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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THAMAR SANTISTEBAN
CORTINA, on behalf of herself, all
others similarly situated, and the
general public,

Plaintiff,

v.

WAL-MART STORES, INC., and
LANG PHARMA NUTRITION,
INC.,

Defendants.

Case No. 13-cv-02054-BAS-DHB

ORDER:

- (1) GRANTING PLAINTIFF’S
MOTION TO SEAL
[ECF No. 95];**
- (2) GRANTING PARTIES’ JOINT
MOTION TO CONTINUE
PLAINTIFF’S DEADLINE TO
SIT FOR DEPOSITION
[ECF No. 94];**
- (3) GRANTING PLAINTIFF’S
MOTION TO VOLUNTARILY
DISMISS THE CASE WITHOUT
PREJUDICE [ECF No. 71]**

On September 1, 2016, the Court granted Plaintiff Thamar Santisteban Cortina’s motion to voluntarily dismiss this case without prejudice pursuant to two conditions: (1) that Plaintiff agree to use existing discovery from this case in the anticipated state court action, and (2) that Plaintiff sit for her deposition on or before September 22, 2016. (ECF No. 90.)

1 The parties now jointly move to continue Cortina’s deadline to sit for her
2 deposition. (ECF No. 94.) Plaintiff explains that she is amenable, in principle, to the
3 Court’s conditions for non-prejudicial dismissal, but that she is unable to sit for her
4 deposition because of medical reasons. Plaintiff’s counsel has filed a declaration
5 explaining Cortina’s medical situation, and Defendants have consented to
6 continuing the deadline for Cortina’s deposition until she is medically able to sit for
7 it.

8 **Plaintiff’s Motion to Seal**

9 The Court first addresses Plaintiff’s motion to file under seal a declaration by
10 her counsel (“Fitzgerald Declaration,” ECF No. 96) explaining details of Plaintiff’s
11 medical situation. (ECF No. 95.) In the Ninth Circuit, the legal standard governing
12 public access to motions and documents attached thereto turns on whether the
13 motion at issue is “more than tangentially related to the merits of the case.” *Ctr. for*
14 *Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). When the
15 underlying motion is more than tangentially related to the merits, the “compelling
16 reasons” standard applies. *Id.* at 1096–98. When the underlying motion does not
17 surpass the tangential relevance threshold, the “good cause” standard applies. *Id.*
18 Here, the Court finds that the joint motion to continue the deadline for Plaintiff’s
19 deposition is not more than tangentially related to the merits, and so the good cause
20 standard applies. Under this standard, a court may grant a motion to seal where the
21 record at issue is one that has been “traditionally kept secret,” *Foltz v. State Farm*
22 *Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003), or contains information
23 that might subject a party to annoyance, embarrassment, or oppression, *see Ctr. for*
24 *Auto Safety*, 809 F.3d at 1097.

25 In this case, the Court finds there is good cause to seal the Fitzgerald
26 Declaration. Plaintiff explains that the Declaration contains highly-sensitive
27 personal medical and health information of a type that has been traditionally kept
28 secret. The Court agrees. As Plaintiff explains, laws such as the Health Insurance

1 Portability and Accountability Act (HIPAA) are aimed at protecting individually
2 identifiable health information similar to that contained in the Declaration. *See* 42
3 U.S.C. §§ 1320d(6); 1320d-6. Moreover, district courts in the Ninth Circuit have
4 frequently concluded that the need to protect medical privacy satisfies not only the
5 good cause standard, but also the more exacting compelling reasons standard. *See,*
6 *e.g., Karpenski v. Am. Gen. Life Co., LLC*, No. 2:12-cv-01569RSM, 2013 WL
7 5588312, at * 2 (W.D. Wash. Oct. 9, 2013) (finding compelling reasons to seal
8 court filings that contained copies of plaintiff's private medical records and
9 deposition testimony making direct reference to information in plaintiff's medical
10 records); *G. v. Hawai'i*, Civ. No. 08-00551 ACK-BMK 2010 WL 2607483, at * 1-
11 2 (D. Haw. June 25, 2010) (finding compelling reasons test satisfied where filings
12 at issue contained information about plaintiffs' medical conditions and treatment
13 and disclosed plaintiffs' identities). Accordingly, the Court GRANTS Plaintiff's
14 motion to file under seal the Fitzgerald Declaration. (ECF No. 95.)


15 **Joint Motion to Continue Plaintiff's Deposition Deadline**

16 In light of the seriousness of Plaintiff's medical situation, and considering
17 Defendants' consent to Plaintiff's request, the Court **GRANTS** the joint motion to
18 continue the deadline for Plaintiff to sit for her deposition. (ECF No. 94.) Cortina is
19 hereby **ORDERED** to sit for her deposition when she is medically able to do so.

20 In light of the foregoing, the Court **GRANTS** Plaintiff's motion to
21 voluntarily dismiss this case without prejudice. (ECF No. 71.) The Court will retain
22 jurisdiction for the purpose of ensuring Plaintiff satisfies the conditions of the
23 dismissal.

24 **IT IS SO ORDERED.**

25
26 **DATED: September 20, 2016**

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Hon. Cynthia Bashant
United States District Judge