

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**JOHN BACCHETTI and
JADEA BACCHETTI,**

Plaintiffs,

v.

**NATIONSTAR MORTGAGE LLC, aka
Mr. Cooper,**

Defendant.

Case No. 3:17-cv-834-SI

OPINION AND ORDER

Michael R. Fuller, OLSEN DAINES PC, 111 SW Fifth Avenue, Suite 3150, Portland, OR 97204.
Of Attorneys for Plaintiffs.

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Attorneys for Defendant.

Michael H. Simon, District Judge.

Before the Court is a motion for protective order filed by Defendant Nationstar Mortgage
LLC (“Nationstar”). For the following reasons, Nationstar’s motion is denied.

STANDARDS

Rule 26(c)(1) of the Federal Rules of Civil Procedure provides, in relevant part:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following . . . (F) requiring that a deposition be sealed and opened only on court order

Fed. R. Civ. P. 26(c)(1); see also *Phillips v. GMC*, 307 F.3d 1206, 1210-11 (9th Cir. 2002)

(holding that Rule 26(c) authorizes a district court to prevent public dissemination of discovery materials but only when good cause has been shown).

BACKGROUND

On January 20, 2017, Plaintiffs John and Jadea Bacchetti (the “Bacchettis”) sued Defendant Nationstar Mortgage LLC (“Nationstar”) in Oregon state court, asserting a single cause of action for unlawful trade practice in violation of Oregon Revised Statutes § 646.638. The Bacchettis allege that Nationstar violated Oregon Administrative Rule 137-02-0805 in connection with Nationstar’s servicing of the Bacchettis’s residential mortgage loan. Specifically, the Bacchettis claim that Nationstar provided them with an erroneous mortgage escrow amount, that they promptly called Nationstar, that Nationstar provided a recalculated escrow amount, and that Plaintiff timely paid in full the recalculated amount. The Bacchettis further allege that notwithstanding their timely payment in full of the recalculated escrow amount, Nationstar failed properly to apply their payment, assessed unauthorized fees and charges, and threatened the Bacchettis with foreclosure. Based on these allegations, the Bacchettis requested money damages not to exceed \$10,000, plus fees and costs, as well as declaratory relief.

On March 10, 2017, Nationstar filed its answer to the complaint. On May 11, 2017, while the lawsuit was still in state court, Plaintiffs took the videotaped deposition of Nationstar’s corporate designee (the “Nationstar Deposition”), pursuant to Rule 39 C(6) of the Oregon Rules

of Civil Procedure. On May 14, 2017, the Bacchettis filed a complaint in their Chapter 13 bankruptcy against Nationstar, seeking \$100,000 in actual damages and \$1 million in punitive damages. The next day, May 15, 2017, the Bacchettis' wrote to Nationstar's counsel, leading Nationstar to conclude that a reasonable estimate of the value that the Bacchettis place on their state court claims exceeds \$75,000. On May 26, 2017, Nationstar removed the Bacchettis's state lawsuit to this Court, and Plaintiffs do not challenge the timeliness of that removal. On June 21, 2017, Nationstar filed an unopposed motion to withdraw the reference of the adversary proceeding to this Court. Nationstar also filed an unopposed motion to consolidate the adversary proceeding with the removed state action. The Court granted both motions.

On May 26, 2017, in the removed action, Nationstar filed a motion for protective order.

Specifically, Nationstar asks the Court to order:

That the deposition of Nationstar taken on May 11, 2017, shall be treated as confidential, and specifically that Plaintiffs shall not publish or otherwise disseminate the deposition transcript, video recording of the deposition, or audio recording of the deposition, unless Plaintiffs seek and obtain from the Court permission to do so.

ECF 1 at 2. The Bacchettis oppose Nationstar's motion for protective order and also seek their reasonable attorney's fees and costs in opposing Nationstar's motion.

DISCUSSION

Nationstar argues that it believes that the Bacchettis, or their counsel, intend to use Nationstar Deposition in what Nationstar asserts are "inappropriate ways." ECF 1 at 3. Nationstar adds that it also suspects that the Bacchettis or their counsel "intend to provide local media outlets with excerpts of the deposition, or perhaps the entire video transcript, for use in upcoming news stories." Id. at 4. Nationstar further argues that discovery materials, such as a party's deposition, are not entitled to the same presumption of public availability that attaches to

court proceedings and materials filed in court in connection with court proceedings. The Bacchettis do not deny that they intend to share the Nationstar Deposition with other litigants, potential litigations, and legislators. Instead, they argue that Nationstar has failed to show good cause in support of its motion.

In *Macias v. City of Clovis*, 2015 WL 7282841 (E.D. Cal. Nov. 18, 2015), the court summarized well the law in this area:

Generally, the public has a common law presumptive right of access to “judicial documents,” which are items filed with the court that are relevant to the performance of the judicial function and useful in the judicial process. *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop)*, 661 F.3d 417, 421 (9th Cir. 2011). However, dissemination of confidential discovery documents for non-judicial purposes is unusual and rightly so. The discovery rules are “a matter of legislative grace.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984). They compel parties, including third parties, to divulge information “for the sole purpose of assisting in the preparation and trial, or the settlement, of litigated disputes.” *Id.* at 34. The liberality of this process creates “a significant potential for abuse” such as delay, expense, misuse of court process and damage to the reputation and privacy of litigants and third parties. *Id.* at 34-35. Courts therefore must be mindful that the purpose of discovery is “to facilitate orderly preparation for trial, not to educate or titillate the public.” *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982).

Id. at *6.

Similarly, in *Burgess v. Town of Wallingford*, 2012 WL 4344194 (D. Conn. Sept. 21, 2012), the court explained:

When the materials in question “are deemed non judicial, then there is no presumption of public access, and the movant need only make a baseline showing of good cause in order to justify the imposition of a protective order.” *Ello v. Singh*, 531 F. Supp. 2d 552, 583 (S.D.N.Y. 2007) (citing *Standard Inv. Chartered, Inc. v. National Ass’n of Securities Dealers*, 621 F. Supp. 2d 55, 62 (S.D.N.Y. 2007) and *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006)). As the Second Circuit explained in [*United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995)], “[d]ocuments that play no role in the performance of Article III

functions, such as those passed between the parties in discovery, lie entirely beyond the . . . reach” of the presumption of public access.” 71 F.3d at 1050 (internal quotations and citation omitted). Such documents “stand[] on a different footing than . . . a motion filed by a party seeking action by the court, . . . or, indeed, than any other document which is presented to the court to invoke its powers or affect its decisions.” Id. (internal quotations and citation omitted).

In the case of non judicial documents, the Court may therefore issue a protective order under Fed. R. Civ. P. 26(c) upon a baseline showing of “good cause” that the order is necessary to “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”

Id. at *9 (ellipses in original).

Because the Nationstar Deposition has not been filed in Court, there is no presumptive right of public access to that evidence. For the Court to grant the protective order that Nationstar seeks, however, Nationstar must show good cause. Nationstar has failed to identify anything contained in the Nationstar Deposition that might cause Nationstar unreasonably to suffer “annoyance, embarrassment, [or] oppression” if disclosed. Thus, Nationstar has failed to show good cause, and the Court has no grounds for providing the relief sought.¹

CONCLUSION

Defendant Nationstar Mortgage LLC’s Motion for Protective Order (ECF 1) is DENIED.

IT IS SO ORDERED.

DATED this 14th day of July, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

¹ The Bacchettis seek their reasonable expenses incurred in opposing Nationstar’s motion, pursuant to Fed. R. Civ. P. 37(a)(5)(B). Because Nationstar’s motion raises important and sometimes subtle issues about what may be done with non judicial materials obtained in discovery, the Court finds it would be unjust under the circumstances to award expenses.