

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DONELL L. TILLMAN, individually
and on behalf of all others similarly
situated

Plaintiff,

v.

Case No: 2:16-cv-313-FtM-99CM

ALLY FINANCIAL INC.,

Defendant.

ORDER

This matter comes before the Court upon review of Defendant's Motion to Seal Portions of Ally Financial Inc.'s Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment and Motion to Deny Class Certification (Doc. 75) filed on January 17, 2017. Defendant seeks the Court's permission to file certain exhibits to its Motion for Summary Judgment (Doc. 73) and Motion to Deny Class Certification (Doc. 74) pursuant to the parties' stipulated protective order. Doc. 75 at 2. Defendant alleges that its motion and exhibits contain or make references to portions of First Orion Corp.'s deposition, which Plaintiff designated as confidential under the parties' stipulated protective order. *Id.* The parties jointly request that they preliminarily file under seal the materials designated as confidential by Plaintiff and the third party First Orion Corp., and the Court issue an order to show cause why these materials should remain under seal. Docs. 75 at 6; 83 at 1.

Pursuant to Local Rule 1.09(a),

[u]nless filing under seal is authorized by statute, rule, or order, a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words “Motion to Seal” and which includes (i) an identification and description of each item proposed for sealing; (ii) the reason that filing each item is necessary; (iii) the reason that sealing each item is necessary; (iv) the reason that a means other than sealing is unavailable or unsatisfactory to preserve the interest advanced by the movant in support of the seal; (v) a statement of the proposed duration of the seal; and (vi) a memorandum of legal authority supporting the seal. The movant shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion required by this section.

M.D. Fla. Rule 1.09(a).

Here, although Defendant’s present motion complies with Local Rule 1.09(a) in form, the Court finds that Plaintiff, not Defendant, bears the burden of filing a motion to file under seal. Defendant’s present motion and Plaintiff’s Notice allege that Plaintiff and the third party First Orion Corp., not Defendant, designated the materials as confidential. Docs. 75 at 2; 83 at 1. If the opposing party insists that any information contained is “confidential,” it shall be the burden of *that party* to move for an order to allow the opposing party to file its pleading under seal. Regardless, the Court will grant the requested relief because Plaintiff does not oppose the requested relief, and the deadline of March 31, 2017 for class certification is approaching. Docs. 72, 73, 74.

Furthermore, the Court reminds the parties that although “a stipulated protective order may provide that documents designated as confidential are presumptively protected, a party’s calling a document confidential pursuant to a protective order does not make it so when it comes to filing the document with the

court.” *Arthrex, Inc. v. Parcus Med., LLC*, No. 2:11-cv-694-FtM-29CM, 2014 WL 1569149, at *3 (M.D. Fla. Apr. 17, 2014).

ACCORDINGLY, it is hereby

ORDERED:

1. Defendant's Motion to Seal Portions of Ally Financial Inc.'s Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment and Motion to Deny Class Certification (Doc. 75) is **GRANTED**.

2. Defendant shall have up to and including **February 9, 2017** to temporarily file under seal its unredacted Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment (Doc. 73) and Motion to Deny Class Certification (Doc. 74) along with complete sets of exhibits.

3. Plaintiff shall have up to and including **February 16, 2017** to show cause in compliance with M.D. Fla. Rule 1.09 as to why these pleadings should remain under seal. **Plaintiff's failure to comply with this Order will result in the Court unsealing Defendant's motion and exhibits.**

DONE and ORDERED in Fort Myers, Florida on this 2nd day of February, 2017.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record