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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TONYA GUNTER, individually, and )  
on behalf of all others similarly situated, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
UNITED FEDERAL CREDIT UNION, DOES )  
105 inclusive and ROE CORPORATIONS )  
6-10 inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

3:15-cv-00483-MMD-WGC

**ORDER**

Re: ECF No. 65

Before the court is Plaintiff’s Motion for Leave to File Documents Records Under Seal. (ECF No. 65.) The motion is unopposed.

In this motion, Plaintiff seeks leave to file under seal an unredacted version of her motion for class certification and appointment of class counsel, as well as an unredacted copy of Defendant’s responses to interrogatories 10 and 15, attached as Exhibit 10 to the declaration of Richard D. McCune filed in support of Plaintiff’s motion for class certification and appointment of class counsel.

“Historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents.” *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). “Throughout our history, the open courtroom has been a fundamental feature of the American judicial system. Basic principles have emerged to guide judicial discretion respecting public access to judicial proceedings. These principles apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important, sometimes the only, bases or explanations for a court’s decision.” *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014)

1 (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

2 Documents that have been traditionally kept secret, including grand jury transcripts and warrant  
3 materials in a pre-indictment investigation, come within an exception to the general right of public  
4 access. *See Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of access is the  
5 starting point.” *Id.* (internal quotation marks and citation omitted). “The presumption of access is ‘based  
6 on the need for federal courts, although independent—indeed, particularly because they are  
7 independent—to have a measure of accountability and for the public to have confidence in the  
8 administration of justice.’” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th  
9 Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States v. Amodeo (Amodeo II)*, 71  
10 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Court-D. Nev.*, 798 F.2d 1289, 1294  
11 (9th Cir. 1986)).

12 There are two possible standards a party must address when it seeks to file a document under  
13 seal: the compelling reasons standard or the good cause standard. *See Center for Auto Safety*, 809 F.3d  
14 at 1096-97. Under the compelling reasons standard, “a court may seal records only when it finds ‘a  
15 compelling reason and articulate[s] the factual basis for its ruling, without relying on hypothesis or  
16 conjecture.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court must then ‘conscientiously balance[  
17 ] the competing interests of the public and the party who seeks to keep certain judicial records secret.’”  
18 *Id.* “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’” *Id.*  
19 (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)). “Examples include when a court  
20 record might be used to ‘gratify private spite or promote public scandal,’ to circulate ‘libelous’  
21 statements, or ‘as sources of business information that might harm a litigant’s competitive standing.’”  
22 *Id.* (quoting *Nixon*, 435 U.S. at 598-99).

23 *Center for Auto Safety* described the good cause standard, on the other hand, as the exception to  
24 public access that had been applied to “sealed materials attached to a discovery motion unrelated to the  
25 merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213-  
26 14 (9th Cir. 2002)). “The ‘good cause language comes from Rule 26(c)(1), which governs the issuance  
27 of protective orders in the discovery process: ‘The court may, for good cause, issue an order to protect  
28 a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Id.* (citing

1 Fed. R. Civ. P. 26(c)).

2 The Ninth Circuit has clarified that the key in determining which standard to apply in assessing  
3 a motion for leave to file a document under seal is whether the documents proposed for sealing  
4 accompany a motion that is “more than tangentially related to the merits of a case.” *Center for Auto*  
5 *Safety*, 809 F.3d at 1101. If that is the case, the compelling reasons standard is applied. If not, the good  
6 cause standard is applied.

7 Here, Plaintiff seeks to file under seal unredacted versions of her motion for class certification  
8 and appointment of class counsel as well as interrogatory responses filed in support of that motion.  
9 Plaintiff argues that the documents should be filed under seal because they are subject to the stipulated  
10 protective order signed by the court which limits disclosure of information provided during discovery  
11 to Plaintiff’s counsel. The subject discovery responses were deemed confidential pursuant to the  
12 protective order, and portions of the motion for class certification and appointment of class counsel cite  
13 to documents deemed confidential.

14 Since the motion seeks to file under seal discovery responses, and portions of a motion for class  
15 certification that reference documents deemed confidential pursuant to a stipulated protective order and  
16 is not more than tangentially related to the merits, the good cause standard appears to apply. In this  
17 action, Plaintiff challenges Defendant’s policies and practices regarding the assessment of overdraft fees.  
18 According to Plaintiff, the documents reference Defendant’s proprietary interest in its mechanisms for  
19 handling its customers’ accounts, its internal finances and aggregate customer information.

20 Rule 26 allows the court to protect “trade secret[s] or other confidential research, development,  
21 or commercial information[.]” As such, the court finds that good cause exists for sealing these  
22 documents, and Plaintiff’s motion (ECF No.65) is **GRANTED**.

23 **IT IS SO ORDERED.**

24 DATED: August 23, 2017.

25   
26 WILLIAM G. COBB  
27 UNITED STATES MAGISTRATE JUDGE  
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