

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the  
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**MOTION TO SEAL PLAINTIFFS’  
REPLY TO MOTION TO COMPEL AND  
OPPOSITION TO DEFENDANTS’  
CROSS-MOTION FOR A PROTECTIVE  
ORDER**

**Note on Motion Calendar: April 5, 2019**

**I. INTRODUCTION**

Plaintiffs respectfully move for leave to file under seal unredacted versions of Plaintiffs’ Reply in Support of Motion to Compel and Opposition to Defendants’ Cross-Motion for a Protective Order (“Reply”) and the Exhibits C-K attached to the Declaration of Sameer Ahmed in support of the Reply (“Ahmed Decl.”). Plaintiffs will publicly file a redacted version of the Reply, and unredacted versions of these documents will be provisionally filed under seal simultaneously with the filing of this motion.

On February 21, 2019, Plaintiffs filed a motion to compel production of why the Named Plaintiffs were subjected to CARRP and a random sample of class members’ A-files. Dkt. 221 at 1-2. The motion also requested that the Court permit Plaintiffs to publicly post a Notice to Potential Class Members. *Id.* at 1. In response, Defendants filed an opposition to the motion to

1 compel and cross-motion for a protective order. Dkt. 226. In response, Plaintiffs’ rely on two  
2 categories of documents. *See* Ahmed Decl. ¶¶ 3-12. First, Defendants produced Exhibits B-E and  
3 designated them as “Confidential” under the parties’ Protective Order, Dkt. 86. *See id.* ¶¶ 3-6.  
4 Following a meet and confer on March 20, 2019, Defendants agreed to withdraw the  
5 confidentiality designation for Exhibit B. *See id.* at ¶ 3. Second, Exhibits F-K include sensitive  
6 and personal information, disclosure of which would cause harm to the individuals the  
7 information pertains to and that Plaintiffs cannot fully redact pursuant to LCR 5(g)(1)(B). *See id.*  
8 ¶¶ 7-12. Plaintiffs seek to file under seal Exhibits C-K, as well as portions of its Reply that  
9 discuss these exhibits.

## 10 II. CERTIFICATION

11 Pursuant to LCR 5(g)(3)(A), counsel for Plaintiffs certify that they met and  
12 conferred telephonically with Defendants’ counsel regarding the need for this motion on March  
13 20, 2019. Participants on the call included Sameer Ahmed, Cristina Sepe, and Heath Hyatt for  
14 the Plaintiffs and Ethan Kanter, Andrew Brinkman, Lindsay Murphy, and Brendan Moore for the  
15 Defendants. Following the meet and confer, counsel for Defendants agreed to remove the  
16 confidentiality designation as to Exhibit B. Defendants’ counsel stated they do not take a  
17 position on the motion to seal as to Exhibits F-K at this time.

## 18 III. ARGUMENT

### 19 A. Legal Standard

20 The strong presumption of public access to court records ordinarily requires the moving  
21 party to provide compelling reasons to seal a document. *Kamakana v. City & County of*  
22 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But, the “good cause” standard applies to  
23 “sealed materials attached to a discovery motion unrelated to the merits of a case.” *Ctr. for Auto*  
24 *Safety, v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (citing *Phillips ex rel.*  
25 *Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213-14 (9th Cir. 2002) and *Foltz v. State*  
26

1 *Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Here, the good cause standard  
2 applies because the sealed materials are related to the Motion to Compel, Dkt. 221, and Cross-  
3 Motion for Protective Order, Dkt. 226—“discovery motion[s] unrelated to the merits of the  
4 case.” *Ctr. for Auto Safety*, 809 F.3d at 1097. The Court need only find that good cause exists to  
5 seal the portions of Plaintiffs’ Reply and the supporting exhibits.

6 **B. The Exhibits and Portions of the Reply Satisfy the Good Cause Standard**

7 Plaintiffs move to seal Exhibits C-E because Defendants have designated the three  
8 documents as confidential under the protective order, Dkt. 86 at 4 (“nor shall [Confidential  
9 Information] be included in any pleading, record, or document that is not filed under seal with  
10 the Court or redacted in accordance with applicable law.”); *see also* LCR 5(g)(3) (“the party who  
11 designated the document confidential must satisfy subpart (3)(B) in its response to the motion to  
12 seal or in a stipulated motion.”).

13 Plaintiffs seek to seal Exhibits F-K because they contain confidential personal and  
14 sensitive information that cannot be redacted to comply with LCR 5(g)(1)(B). Included in the  
15 information filed under seal are detailed allegations about whether and why the government  
16 claims that those individuals might be national security concerns. Public disclosure of this  
17 information could cause individuals annoyance, oppression, or undue burden and infringe on  
18 their privacy interests. *See Nursing Home Pension Fund v. Oracle Corp.*, No. C01-00988 MJJ,  
19 2007 WL 3232267, at \*2 (N.D. Cal. Nov. 1, 2007) (“The Ninth Circuit has found that  
20 compelling reasons exist to keep personal information confidential to protect an individual’s  
21 privacy interest and to prevent exposure to harm or identity theft.”); *Big3 LLC v. Al-Rumaihi*,  
22 No. CV 18-3466-DMG (SKX), 2018 WL 4847070, at \*1 (C.D. Cal. June 12, 2018) (granting  
23 motion to file under seal copies of defendants’ passport and B-1 visa because the “documents  
24 contain sensitive personal information”). Plaintiffs have redacted portions of Exhibits F-K  
25 pursuant to LCR 5.2(a).  
26

1 For the same reasons, Plaintiffs also seek to file under seal small portions of their Reply  
2 that discuss Exhibits C-K. *See* LCR 5(g)(5)(B).

3 **IV. CONCLUSION**

4 Plaintiffs respectfully request that the unredacted versions of Plaintiff's Reply to their  
5 Motion to Compel and Opposition to Defendants' Cross-Motion and the Supporting Documents,  
6 and Exhibits C-K, remain under seal.

1 Respectfully submitted,

DATED: March 21, 2019

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**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I caused service of the foregoing document via the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

DATED March 21, 2019, at Seattle, Washington.

s/ Cristina Sepe  
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