents is “one best left to the sound discretion of the trial court” upon
15 consideration of “the relevant facts and circumstances of the particular case.” *Nixon*, 435
16 U.S. at 599.

17 II. DISCUSSION

18 Plaintiff has filed motions to seal material attached to: (1) Plaintiff’s motion to
19 exclude Testimony of Dominick Addario, M.D. pursuant to Federal Rule of Civil
20 Procedure 702 (Doc. 65); and (2) Plaintiff’s motion in limine to exclude evidence of
21 Plaintiff’s sexual behavior, lifestyle, coarse language, and/or predisposition (Doc. 68-1).
22 (See Docs. 66, 69.) Because Plaintiff’s *Daubert* motion and his motion in limine are more
23 than tangentially related to the merits of the case, the compelling reasons standard applies
24 in determining whether to grant the motions to seal. The Court will consider each request
25 in turn.

26 In his first motion, Plaintiff seeks to seal “certain portions of his medical records and
27 expert materials submitted as exhibits to his *Daubert* Motion.” (Doc. 66 at 2.) Plaintiff
28 states the Plaintiff and Defendant (collectively, the “Parties”) lodged a proposed pretrial

1 order with the Court containing a stipulation that the Parties will redact “any patient ID,
2 medical ID, social security, and account numbers from every exhibit containing such
3 numbers in advance of trial.” (*Id.*) Plaintiff also argues the Parties’ stipulated protective
4 order in this action prohibits either party from filing on the docket information that the
5 opposing party has designated confidential. (*See* Doc. 11.) Because “[t]he Daubert
6 Exhibits include, summarize, or reflect a litany of confidential medical and private
7 information that was reviewed or considered by the Parties’ experts in this case,” Plaintiff
8 seeks an order sealing “those portions of his medical and private information which do not
9 directly bear on the issues germane to this case, including references in the Daubert
10 Exhibits to prejudicial and irrelevant character evidence which are the subject of Plaintiff’s
11 Motion in Limine No. 1.” (Doc. 66 at 4.)

12 At the outset, the Court notes that one party’s designation of a document as
13 “Confidential” does not, standing alone, demonstrate that the documents should be shielded
14 from public access. *See, e.g., Foltz*, 331 F.3d at 1136 (“the presumption of access is not
15 rebutted where, as here, documents subject to a protective order are filed under seal as
16 attachments to a dispositive motion”); *In re Packaged Seafood Prod. Antitrust Litig.*, No.
17 15-MD-2670 JLS (MDD), 2020 WL 6395595, at *1 (S.D. Cal. Nov. 2, 2020) (“That a
18 document is designated confidential pursuant to a protective order is of little weight when
19 it comes to sealing court filings”); *In re Incretin Mimetics Prod. Liab. Litig.*, No.
20 13MD2452 AJB MDD, 2014 WL 1912731, at *2 (S.D. Cal. May 13, 2014) (“[t]hough the
21 Parties themselves may have stipulated to the confidential nature of this information, the
22 ‘compelling reasons’ standard is invoked even if the motion, or its attachments, were
23 previously filed under seal or protective order”) (citing *Kamakana*, 447 F.3d at 1179).
24 Accordingly, a sealing order will be issued only if the Court is satisfied that Plaintiff has
25 otherwise satisfied the compelling reasons standard.

26 Courts throughout the Ninth Circuit have found that the need to protect a litigant’s
27 medical privacy constitutes a compelling reason to seal court records. *See, e.g., Salgado*
28 *v. Iqvia, Inc.*, No. 18-CV-2785-BAS-WVG, 2020 WL 1322949, at *2 (S.D. Cal. Mar. 20,

1 2020); *Weisberg v. Takeda Pharms. U.S.A., Inc.*, No. CV 18-784 PA (JCX), 2018 WL
2 6252458, at *3 (C.D. Cal. July 3, 2018); *Racies v. Quincy Bioscience, LLC*, No. 15-cv-
3 00292-HSG, 2017 WL 6405612, at *2 (N.D. Cal. Dec. 15, 2017). However, upon review
4 of Plaintiff’s lodged documents, the Court is not convinced that Plaintiff has limited his
5 sealing request to “only those portions of his medical and private information which do not
6 directly bear on the issues germane to this case.” (Doc. 66 at 4.) For example, Plaintiff
7 appears to seek an order redacting information such as his age (*see* Doc. 67-2 at 2) and
8 various communications Plaintiff made on social media sites such as Twitter (*see, e.g.*,
9 Doc. 67-5 at 66; Doc. 67-6 at 162, 163, 166, 168). The Court agrees with Plaintiff that,
10 even in cases where Plaintiff’s medical condition is at issue, “the entirety of his medical
11 records filed in connection with a motion (which frequently contain records that pertain to
12 unrelated medical information) need [not] be unnecessarily broadcast to the public.”
13 *Carmichael v. Aranas*, No. 317CV00025MMDWGC, 2017 WL 955183, at *2 (D. Nev.
14 Mar. 10, 2017). However, Plaintiff must nevertheless satisfy the compelling reasons
15 standard for each redaction he seeks to make to his medical records and deposition
16 transcripts involving medical professionals.

17 Plaintiff’s second motion seeks an order sealing a summary document detailing
18 “explicit material and information relating to Plaintiff’s private life which are not at issue
19 in this case, and which Plaintiff seeks to exclude from introduction at trial (or the public
20 docket).” (Doc. 69 at 2.) Plaintiff argues the information contained in the summary
21 document “could be prejudicial, harmful, and/or embarrassing to Plaintiff if published for
22 public access.” (*Id.*) The lodged document is a “summary of character evidence sought to
23 be excluded” by Plaintiff’s motion in limine. (*See* Doc. 70.) In other words, the lodged
24 document appears to be a *list* of the underlying, allegedly embarrassing information
25 Plaintiff seeks to exclude at trial, as opposed to the embarrassing information itself. (*See*
26 *id.*) Defendant filed a response in opposition to Plaintiff’s motion to seal, arguing “the
27 document sought to be sealed does not reveal private information or is a generic category
28 that reveals no information specific to Plaintiff” in part because “[c]opies of the documents

1 containing the statements were not attached or submitted.” (Doc. 79 at 2.) Defendant also
2 argues that much of the information Plaintiff seeks to seal was made by Plaintiff on his
3 public Twitter page or in his workplace to co-workers, or is non-confidential information
4 like public YouTube video URLs. (*See id.* at 2–5.) In response, Plaintiff argues “The
5 Behemoth sustains no prejudice whatsoever since it was served with the unredacted version
6 of” the sealed document, the summarized material “is either wholly irrelevant to this case
7 or subject to exclusion pursuant to Plaintiff’s Motion in Limine No. 1.” (Doc. 89 at 2.)

8 Plaintiff misstates the standard for sealing a court document—a standard which
9 focuses on the public’s “general right to inspect and copy public records and documents,
10 including judicial records and documents.” *Nixon*, 435 U.S. at 597. While potential harm
11 to a litigant’s reputation may at times justify sealing a court record, the Court finds
12 Plaintiff’s sealing request overbroad. *See, e.g., Kamakana*, 447 F.3d at 1179 (“[t]he mere
13 fact that the production of records may lead to a litigant's embarrassment, incrimination, or
14 exposure to further litigation will not, without more, compel the court to seal its records”)
15 (citing *Foltz*, 331 F.3d at 1136). In evaluating Plaintiff’s motion, the Court does not see
16 how a YouTube URL, or tweets posted publicly on Twitter, could be properly sealed on
17 the Court’s docket. Because Plaintiff has failed to show compelling reasons to seal all of
18 the information contained in the lodged document, his sealing request is denied.

19 III. CONCLUSION

20 The Court **DENIES WITHOUT PREJUDICE** Plaintiff’s motions to seal (Docs.
21 66, 69). The Clerk of Court is instructed to maintain under seal the lodged documents.
22 Should Plaintiff choose to renew his request for a sealing order, such motion to seal must
23 be filed on or before **October 20, 2022**. If Plaintiff fails to do so, or fails to meet his burden
24 of showing sufficient reasons to warrant sealing, the Court may order the sealed lodged
25 documents, or portions thereof, unsealed. Plaintiff is cautioned that the Court will adhere
26 strictly to the Local Rules of Practice for the United States District Court for the Southern
27 District of California, the Electronic Case Filing Administrative Policies & Procedures
28 Manual, and Section IV of this Court’s Civil Chamber Rules in ruling on any motion to

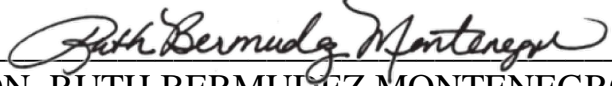
1 seal.

2 **IT IS SO ORDERED.**

3 DATE: October 6, 2022

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HON. RUTH BERMUDEZ MONTENEGRO
UNITED STATES DISTRICT JUDGE

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