

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

SANDI JOHNSON, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	EP-12-CV-418-KC
	§	
BILLY BLACKBURN, et al.,	§	
	§	
Defendants.	§	

ORDER

On this day, the Court considered Plaintiffs’ Motion to Vacate and Motion to Unseal Evidence (the “Motion”), ECF No. 162. By the Motion, Plaintiff requests that the Court vacate its May 1, 2013, protective order, ECF No. 146, and unseal LaToshia Boxley’s communication to the Court as referenced in that order.

Upon due consideration, the Court finds that it should vacate the protective order. For the reasons set forth herein, the Court denies Plaintiff’s request to unseal the letter.

Though “courts have recognized a common law right to inspect and copy judicial records,” *In re Pratt*, 511 F.3d 484, 485 (5th Cir. 2007) (citing *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993)), the Fifth Circuit has not defined what materials constitute “judicial records” to which there is a presumptive right of access. *Cf. Sullo & Bobbitt, PLLC v. Abbott*, No. 3:11-CV-1926-D, 2013 WL 1949835, at *3 (N.D. Tex. May 13, 2013) (noting the absence of Fifth Circuit case law on a closely related question); 2012 WL 2796794, at *11-13 (N.D. Tex. July 10, 2012) (same). The Court finds instructive the Second Circuit’s conclusion in *United States v. Amodeo* that

the mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access. We think that the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document. 44 F.3d 141, 145 (2d Cir. 1995).

The Court finds similarly instructive the First Circuit's definition of "judicial documents" as "materials on which a court relies in determining the litigants' substantive rights." *United States v. Kravetz*, 706 F.3d 47, 54 (1st Cir. 2013).

Here, the letter in question was submitted to the Court by a non-party to this case, which proceeded to final judgment more than two years ago. As the Court now vacates the order that gave rise to the Motion, and can envision no reason why it might consider the letter in rendering any decision in a live case or controversy, the letter is not "relevant to the performance of the judicial function and useful in the judicial process." *Amodeo*, 44 F.3d at 145; *see Stern v. Cosby*, 529 F. Supp. 2d 417, 421 (S.D.N.Y. 2007). Likewise, the Court does not rely upon the letter in "determining the litigants' substantive rights." *Kravetz*, 706 F.3d at 54. The Court accordingly finds that the letter is not a judicial document to which there is a presumptive right of access. Moreover, in light of the vacatur of the protective order, Plaintiff's stated need to examine the "evidence that formed the basis of the injunction [sic] against her" is moot. *See Mot. 5*.

For the foregoing reasons, Plaintiff's Motion to Vacate and Motion to Unseal Evidence, ECF No. 162, is **GRANTED** in part and **DENIED** in part. The motion is **GRANTED** with respect to its request that the Court vacate the protective order of May 1, 2013. The Motion is **DENIED** with respect to its request that the Court unseal LaToshia Boxley's correspondence to the Court. The Court's protective order, ECF No. 146, is hereby **VACATED**.

SO ORDERED.

SIGNED this 4th day of May, 2014.

A handwritten signature in black ink, reading "Kathleen Cardone". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE