

United States Bankruptcy Court for the Northern District of California

Procedures for Filing Redacted or Sealed Confidential or Highly Sensitive Documents

(Effective ~~March 23, 2021~~ February 7, 2022)

General Instructions

Sealing or redacting filed documents is disfavored under the law and by this court. See 11 U.S.C. § 107. No document may be filed in redacted form or filed under seal and made part of the record except pursuant to court order. Accordingly, any request to file a redacted document or to file a document under seal must satisfactorily explain why the court should disregard well-established law and its long-standing policy of open access to the public record.

Parties opposing a request to file a redacted document or to file a document under seal should respond as soon as possible, as the court typically will act promptly and without a hearing on any motion filed pursuant to these Procedures.

These Procedures address the filing in redacted form and filing under seal of two categories of information or documents: (1) Highly Sensitive Material (“HSM”) or Documents (“HSD”); and (2) Confidential Documents. The procedures applicable to HSM and HSD do not apply to Confidential Documents and vice versa.

I. Highly Sensitive Material or Documents

Following a security audit of CM/ECF by the Department of Homeland Security in 2021, the Secretary of the Judicial Conference of the United States issued a policy directive, instructing all federal courts to accept HSM and HSD for filing only in paper format or via a secure electronic device, and requiring them to store HSM and HSD in a secure paper filing system or on a secure, standalone server, not connected to any network. Unless or until the Judicial Conference alters this directive, no HSM or HSD should be submitted for filing by any means other than those set forth in these Procedures.

This court currently does not have the capability to safely store HSM or HSD in electronic format, so HSM or HSD will be accepted in paper format only, in accordance with these Procedures.

HSM and HSD are defined very narrowly, and include *only* unclassified, sealed material or documents involving: foreign, sovereign interests; criminal activity related to cybersecurity, intellectual property, or trade secrets; terrorism; investigation of public officials; potential negative impact on national security or foreign relations of the United States; and sensitive commercial information likely to be of interest to foreign powers.

HSM and HSD do **not** include personal or financial information, such as tax returns, account numbers, Social Security numbers, addresses, or other information typically included in schedules, a statement of financial affairs, or other documents required by Bankruptcy Rule 1007 and/or Bankruptcy Code section 521. Such information might be appropriate for treatment as confidential, but it is not considered highly sensitive for purposes of these Procedures.

A. Preparation and Transmission of HSM, HSD, and Related Pleadings

HSM, HSD, and related motions must be submitted *only* in paper format.

To submit HSM, HSD, and related pleadings, place the HSM, HSD and related pleadings inside a single, sealed container (e.g., an envelope or box). Write or type the case name and number on the exterior of the container, along with “HIGHLY SENSITIVE MATERIAL”. Place that container inside a second, larger container, seal the larger container and deliver it to the court. The second, outer container should be addressed to the assigned judge, so that court staff may deliver the enclosed materials without opening either container.

The court strongly encourages parties to deliver HSM, HSD and related material via messenger or personal delivery. During the COVID-19 pandemic, the Clerk’s Offices are closed to the public, but the court has installed drop boxes in the San Francisco and San Jose courthouses, and in its Oakland location. Instructions for using the court’s drop boxes can be found here: <https://www.canb.uscourts.gov/content/page/court-operations-during-covid-19-outbreak>

B. Filing HSM or HSD in or with an Initiating Pleading

For purposes of these Procedures, an “Initiating Pleading” is one that commences an adversary proceeding or a case such as, for example, a complaint or petition for relief.

(1) A litigant seeking protection for HSM and/or HSD submitted with or referred to in an Initiating Pleading must submit a “Certificate for Protection of Highly Sensitive Document” or a “Certificate for Protection of Highly Sensitive Material”, as appropriate (each, a “Certificate”). The Certificate must explain why the HSM and/or HSD meets the definition set forth above. The HSM and/or HSD must be attached to the Certificate.

(2) The litigant must submit the Certificate and attached HSM and/or HSD in accordance with § I.A of these Procedures.

(3) The litigant must file a redacted version of the Certificate and accompanying redacted HSM and/or HSD using CM/ECF (if the litigant is a Registered Participant) or through the means described here <https://www.canb.uscourts.gov/content/page/court-operations-during-covid-19-outbreak> (if the litigant is not a Registered Participant). The redacted Certificate and attached redacted HSM and/or HSD also must be properly served on all necessary parties.

(4) The assigned judge will review the unredacted Certificate and accompanying unredacted HSM and/or HSD and determine whether the designated materials constitute HSM and/or HSD.

(a) If the assigned judge rules that the designated materials constitute HSM and/or HSD, the assigned judge will enter an order to that effect. The unredacted Certificate and its accompanying unredacted materials (including the HSM and/or HSD) become part of the official record, and will be securely maintained by the court in hard copy, in accordance with these Procedures.

(b) If the assigned judge rules that the designated materials do not constitute HSM or HSD, the assigned judge will enter an order to that effect. The unredacted Certificate and its accompanying unredacted materials will not become part of the official record, but will be securely maintained by the court in hard copy, in accordance with these Procedures. If the litigant wishes to introduce into the public record the material that the court declined to protect as HSM and/or HSD, it will need to do so pursuant to a separately filed motion, declaration, request for judicial notice, or other appropriate pleading.

(c) If the assigned judge rules that some, but not all, of the designated materials constitute HSM and/or HSD, the assigned judge will enter an order to that effect. To the extent the unredacted Certificate and its accompanying unredacted materials include HSM and/or HSD, they will become part of the official record. The court will securely maintain the entire unredacted Certificate and its accompanying unredacted materials in hard copy, in accordance with these Procedures. If the litigant wishes to introduce into the public record the material or documents that the court declined to protect as HSM and/or HSD, it will need to do so pursuant to a separately filed motion, declaration, request for judicial notice, or other appropriate pleading.

C. Filing HSM or HSD in a Pending Case or Proceeding

(1) A party seeking designation of HSM and/or HSD to be filed in a pending case or proceeding must first file a “Motion for Protection of Highly Sensitive Document” or a “Motion for Protection of Highly Sensitive Material”, as appropriate. The HSM and/or HSD should be submitted with the motion, which must explain why the HSM or HSD meets the definition set forth in these Procedures.

~~**(2)** The Motion must comply with B.L.R. 1001-2, which incorporates Civil L.R. 79-5.~~

(2) The unredacted Motion and accompanying unredacted HSM and/or HSD must be submitted in accordance with § I.A of these Procedures.

(3) The movant shall file a redacted version of the Motion and its accompanying redacted HSM and/or HSD using CM/ECF (if the litigant is a Registered Participant) or through the means described here <https://www.canb.uscourts.gov/content/page/court-operations-during-covid-19-outbreak> (if the litigant is not a Registered Participant). The

redacted Motion and accompanying redacted HSM and/or HSD also must be properly served on all necessary parties.

(4) The assigned judge will review and rule on the Motion.

(a) If the Motion is granted, the assigned judge will enter an order to that effect. The unredacted Motion and its accompanying unredacted materials (including the HSM and/or HSD) become part of the official record, and will be securely maintained by the court in hard copy, in accordance with these Procedures.

(b) If the Motion is denied, the assigned judge will enter an order to that effect. The unredacted Motion and its accompanying unredacted materials will not become part of the official record, but will be securely maintained by the court in hard copy, in accordance with these Procedures. If the movant wishes to introduce into the public record the material that the court declined to protect as HSM and/or HSD, it will need to do so pursuant to a separately filed motion, declaration, request for judicial notice, or other appropriate pleading.

(c) If the Motion is granted in part and denied in part, the assigned judge will enter an order to that effect. To the extent the unredacted Motion and its accompanying materials include HSM and/or HSD, they will become part of the official record. The court will securely maintain the entire unredacted Motion and its accompanying unredacted materials in hard copy, in accordance with these Procedures. If the movant wishes to introduce into the public record the material that the court declined to protect as HSM and/or HSD, it will need to do so pursuant to a separately filed motion, declaration, request for judicial notice, or other appropriate pleading.

D. Designating Previously Filed Documents as HSM and/or HSD

A party requesting that the court designate and protect previously filed, sealed or redacted documents as HSM or HSD shall comply with § I.C of these Procedures. In addition, any motion must set forth the docket number assigned to the relevant previously filed document(s).

E. Court's Handling of HSM and/or HSD

Upon receipt of any HSM and/or HSD and related material (such as, for example a Certificate or motion required by these Procedures), the Clerk shall place the HSM, HSD, and related pleadings under seal and shall store them in a secured, paper filing system.

F. Court-Issued Documents Containing HSM or HSDs

If an opinion, order, or other court-issued document contains or refers to HSM and/or HSD, the issuing judge will create a redacted or unsealed version of the court-issued document, which will be placed in the publicly available record. The sealed or

unredacted version of the court-issued document also will become part of the record of the case or proceeding, but it will be securely stored and not publicly available, in accordance with these procedures.

II. Sealing or Redacting Confidential Material or Documents

An order authorizing the sealing or redaction of confidential material or documents (i.e., not HSM or HSD) will be issued only upon a motion which establishes that the allegedly confidential material or document(s) is/are ~~privileged; entitled to protection as a trade secret; or otherwise~~ entitled to protection under ~~the~~applicable law. The motion must be as narrowly tailored as possible, and shall ~~comply with B.L.R. 1001-2~~(as specify the grounds on which the request is based. See 11 U.S.C. § 107(b) and Civil L.R. 79-5. See also(c); Fed. R. Bankr. P. 9018. Any such motion must be supported by a competent declaration that attests to the factual bases for the relief sought. B.L.R. 9013-1(d).

Litigants shall review all information pertaining to sealed or redacted documents and the detailed docketing instructions posted on the court's website at: <http://www.canb.uscourts.gov/ecf/efiling-manual/sealed-events> Compliance with these instructions will help avoid docketing errors and the unintentional disclosure of confidential information.

A. **General Guidelines**

- CM/ECF has a Sealed Event category for all related sealed events.
- Parties do not have to produce and submit to the court hard copies of electronically sealed documents **unless** the presiding judge requires chambers copies. [Note: During the COVID-19 pandemic, none of the judges require chambers copies of any pleading, sealed, redacted, or otherwise.]
- The presiding judge and designated staff will receive electronic access to sealed or redacted documents.
- Public access to sealed or redacted documents will be restricted.
- These procedures do not apply to redacted filings authorized by Bankruptcy Rule 9037(b), which pertains to personal or financial information and which permits certain redactions without prior leave of court.
- A "Motion to Redact Previously Filed Document" and a "Motion to File Redacted Document" are separate and distinct events in CM/ECF and serve separate purposes:
 - Motion to Redact Previously Filed Document: This event is used when the filing party seeks to redact and limit access to personal information (see

Bankruptcy Rule 9037) set forth in a document previously filed with the court (e.g., a proof of claim that includes a complete Social Security number or a pleading that includes a complete bank account number). This event is found under the “Motion” category in CM/ECF and requires payment of a \$26.00 fee. For additional information, see [District Procedure for Motion to Redact Previously Filed Document](#).

- **Motion to File Redacted Document:** This event should be used when a party seeks prior permission to file a document in which confidential information has been redacted. This event is located in the “Sealed Events” category in CM/ECF and does not require payment of a fee.

B. CM/ECF Filing Sequence for SEALED Documents

(1) File “Motion to File Document Under Seal”. The docket entry and motion will be viewable by the public. DO NOT ATTACH sealed documents to this event.

(2) File Proposed Sealed Document. The document must be clearly marked “PROPOSED DOCUMENT FILED UNDER SEAL”. The docket entry will be viewable by the public, but access to the document itself will be restricted. This means that clicking on the document’s hyperlink will cause CM/ECF to display the following message: “You do not have access to the restricted document.”

(3) Upload “Order re: Motion to File Document Under Seal”.

(4) Parties File Declaration(s) in Support of Motion to File Document Under Seal. Following Movant’s submission of the materials described in steps (1) – (3), above, any party who believes that some or all of the material described in the motion should be sealed shall file within 4 court days a declaration in support of the motion. Such declaration shall clearly identify the specific documents or portions thereof that should be sealed or redacted, and shall clearly explain the grounds for such relief.

(5) Judge will review Order, Motion, and Proposed Sealed Document(s).

(a) If Motion is Granted: The Proposed Document(s) Filed Under Seal will remain sealed and become part of the record. The Clerk will annotate the original docket entry as follows: PROPOSED SEALED DOCUMENT(S) APPROVED – REFER TO DOCKET ENTRY #_____.

(b) If Motion is Denied: The Proposed Document(s) Filed Under Seal will remain on the docket with access restricted but will not become a part of the record. The Clerk will annotate the original docket entry: PROPOSED SEALED DOCUMENT(S) DENIED – REFER TO DOCKET ENTRY #_____.

(c) If Motion is Granted in Part and Denied in Part: Proposed Document(s) Filed Under Seal will not become part of the court’s record unless the

Movant files within 7 calendar days following entry of the order a redacted version of the document that comports with the court's order.

C. CM/ECF Filing Sequence for REDACTED Documents

(1) File “Motion to File Redacted Document”. The docket entry and motion will be accessible by the public. DO NOT ATTACH proposed redacted documents to this event.

(2) File Unredacted Version of the Proposed Redacted Document. The document must be clearly marked “UNREDACTED VERSION OF PROPOSED REDACTED DOCUMENT”. The docket entry will be viewable by the public, but access to the document will be restricted. If a user attempts to access the document by clicking on its hyperlink, the CM/ECF system will display the following message: “You do not have access to the restricted document.” The filer must highlight in **yellow** the portion(s) of the document to be redacted. This permits the court to distinguish between redacted and unredacted information and helps minimize the possibility that the court will accidentally disclose redacted/confidential material in open court or in an order or decision.

(3) File the Redacted Document. The redacted version may be entered on the docket and the document must be clearly marked “REDACTED VERSION OF [Insert Title of Proposed Redacted Document]”. E.g., REDACTED VERSION OF OBJECTION TO PROOF OF CLAIM NO. 2-1. The filer is responsible for ensuring the effectiveness of its redaction, i.e., that all confidential information has been redacted and that the redaction method actually conceals the confidential information. The docket entry and the Redacted Document will be viewable by the public.

(4) Upload “Order re: Motion to File Redacted Document”.

(5) Parties File Declaration(s) in Support of Motion to File Redacted Document. Following Movant's submission of the materials described in steps (1) – (4), above, any party who believes that some or all of the material described in the motion should be redacted shall file within 4 court days a declaration in support of the motion. Such declaration shall clearly identify the specific documents or portions thereof that should be sealed or redacted, and shall clearly explain the grounds for such relief.

(6) Judge Will Review Order, Motion, and Proposed Redacted Document(s).

(a) If Motion is Granted: The Redacted Document will remain as part of the record. The Clerk will annotate the original docket entry as follows: PROPOSED REDACTED DOCUMENT APPROVED – REFER TO DOCKET ENTRY #_____.

(b) If Motion is Denied: Access to the unredacted document will be restricted and it will not become part of the record. The Clerk will annotate the original

docket entry: PROPOSED REDACTED DOCUMENT DENIED – REFER TO DOCKET ENTRY #_____.

(c) If Motion is Granted in Part and Denied in Part: Proposed Redacted Document(s) will not become part of the court's record unless the movant files within 7 calendar days following entry of the order a revised redacted version of the document that comports with the court's order.