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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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8 DONALD ALLBAUGH, on behalf of himself )  
9 and all others similarly situated, )

10 Plaintiff, )

11 vs. )

12 CALIFORNIA FIELD IRONWORKERS PENSION )  
13 TRUST, *et al.*, )

14 Defendants. )

Case No. 2:12-cv-00561-JAD-GWF

**ORDER**

15 This matter is before the Court on Defendants' Motion to File Documents Under Seal in  
16 Support of its Opposition to Plaintiff's Motion for Summary Judgment (#156), filed on December  
17 21, 2015. Also before the Court is Plaintiff's Notice of Motion and Motion for Leave to File  
18 Documents at Tabs 31, 33 & Portion of Tab 36 to Plaintiff's Opposition to Defendants' Motion for  
19 Summary Judgment Under Seal (#162), filed on December 21, 2015.

20 The Ninth Circuit comprehensively examined the presumption of public access to judicial  
21 files and records in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).  
22 There, the court recognized that different interests are at stake in preserving the secrecy of materials  
23 produced during discovery and materials attached to dispositive motions. The *Kamakana* court  
24 held that a "good cause" showing is sufficient to seal documents produced during discovery. *Id.* at  
25 1180. However, the *Kamakana* decision also held that a showing of "compelling reasons" is  
26 needed to support the secrecy of documents attached to dispositive motions. A showing of "good  
27 cause" does not, without more, satisfy the "compelling reasons" test required to maintain the  
28 secrecy of documents attached to dispositive motions. *Id.* The court found that:

1 Different interests are at stake with the right of access than with  
2 Rule 26(c); with the former, the private interests of the litigants are  
3 not the only weights on the scale. Unlike private materials unearthed  
4 during discovery, judicial records are public documents almost by  
5 definition, and the public is entitled to access by default. (Citation  
6 omitted). This fact sharply tips the balance in favor of production  
7 when a document formally sealed for good cause under Rule 26(c)  
8 becomes part of the judicial record. Thus, a “good cause” showing  
9 alone will not suffice to fulfill the “compelling reasons” standard that  
10 a party must meet to rebut the presumption of access to dispositive  
11 pleadings and attachments.

12 *Id.* *Kamakana* recognized that “compelling reasons” sufficient to outweigh the public’s interests in  
13 disclosure and justify sealing records exist when court records may be used to gratify private spite,  
14 permit public scandal, circulate libelous statements, or release trade secrets. *Id.* at 1179 (internal  
15 quotations omitted). However, “[t]he mere fact that the production of records may lead to a  
16 litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more,  
17 compel the court to seal its records.” *Id.*, citing, *Foltz v. State Farm Mutual Auto Insurance*  
18 *Company*, 331 F.3d 1122, 1136 (9th Cir. 1995). To justify sealing documents attached to  
19 dispositive motions, a party is required to present articulable facts identifying the interests favoring  
20 continuing secrecy *and* show that these specific interests overcome the presumption of public  
21 access by outweighing the public’s interests in understanding the judicial process. *Id.* at 1181  
22 (internal citations and quotations omitted).

23 Defendants’ Motion (#156) represents that the Declaration of Leanne Vance and  
24 Declaration of Zoe S. Moskowitz, attached as Exhibit 1 and Exhibit 2, respectively, to its  
25 Opposition to Plaintiff’s Motion for Summary Judgment, have been designated “Confidential”  
26 pursuant to the terms of the Stipulated Confidentiality Order (#25) entered in this case, and thus  
27 should be filed under seal. Defendants assert that these documents contain “information from a  
28 participant’s pension file and notices prepared in the course of scope of management of the pension  
trust related to the changes made to the pension plan.” *Motion to File Documents Under Seal*  
(#156). The Court finds that this is not a “compelling reason” that would justify an order sealing  
the requested documents.

Plaintiff’s Motion (#162) represents that documents at Tab 31, Tab 33, and a portion of Tab  
36 have been deemed “Confidential” pursuant to the terms of the Stipulated Confidentiality Order

1 (#25), and accordingly should be filed under seal. Plaintiff failed to provide the Court with any  
2 “compelling reason” why these documents should be filed under seal.

3 Accordingly,

4 **IT IS HEREBY ORDERED** that Defendants’ Motion to File Documents Under Seal in  
5 Support of its Opposition to Plaintiff’s Motion for Summary Judgment (#156) is **denied** without  
6 prejudice. Defendants may file a supplemental motion that complies with the *Kamakana* standard.

7 **IT IS FURTHER ORDERED** that Plaintiff’s Notice of Motion and Motion for Leave to  
8 File Documents at Tabs 31, 33 & Portion of Tab 36 to Plaintiff’s Opposition to Defendants’  
9 Motion for Summary Judgment Under Seal (#162) is **denied** without prejudice. Plaintiff may file a  
10 supplemental motion that complies with the *Kamakana* standard.

11 DATED this 23rd day of December, 2015.

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14 GEORGE FOLEY, JR.  
United States Magistrate Judge