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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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| AYSE SEN, | } | Case No.12cv2878 AJB (BGS) |
| Plaintiff, | } | ORDER DENYING MOTION TO FILE UNDER SEAL |
| v. | } | [Doc. No. 31] |
| AMAZON.COM, INC., | } | [Doc. No. 31] |
| Defendants. | } | |

Presently before the Court is Defendant Amazon.com’s (“Amazon”) Application to File its Motion for Enforcement of Settlement Agreement Under Seal (“Application”). (Doc. No. 31.) The Court, having reviewed the Application and the papers in support, finds that good cause has not been shown. Thus, for the following reasons, the Court DENIES the Application.

I. LEGAL STANDARD

Courts have historically recognized a “general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc ’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to overcome this strong presumption, a party seeking to seal a judicial record must articulate justifications for sealing that outweigh the public policies favoring disclosure. *See id.* at 1178–79. Because

1 the public's interest in non-dispositive motions is relatively low, a party seeking to seal a
2 document attached to a non-dispositive motion need only demonstrate "good cause." *Pintos*
3 *v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying "good cause" standard
4 to all non-dispositive motions, because such motions " 'are often unrelated, or only
5 tangentially related, to the underlying cause of action' " (citing *Kamakana*, 447 F.3d at
6 1179)). Here, a motion to compel enforcement of settlement is a dispositive matter and the
7 higher burden for sealing the pleadings must be met.

8 **II. DISCUSSION**

9 Confidential settlement agreements are ordinarily private documents that do not have
10 to be disclosed. If the information is not part of the public record, there is no First
11 Amendment right to access. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984).
12 However, where a "confidential" agreement makes its way into the court file, it is subject
13 to disclosure. *Jessup v. Luther*, 277 F.3d 926, 929 (7th Cir. 2002). In addition, when parties
14 to a confidential settlement agreement ask a court to interpret or enforce their agreement,
15 the contract enters the record and thus becomes available to the court (and therefore the
16 public). "The court's approval of a settlement or action on a motion are matters which the
17 public has the right to know about and evaluate." *Bank of America Nat'l Trust v. Hotel*
18 *Rittenhouse Associates*, 800 F.2d 339 (3rd Cir. 1986).

19 Where parties indicate that the settlement is "confidential," they are required to meet
20 the same "good cause" showing and the same analysis and findings by the court must be
21 made before the record can be sealed. The district court should not rely on the general
22 interest in encouraging settlement to enter a confidentiality order, but should require a
23 particularized showing of the need for confidentiality in reaching the settlement. *Pansy v.*
24 *Borough of Stroudsburg*, 23 F.3d 772, 788-89 (3rd Cir.1994).

25 Amazon seeks to file its Motion to Enforce the Settlement Agreement under seal.
26 Amazon argues that the confidentiality of the Settlement Agreement was a critical term to
27 the parties entering into the Agreement and that references to the terms and conditions are
28 critical to the arguments Amazon makes in its Motion. (Anderson Decl., Doc. No. 33 at 2.)

1 However, as discussed, a district court should not rely on the general interest in encourag-
2 ing settlement to enter a confidentiality order. Without additional arguments in support of
3 the Application, Amazon has not met its burden of showing good cause. Despite the Court's
4 grant of a second opportunity to show good cause, Amazon has still failed to do so.
5 Accordingly, Amazon's reason in seeking to file under seal does not overcome the public's
6 right of access.

7 **III. CONCLUSION**

8 Defendant Amazon.com's Application to File its Motion for Enforcement of
9 Settlement Agreement Under Seal is DENIED.

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11 IT IS SO ORDERED.

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13 DATED: October 9, 2013

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16 Hon. Anthony J. Battaglia
17 U.S. District Judge
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