

Tentative Rulings for December 17, 2024
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: **Yang v. Kulkarni**
Superior Court Case No. 22CECG03079

Hearing Date: December 17, 2024 (Dept. 501)

Motion: by Defendant to Seal and Compel Arbitration

Tentative Ruling:

To deny. (Cal. Rules of Court, rule 2.550(d).) To continue defendant's motion to compel arbitration to Thursday, January 9, 2024, at 3:30 p.m., to afford time for compliance with California Rules of Court, rule 2.551(b)(6), prior to the hearing on the motion for compel arbitration.

Defendant may file an amended declaration in support of the reply with the proper redactions as noted below no later than on Thursday, January 2, 2024.

Explanation:

Under California Rules of Court, rule 2.550(c), "Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) "A record must not be filed under seal without a court order. *The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties.*" (Cal. Rules of Court, rule 2.551(a), emphasis added.)

"A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing *facts sufficient to justify the sealing.*" (Cal. Rules of Court, rule 2.551(b)(1), emphasis added.)

"The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion or application is made, unless good cause exists for not lodging it or the record has previously been lodged under (3)(A)(i). Pending the determination of the motion or application, the lodged record will be conditionally under seal." (Cal. Rules of Court, rule 2.551(b)(4).)

The court must make certain express findings in order to seal records. Specifically, the court must find that the facts establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, rule 2.550(d).)

Also, “[a]n order sealing the record must: (A) Specifically state the facts that support the findings; and (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.” (Cal. Rules of Court, rule 2.550(e)(1)(A), (B).)

“In *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, *supra*, 20 Cal.4th at pages 1217–1218, 86 Cal.Rptr.2d 778, 980 P.2d 337, the California Supreme Court identified the constitutional requirements applicable to a request to seal court records as follows: ‘[B]efore substantive courtroom proceedings are closed or transcripts are ordered sealed, a trial court must hold a hearing and expressly find that (i) there exists an overriding interest supporting closure and/or sealing; (ii) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (iv) there is no less restrictive means of achieving the overriding interest.’” (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1279.)

A binding contractual obligation not to disclose information may constitute a potentially overriding interest justifying a sealing order. (*Id.* at p. 1283.) “Nonetheless, once it is established there is a potential overriding interest, the party seeking closure or sealing must prove prejudice to that interest is substantially probable.” (*Id.* at p.1283, internal citation omitted.)

Also, “[t]he mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” (*Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir.2006).) The court must “conscientiously balance [] the competing interests” of the public and those of the party seeking to keep certain judicial records secret. (*Foltz v. State Farm Mutual Ins. Co.* (9th Cir. 2003) 331 F.3d 1122, 1135.) In considering these interests, the court must “base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” (*Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995) (internal citations omitted).)

Here, defendant moves to seal the unredacted copy of the Reply Declaration of Eric Carlile in Support of Defendant's Petition to Compel Arbitration and Stay Action. While there is some protected health information (“PHI”) and other private information such as plaintiff's medical record number, date of birth, home address, telephone number, and email address, contained within an exhibit, Exhibit L, attached to the declaration, any privacy concerns can easily be alleviated by simply filing redacted copies of plaintiff's grievance and Kaiser Foundation Health Plan, Inc.'s responses. Other than this information, the remainder of Mr. Carlile's declaration, including plaintiff's summary of events in her grievance and the body of Kaiser's October 30, 2020, response letter not do appear to qualify as PHI.

Therefore, defendant has failed to meet his burden of showing facts that would justify sealing the declaration, i.e. that the interest in sealing the documents outweighs the public interest in keeping court files open or that any party would suffer prejudice if the information were placed in the public file. As a result, the court intends to deny the motion to seal the Reply Declaration of Eric Carlile.

