

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	CR 05-0017 ABC	Date	December 15, 2009
Title	United States v. Anne Masters Sholtz		

Present: The Honorable	Audrey B. Collins, Chief Judge	
Angela Bridges	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for the United States:	Attorneys Present for Defendant(s):	
None	None	

Proceedings: ORDER RE NON-PARTY MOTION TO UNSEAL DOCUMENTS (In Chambers)

Pending before the Court is non-party Congressmen Joe Barton and Greg Walden's (the "Congressmen's") motion to unseal pleadings in this case, filed on November 23, 2009. The government filed no opposition, and Defendant Anne Master Sholtz filed a declaration indicating she does not oppose the unsealing, so long as she is given the opportunity to request redaction of certain information contained in the documents. The Congressmen did not request oral argument, and the Court finds this matter appropriate for resolution without oral argument, so the December 21, 2009 hearing date is VACATED. Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons below, the Court GRANTS the Congressmen's motion, but before ordering any documents unsealed, the Court will provide Sholtz with the opportunity to identify information potentially subject to redaction in any documents subject to unsealing.

On June 15, 2004, Sholtz was indicted on six counts of wire fraud related to an alleged fraudulent pollution credit trading scheme carried out in the context of the Southern California Regional Clean Air Incentives Market, or RECLAIM. She pled guilty to one count and, on April 15, 2008, was sentenced by this Court. During the proceedings in this case, the Court sealed several documents filed by the parties, including Docket Nos. 45, 46, 48, 49, 51, 56, 57, 58, 63, 64, 65, 76, 77, 78, 79, 93, 94, 95, 105, 107, and 113. The Congressmen move the Court to unseal these documents to aid in Congress's consideration of federal legislation that would implement a national pollution cap-and-trade system akin to RECLAIM; they particularly aver that the sealed documents in this case could shed light on the possibility of fraud in a national cap-and-trade system.

The public has a presumptive right to access judicial records based on the First Amendment and commonlaw. See CBS, Inc. v. U.S. Dist. Court for Central Dist. of Cal., 765 F.2d 823, 825 (9th Cir. 1985). That right extends to pre-trial, trial, and post-trial

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documents in criminal proceedings. Id. The party seeking to keep information secret bears the burden of overcoming the presumption. Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). To overcome the presumption, a party must identify "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.'" CBS, 765 F.2d at 825 (quoting Press-Enter. Co. v. Superior Ct., 464 U.S. 501, 510 (1984)).

The Court must balance the competing interests of the public and the party seeking the information to be sealed, and the Court must articulate the factual basis for sealing records, without hypothesizing or relying on conjecture. Kamakana, 447 F.3d at 1179. Compelling reasons for keeping documents sealed include whether the documents might be used for an improper purpose like gratifying personal spite, promoting public scandal, circulating libelous statements, or releasing trade secrets. Id. However, "[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." Id.

The Congressmen have sufficiently demonstrated a First Amendment right to the sealed documents, which include briefing regarding the parties' respective sentencing positions and filings regarding expert services. Courts have found similar documents in criminal proceedings subject to a right of disclosure. See In re Copley Press, Inc., 518 F.3d 1022, 1026 (9th Cir. 2008) (portions of plea colloquy transcripts); Oregonian Pub. Co. v. U.S. Dist. Court for Dist. of Or., 920 F.2d 1462, 1466-67 (9th Cir. 1990) (plea agreement and related documents); In re Wash. Post Co., 807 F.2d 383, 390 (4th Cir. 1986) (plea and sentencing documents and hearing transcripts); CBS, 765 F.2d at 825 (documents supporting motion for reduction of sentence). They have also demonstrated a common law right to access the documents. See, e.g., United States v. Schlette, 842 F.2d 1574, 1582-84 (9th Cir. 1988) (finding common law right to access pre-sentence report).

Neither the government nor Sholtz claims the Congressmen lack the right to access the sealed documents identified above or that a countervailing interest prevents unsealing the sealed documents. In fact, the only concern identified in the Court's sealing orders is the pretrial publicity that might result from disclosure of sensitive information, but the danger of prejudice has since passed because the litigation has concluded. Cf. United States v. Brooklier, 685 F.2d 1162, 1172 (9th Cir. 1982) ("[T]ranscripts of properly closed

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proceedings must be released when the danger of prejudice has passed."). Thus, the Court finds that the Congressmen have a right to the unsealing of the documents listed above.

However, even though Sholtz does not oppose the unsealing, she complains that the sealed documents contain private or privileged information like "salary information of third parties . . . private medical information, telephone information, social security/tax ID numbers, information on alleged illegal activities of unrelated third-parties whose alleged activities have not yet been adjudicated, and/or attorney-client issues brought before the court." (Sholtz Decl. ¶ 10.) As a result, Sholtz requests that the Court give her the opportunity to propose redactions of information contained in the sealed documents and asks the Court to notify third parties of the disclosure of potentially private information. (Id.)

Before ordering the documents unsealed, the Court will allow Sholtz to submit to the Court proposed redactions in the sealed documents since doing so balances her interests in privacy and the interests of third parties against the interest in public disclosure of information. See United States v. Kaczynski, 154 F.3d 930, 931 (1998) (finding district court struck proper balance by ordering disclosure of competency reports but allowing redactions of certain portions based on defendant's privacy interests and the interests of third parties). To justify any such redactions, however, Sholtz must identify (1) the matter to be redacted, (2) the document in which it appears and its location in that document, (3) the legal justification for redacting the information, and (4) the name and contact information (if known) of any third party who should be notified of the unsealing of the documents. Failure to provide any single piece of this information will result in denial of the request.

Thus, the Court GRANTS the Congressmen's motion to unseal the documents identified above but GRANTS Sholtz the opportunity to propose redactions to the documents before ordering them unsealed. Sholtz must file any request for redactions **no later than Monday, January 11, 2009**. Sholtz may request to file this information ex parte and conditionally under seal so the Court may consider the information in camera and prevent any unnecessary disclosure of private information.

IT IS SO ORDERED.

Initials of Preparer

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