

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 DARREN CHAKER-DELNERO,

Case No. 2:06-cv-00008-JAD-EJY

5 Plaintiff,

ORDER

6 v.

7 NEVADA FEDERAL CREDIT UNION, *et*
8 *al.*

Defendants.

9
10 Before the Court are Plaintiff Darren Chaker-Delnero's ("Plaintiff") Application to File
11 Under Seal ("Application") (ECF No. 33), which attaches a Motion for Reconsideration of Ex Parte
12 Motion to Seal Records ("Motion for Reconsideration") (ECF No. 33-1), and Application to File
13 Under Seal (ECF No. 35). No responses to these filings were received by the Court.

14 **I. Motion for Reconsideration**

15 Plaintiff moves the Court to reconsider its prior Order denying Plaintiff's Ex Parte Motion
16 to Seal the entire record in this case. ECF No. 32 at 3. Plaintiff contends in his present Motion that
17 the Court "reconsider its ruling since it failed to embrace California law." ECF No. 33-1 at 1.
18 Plaintiff also requests the Court take judicial notice of recent orders by other federal and state courts
19 regarding Plaintiff's requests to seal records in other cases. *Id.* at 2-3.

20 A. Legal Standards

21 Ninth Circuit precedent and the Local Rules of Practice for the District of Nevada explain
22 that the Court "possesses the inherent power to reconsider an interlocutory order for cause, so long
23 as the court retains jurisdiction." United States District Court for the District of Nevada Local Rule
24 59-1; *see also Petrarca v. Aranas*, Case No. 2:15-cv-001231-RFB-CWH, 2016 WL 884638, at *1
25 (D. Nev. Mar. 7, 2016) (citing *City of L.A., Harbor Div. v. Santa Monica Bayskeeper*, 254 F.3d 882,
26 885 (9th Cir. 2001)). Local Rule 59-1 and Ninth Circuit cases also provide that reconsideration may
27 be appropriate if "(1) there is a newly discovered evidence that was not available when the original
28 motion or response was filed, (2) the court committed clear error or the initial decision was

1 manifestly unjust, or (3) if there is an intervening change in controlling law.” LR 59-1; *S.E.C. v.*
2 *Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1100 (9th Cir. 2010). “A motion for reconsideration
3 is not an avenue to relitigate the same issues and arguments upon which the court already has ruled.”
4 *Petrarca*, 2016 WL 884638, at *1 (internal quotation marks omitted) (quoting *In re AgriBioTech,*
5 *Inc.*, 319 B.R. 207, 209 (D. Nev. 2004)).

6 United States Supreme Court case law holds that there is a general right “to inspect and copy
7 public records and documents, including judicial records and documents.” *Nixon v. Warner*
8 *Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). Unless a particular court record is one that is traditionally
9 kept secret, there is a strong presumption in favor of access to court records. *Hagestad v. Tragesser*,
10 49 F.3d 1430, 1434 (9th Cir. 1995) (citing *Valley Broadcasting Co. v. U.S. Dist. Court for the Dist.*
11 *of Nev.*, 798 F.2d 1289, 1293 (9th Cir. 1986)). A party that seeks to seal a judicial record bears the
12 burden of overcoming the public access presumption by providing sufficiently compelling reasons
13 for doing so. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing
14 *San Jose Mercury News v. U.S. Dist. Court for the N. Dist. of Cal.*, 187 F.3d 1096, 1102 (9th Cir.
15 1999)). Compelling reasons sufficient to outweigh the public interest in access exist when
16 information becomes the vehicle for improper purposes such as the use of records to gratify spite,
17 promote public scandal, spread libelous statements or reveal trade secrets. *Nixon*, 435 U.S. at 598.
18 The presumption of access may be rebutted only on the basis of articulable facts known to the court,
19 rather than on unsupported hypothesis or conjecture. *Hagestad*, 49 F.3d at 1434.

20 The Ninth Circuit also established an exception to the compelling reasons standard that
21 allows a party to meet a lower good cause standard derived from Fed. R. Civ. P. 26(c). *Foltz*, 331
22 F.3d at 1135. Rule 26(c) authorizes federal courts “for good cause, [to] issue an order to protect a
23 party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R.
24 Civ. P. 26(c). When the district court considers whether to seal a record, the court will focus on how
25 strongly the record correlates to the merits of a case. *Center for Auto Safety v. Chrysler Group, LLC*,
26 809 F.3d 1092, 1099 (9th Cir. 2016). If a party is attempting to seal a record that is directly related
27 to the underlying cause of action, the party must establish a compelling reason to seal. *Id.* (Internal
28

1 citations omitted.) In contrast, when the record at issue is unrelated or tangentially related to the
2 underlying cause of action, the party may successfully seal a record upon a showing of good cause.
3 *Id.*

4 When granted, a sealing order must be narrowly tailored. *McCurry v. Ocwen Loan Servicing,*
5 *Inc.*, Case No. 2:16-cv-00191-RFB-PAL, 2016 WL 4926430 (D. Nev. 2016) (citing *Press-*
6 *Enterprise Co. v. Superior Ct. of Cal., Riverside Cty.*, 464 U.S. 501, 512 (1984)). Further, sealing
7 documents is improper when confidential information can instead be redacted. *In re Roman Catholic*
8 *Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011).

9 B. Plaintiff's Argument

10 Plaintiff asks that the Court reconsider its prior Order because the Court “failed to embrace
11 California law.” ECF No. 33-1 at 1. Plaintiff argues that the Court should not have “discarded the
12 California criteria” contained in § 367.3(a)(3) of the California Code of Civil Procedure by using the
13 legal standard described above. *Id.* at 2. Section 367.3(a)(3) states that a person who is an active
14 participant in the address confidentiality program is considered a “protected person.” Cal. Code Civ.
15 Proc. § 367.3(a)(3). A protected person designation allows a party to proceed using a pseudonym
16 and allows the party to exclude or redact “identifying characteristics” from filings with the court.
17 Cal. Code Civ. Proc. § 367.3(b)(1). “Identifying characteristics” includes the protected person’s
18 name, address, age, marital status, relationship to other parties, race and ethnic background,
19 telephone number, email address, social media profiles, online identifiers, contact information, and
20 images of the protected person. Cal. Code Civ. Proc. § 367.3(a)(1).

21 Plaintiff also requests the Court take judicial notice of recent court orders involving the
22 sealing of what Plaintiff contends are his court records. ECF No. 33-1 at 2-3. Attached to Plaintiff’s
23 Motion for Reconsideration are orders from the following courts: the District Court of Clark County,
24 Nevada; the Superior Court of California, County of San Diego; the U.S. District Court for the
25 Southern District of California; the U.S. District Court for the Southern District of Texas; the U.S.
26 District Court for the Central District of California; and the U.S. District Court for the Eastern
27 District of Pennsylvania. *See* ECF No 33-1 at 5-26. Plaintiff’s name does not appear in all of these
28 orders. The relief granted ranges from the redaction of limited records to the sealing of the entire

1 case. *Id.* Apart from submitting decisions by other courts regarding what Plaintiff contends are his
2 attempts to seal records or redact his personal information, Plaintiff does not include any additional
3 substantive arguments explaining why this Court’s prior Order was in error.

4 C. Analysis

5 Plaintiff states that this Court “failed to embrace California law” in its prior Order denying
6 Plaintiff’s request to seal the entire record in this case. ECF No. 33-1 at 1. However, this Court is
7 bound by Ninth Circuit precedent regarding public access to court records rather than the California
8 Code of Civil Procedure. As explained by the Court in its July 1, 2021 Order, the present Motion
9 for Reconsideration does not provide a compelling reason for sealing the entirety of this case.

10 The Ninth Circuit held that “the identity of the parties in any action, civil or criminal, should
11 not be concealed except in an unusual case, where there is a need for a cloak of anonymity.” *United*
12 *States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008) (quoting *United States v. Doe*, 488 F.3d 1154,
13 1156 n. 1 (9th Cir. 2007)). When determining whether pseudonymity is necessary, the Court will
14 balance the need to protect a person from injury or harassment against the presumption that the
15 identity of parties is public information. *Stoterau*, 524 F.3d at 1012. However, Plaintiff fails to
16 explain how redacting information contained within public filings in this case, available throughout
17 this dispute that began in 2006, will protect him from some current or future harm or harassment.
18 Plaintiff has not introduced any additional evidence that he is currently a victim of harassment. Since
19 Plaintiff failed to introduce newly discovered evidence, failed to establish that this Court’s prior
20 Order was manifestly unjust or clearly erroneous, and failed to demonstrate that there has been an
21 intervening change in controlling law, the Court denies Plaintiff’s Motion for Reconsideration.

22 The above said, and because Plaintiff previously establish that he is a member of the
23 California Safe at Home Program, the Court will exercise its discretion and order the Clerk of Court
24 to redact Plaintiff’s address from the docket and substitute it with his Safe at Home address: P.O.
25 Box 1679, Sacramento, CA 95812. Plaintiff may also use this address if, for some reason, he
26 continues to file things in this Court despite the fact that this matter has been dormant since 2012.
27 The Court will also grant Plaintiff’s applications to file under seal (ECF Nos. 33, 35), since these
28 filings appear to contain sealed court documents and contain information regarding Plaintiff’s or

1 unknown others' participation in a state confidentiality program. The Court finds that Plaintiff has
2 established good cause under *Foltz* to keep these documents confidential.

3 **II. Order**

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Applications to File Under Seal
5 (ECF Nos. 33, 35) are GRANTED. The filings attached thereto shall remain sealed.

6 IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration of Ex Parte Motion
7 to Seal Records (ECF No. 33-1) is GRANTED in part and DENIED in part.

8 IT IS FURTHER ORDERED that the Clerk of Court is directed to remove Plaintiff's address
9 from the public docket and replace it with Plaintiff's Stay at Home Address: P.O. Box 1679,
10 Sacramento, CA 95812. Plaintiff may use this address on pleadings if, for some reason, he continues
11 to file things in this Court.

12 IT IS FURTHER ORDERED that all other requested relief is DENIED.

13 DATED THIS 28th day of July, 2021.

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16 ELAYNA J. YOUCHAK
17 UNITED STATES MAGISTRATE JUDGE
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