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THE HON. JOHN C. COUGHENOUR

11
 12 UNITED STATES DISTRICT COURT
 13 WESTERN DISTRICT OF WASHINGTON
 14 AT SEATTLE

15 JAMES S. GORDON, et al.,
 16 Plaintiffs,
 17 v.
 18 VIRTUMUNDO, INC. et al.,
 19 Defendants.

Case No. CV06-0204 JCC

**PLAINTIFFS' MOTION TO SEAL
 CERTAIN DOCUMENTS AND
 REPLACE WITH REDACTED
 VERSIONS**

[NOTE ON MOTIN CALENDAR FOR
 HEARING: JUNE 29, 2007]

20
 21 **I. INTRODUCTION**

22 On May 15, 2007, this Court entered an order (1) denying plaintiffs' Motion to Seal the
 23 Declaration of Derek Newman (Dkt. No. 120); (2) denying Defendants' Motion to Seal their
 24 Reply filed in support of their Motion for Bond (Dkt No. 91); and (3) denying Defendants'
 25 Motion to Seal their Motion to Compel Further Testimony of James Gordon Regarding Prior
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 Seattle-3370863.2 0036491-00001

1 Settlements (Dkt. No. 86). See Dkt. No. 121 (Order). As a result, the following documents were
2 either unsealed or ordered to remain unsealed pursuant to the Court’s order:

- 3 1. Defendant’s Motion To Compel Further Testimony of James Gordon Re Prior
4 Settlements (Dkt. No. 87);
- 5 2. Declaration of Derek A. Newman in Support of Defendants’ Motion to Compel (Dkt. No.
6 88);
- 7 3. Reply in Support of Defendant’s Motion for Undertaking (Dkt. No. 92);
- 8 4. Declaration of Derek A. Newman re Reply in Support of Defendants’ Motion for
9 Undertaking (Dkt. No. 93); and
- 10 5. Declaration of Derek Newman (Dkt. No. 101);

11 In denying these motions to seal, the Court noted that “Local Rule 5(g)(1) requires more
12 than a ‘confidential’ designation and an unspecific sweeping request to seal an entire brief and
13 all of its exhibits.” See Dkt. No. 121, p. 22. Plaintiffs understand that they requested the sealing
14 of material in excess of the confidential portions within the documents. However, at the time,
15 plaintiffs believed that the only way to redact confidential information from already filed
16 documents was to file a motion to seal the entire document because the ECF system does not
17 allow for the replacement of filed documents.¹ Plaintiffs now understand that they may request
18 the documents to be sealed and have redacted versions of those documents in question refiled on
19 the ECF system, thereby narrowly protecting any confidential information from public disclosure
20 where warranted.

21 Pursuant to Local Rule 5(g) and Paragraphs 13 and 15 of this Court’s October 26, 2006
22 Protective Order filed in the above-captioned action (Dkt. No. 37) (hereinafter the “Protective
23 Order”), plaintiffs file this motion to seal and replace certain documents in the public record with
24 the redacted versions of those documents. The motion affects only eleven pages of the 484 page

25 _____
26 ¹ The ECF Helpdesk stated that the only way to seal or redact portions of a filed
document on the ECF system was to file a motion to seal the document in its entirety.

1 deposition of James Gordon, Jr. which was put into the public record as a result of this Court's
2 rulings. Good cause exists to redact minor portions of these 11 pages of the public record that
3 reference and identify a third party, who was not involved in this action, whose relationship and
4 agreement with plaintiffs are irrelevant and unrelated to any issue in this case, and whose identity
5 was inadvertently disclosed in ten pages of the voluminous documents submitted by defendants.

6 **II. EXHIBITS AT ISSUE**

7 Plaintiffs seek to seal and replace the following documents in the public record:

- 8 1. Exhibit A to the Declaration of Derek A. Newman in Support of Defendants' Motion to
9 Compel (Dkt. No. 88);
- 10 2. Exhibit A to the Declaration of Derek A. Newman re Reply in Support of Defendants'
11 Motion for Undertaking (Dkt. No. 93); and
- 12 3. Exhibit A to the Declaration of Derek Newman in Support of Defendants' Motion for
13 Summary Judgment (Dkt. No. 101).²

14 Hereinafter, these documents shall be referred to as the "Exhibits to Newman's Declarations."

15 Each of these exhibits contain excerpts from the Deposition Transcript of James S.
16 Gordon ("Gordon Dep. Transcript"). In the deposition transcript, Mr. Gordon disclosed the
17 name of a non-party with whom plaintiffs entered into a confidential settlement agreement in an
18 unrelated dispute. Gordon disclosed this information with the understanding that it was to be
19 protected from public disclosure under the Protective Order. However, the defendants
20 inadvertently disclosed this confidential information in the Exhibits to Newman's Declarations.
21 Plaintiffs now seek only to redact from these documents the name and identifying information of
22 the third party to the confidential settlement agreement. Proposed redacted versions of the
23

24 ² In the ECF system, Defendants filed the exhibit to Derek Newman's declarations
25 separately for all of these declarations except for Dkt. No. 101, where the declaration and exhibit
26 were filed as one document. Plaintiffs are not requesting that the content of Derek Newman's
declarations be altered in any way. Plaintiffs' request is limited to sealing the exhibits to his
declarations and replacing them with the attached redacted versions.

1 Exhibits to Newman’s Declarations are attached hereto as Exhibits A, B, and C.³

2 **III. ARGUMENT**

3 The information that plaintiffs wish to seal and replace all come from the Gordon Dep.
 4 Transcript, and is information that the deponent provided subject to the Protective Order entered
 5 in this case. Paragraph 15 of the Protective Order provides that the “inadvertent or unintentional
 6 disclosure of confidential information shall not be construed to be a waiver, in whole or in part,
 7 of [the supplying or obtaining party’s] claims of confidentiality.”⁴ During Gordon’s deposition,
 8 counsel for both parties agreed to have pages 39 through 75 of the Gordon Dep. Transcript,
 9 which included information relating to the confidential settlement agreement between Plaintiffs
 10 and a third party, “marked as confidential pursuant to the Protective Order.” See Dkt. No. 101,
 11 Ex. A (Transcript of the Deposition of James Gordon, Jr., Plaintiff), 38:8-9; see also id. at 36:10-
 12 37:14. These pages were already redacted from one of the submitted exhibits pursuant to
 13 counsel’s agreement. See Dkt. No. 101, Ex. A (Transcript of the Deposition of James Gordon,
 14 Jr., Plaintiff), 39-75. However, defendants should have redacted all references to the third party
 15 prior to filing the Exhibits to Newman’s Declarations. The Protective Order allows plaintiffs to
 16 now request that these inadvertent disclosures be sealed and/or redacted.

17 CR 5(g) sets forth a uniform procedure for sealing court records. See CR 5(g)(1).
 18 Records may be sealed when there is “a compelling showing that the public’s right of access is
 19 outweighed by the interests of the public and the parties in protecting files, records, or

20 ³ Pursuant to the Protective Order, Plaintiff has redacted the name of the third party to the
 21 confidential settlement agreement (or specifically identifying information) from the following
 pages of the following documents:

- 22 1. Exhibit A (Dkt. No. 88) – Pages 35, 36, 41, 44, 45.
- 23 2. Exhibit B (Dkt. No. 93) – Page 45.
- 24 3. Exhibit C (Dkt. No. 101) – Pages 38, 80, 82, and 83.

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 26 ⁴ By its terms, the Protective Order remains in full force and effect even after the entry of
 the final judgment in this case. See Dkt. No. 37, ¶ 17.

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1 documents from public review.” See id. However, the public’s right of access does not apply to
2 documents that were filed under seal pursuant to a valid protective order because the Court has
3 already determined that “good cause” exists to protect this information from public disclosure.
4 See Phillips ex rel. Estates of Byrd v. General Motors Corp., 307 F.3d 1206, 1213 (9th Cir. 2002)
5 (“When a court grants a protective order for information produced during discovery, it already
6 has determined that ‘good cause’ exists to protect this information from being disclosed to the
7 public by balancing the needs for discovery against the need for confidentiality.”). As here,
8 federal courts have generally granted protective orders to protect confidential settlement
9 agreements. Id. at 1212.

10 Good cause exists to seal the Exhibits to Newman’s Declarations. The Exhibits to
11 Newman’s Declarations contain excerpts from the Gordon Dep. Transcript that disclose
12 information that is protected by a confidential settlement agreement entered into between
13 plaintiffs and a third party in an unrelated matter. It is also protected by the Protective Order
14 entered in this case. Pursuant to that Protective Order, this information should be sealed/redacted
15 to protect the intent and expectations of the parties to that settlement to keep it confidential. Id.
16 at 1212.

17 The Declarations of Derek A. Newman filed in support of Defendants’ Motion to Compel
18 (Dkt. No. 88) and Defendants’ Motion for Undertaking (Dkt. No. 93) were filed under seal
19 pursuant to the Protective Order. See Dkt. Nos. 86, 91. While the Declaration of Derek A.
20 Newman in support of Defendants’ Motion for Summary Judgment (Dkt. No. 101) was not filed
21 under seal, it contained the same deposition transcript under which Gordon disclosed the identity
22 of the third party assuming it would be protected under the Protective Order. See Dkt. No. 101,
23 Ex. A (Transcript of the Deposition of James Gordon, Jr., Plaintiff), 38:8-9 (parties agreed to
24 mark certain testimony relating to the confidential settlement agreement between plaintiffs and a
25 third party, “as confidential pursuant to the protective order”); see also id. at 36:10-37:14. Under
26 the Protective Order “[a]ll materials containing CONFIDENTIAL INFORMATION that are

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1 submitted to the Court . . . shall remain confidential and shall be accorded in camera treatment.”
2 Dkt. No. 37, ¶ 13. Because this information was disclosed only pursuant to the Protective Order,
3 there is a presumption that good cause exists to protect this information from public disclosure.
4 See Phillips, 307 F.3d at 1213.

5 Moreover, redacting minor portions of Gordon’s Dep. Transcript, that are wholly
6 irrelevant to the underlying cause of action and were not relied upon by the Court in rendering its
7 final judgment in this matter, is unlikely to harm the public’s “interest in understanding the
8 judicial process.” See Phillips, 307 F.3d at 1213. The information that the plaintiffs now wish to
9 seal/redact, is information relating to a separate and independent settlement agreement with a
10 third party in an unrelated action. Not only are the terms underlying the confidential settlement
11 agreement with a third party irrelevant, the identity of the third party to the independent
12 settlement agreement is completely unrelated to the underlying cause of action. Indeed, the
13 motions and reply, for which these declarations are filed in support, make no reference to the
14 identity of the third party to the confidential settlement agreement.⁵ And, this Court ruled on
15 defendants’ motion for summary judgment without reliance on the identity of the third party and
16 without ruling on Defendants’ Motion to Compel Further Testimony of James Gordon Re Prior
17 Settlements (Dkt. No. 86), wherein defendants sought to obtain additional information relating to
18 confidential settlement agreements that plaintiffs entered into with other third parties. Therefore,
19 the public does not need access to the identity of the third party to understand the Court’s ruling.
20 See id. Additionally, since plaintiffs only ask that the name and identifying information of the
21 third party be redacted from the Exhibits to Newman’s Declaration, while keeping all remaining
22 information intact, whatever minimal harm that would result to the public is likely eliminated.

23 IV. CONCLUSION

24 _____
25 ⁵ Plaintiffs do not request that the Court seal or replace Defendant’s Motion To Compel
26 Further Testimony of James Gordon Re Prior Settlements (Dkt. No. 87), or Defendants’ Reply in
Support of Defendant’s Motion for Undertaking (Dkt. No. 92), which this Court ordered
unsealed.

1 This action is now closed. The information plaintiffs seek to seal/redact are minimal and
2 had no bearing the Court's decision or any issue in this action. Good cause exists to grant
3 plaintiffs' motion, and any public interest in accessing this particular information is probably
4 minimal. Plaintiffs only disclosed the confidential information pursuant to the Protective Order.
5 Allowing this confidential information to remain public will unnecessarily expose plaintiffs to
6 potential third-party liability for breach of the confidential settlement agreement. For all the
7 foregoing reasons, plaintiffs respectfully request that this Court grant its Motion to Seal Certain
8 Documents and Replace with Redacted Versions.

9
10 DATED: June 14, 2007.

11 I.JUSTICE LAW, P.C.

12
13 By /s/ Robert J. Siegel
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19
20 **Certificate of Service**

21 I, hereby, certify that on June 14, 2007, I filed this document with this Court via approved
22 electronic filing, and served the following:

23 Attorneys for Defendants: Newman & Newman, Derek Newman

24 /s/ Robert J. Siegel
25 Robert J. Siegel