

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 VILLAGE ON JAMES STREET
10 ASSOCIATION, a Washington non-profit
corporation,

11 Plaintiff,

12 v.

13 OREGON MUTUAL INSURANCE
14 COMPANY, an Oregon Corporation; DOE
INSURANCE COMPANIES 1-10,

15 Defendants.
16

CASE NO. C18-1433-JCC

ORDER

17 This matter comes before the Court on Defendant Oregon Mutual Insurance Company's
18 motion to seal (Dkt. No. 22) and the parties' joint motion for an order approving settlement and
19 barring contribution claims (Dkt. No. 23). Having thoroughly considered the parties' briefing
20 and the relevant record, the Court finds oral argument unnecessary and hereby DENIES
21 Defendant's motion to seal and GRANTS the parties' joint motion for an order approving
22 settlement and barring contribution claims for the reasons explained herein.

23 **I. BACKGROUND**

24 Plaintiff is a nonprofit corporation with the duty to maintain the common elements and
25 any limited common elements of the Village on James Street condominium complex. (*See* Dkt.
26 No. 1 at 2.) Defendant sold Plaintiff property insurance policies identifying the Village on James

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1 Street condominium complex as covered property. (*See id.*) In March 2018, an investigation
2 uncovered hidden damage at the Village on James Street condominium complex. (*See id.* at 3.)
3 In May 2018, Plaintiff tendered claims to Defendant. (*See id.*) The parties subsequently entered
4 into a tolling agreement that expired on September 28, 2018. (*See id.*) On September 28, 2018,
5 Plaintiff filed suit against Defendant, seeking a declaratory judgment that Defendant’s policies
6 provided coverage and alleging various claims arising under Washington state law. (*See id.* at 3–
7 5; Dkt. No. 18.)

8 On September 9, 2019, the parties participated in mediation and reached an agreement to
9 settle this matter. (*See* Dkt. No. 23 at 2–3.) The parties jointly move for an order approving the
10 settlement and barring contribution claims. (Dkt. No. 23.) Defendant individually moves to file
11 under seal two exhibits concerning the parties’ settlement. (Dkt. No. 22; *see* Dkt. No. 26.)

12 **II. DISCUSSION**

13 **A. Motion to Seal**

14 “[T]here is a strong presumption of public access to [the Court’s] files.” W.D. Wash.
15 Local Civ. R. 5(g)(3); *see Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “A party
16 may file a document under seal . . . if a statute, rule, or prior court order expressly authorizes the
17 party to file the document under seal; or . . . if the party files a motion . . . to seal the motion at
18 the same time the party files the sealed document.” W.D. Wash. Local Civ. R. 5(g)(2)(A)–(B).
19 The party seeking to maintain documents under seal bears the burden of showing specific
20 prejudice or harm that will result via a particularized showing to each individual document. *See*
21 *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002);
22 *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir. 1999).

23 In determining whether a judicial record is properly maintained under seal, the Court
24 looks to whether the motion is more than tangentially related to the merits of a case. *See Ctr. for*
25 *Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096–1102 (9th Cir. 2016) (examining case
26 law and clarifying standard to file documents under seal). If a motion is more than tangentially

1 related to the merits of a case, the party seeking protection must demonstrate that “compelling
2 reasons” exist and justify maintaining the record under seal. *See id.*; *Kamakana v. City & County*
3 *of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). But a party seeking to seal judicial records
4 that are only tangentially related to the merits of a case “need only satisfy the less exacting ‘good
5 cause’ standard.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Foltz v. State Farm Mut. Auto.*
6 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)); *see Fed. R. Civ. P. 26(a)*. The Ninth Circuit has
7 not provided specific guidance as to which standard applies to settlement agreements, and district
8 courts have applied both standards. *See Select Portfolio Servicing v. Valentino*, 2013 WL
9 1800039, slip op. at 2 (N.D. Cal. 2013) (collecting cases); *Prosurance Grp., Inc. v. Liberty Mut.*
10 *Grp., Inc.*, 2011 WL 704456, slip op. at 1 (N.D. Cal. 2011) (applying good cause standard
11 because “a motion to determine good faith settlement is only tangentially related to the merits of
12 the underlying cause of action”); *Taylor v. AFS Techs., Inc.*, 2010 WL 2079750, slip op. at 2 (D.
13 Ariz. 2010) (“Because approval of the settlement agreement will be dispositive of the FLSA
14 claim, the compelling reasons standard set forth in *Kamakana* applies to that agreement.”).

15 Defendant first argues that the terms and conditions of the parties’ settlement are
16 confidential. (*See Dkt. No. 22 at 3.*) But mere assertions of confidentiality do not establish good
17 cause or a compelling reason to maintain documents under seal. *See Foltz v. State Farm Mut.*
18 *Auto. Ins. Co.*, 331 F.3d 1122, 1136–38 (9th Cir. 2003); *Bernstein v. Target Stores, Inc.*, 2013
19 WL 5807581, slip op. at 3 (N.D. Cal. 2013) (“The existence of a confidentiality provision,
20 without more, does not constitute good cause, let alone a compelling reason, to seal.”).

21 Defendant next argues that the exhibits should be maintained under seal because they are “the
22 product of mediation” and thus are confidential under Washington law. (*See Dkt. No. 22 at 3–4*)
23 (citing Wash. Rev. Code § 7.07.070). But the statute cited by Plaintiff provides that “mediation
24 *communications* are confidential to the extent agreed by the parties or provided by other law or
25 rule of this state.” Wash. Rev. Code § 7.07.070 (emphasis added). Defendant’s claim that the
26 exhibits arose from mediation does not establish that the exhibits thus constitute “mediation

1 communications” within the meaning of the statute. And, notably, Defendant’s motion to seal
2 discusses the parties’ mediation in much more detail than the exhibits do themselves. (*See* Dkt.
3 No. 22 at 2.)

4 Thus, Defendant has not identified a statute, rule, or prior court order expressly
5 authorizing it to file the exhibits at issue under seal, and it has not carried its burden of
6 demonstrating that the exhibits should be sealed under either the compelling reason standard or
7 the good cause standard. *See* W.D. Wash. Local Civ. R. 5(g)(2)(A)–(B). Therefore, Defendant’s
8 motion to seal (Dkt. No. 22) is DENIED.

9 **B. Motion to Approve Settlement and Bar Contribution Claims**

10 “A court has the ‘inheritable [sic] equitable authority to enter an order precluding
11 subsequent claims for contribution and indemnity by non-settling parties.’” *Nautica Condo.*
12 *Owners Ass’n v. Aspen Specialty Ins. Co.*, Case No. C15-1788-JLR, Dkt. No. 83 at 2–3 (W.D.
13 Wash. 2018) (quoting *Canal Indem. Co. v. Glob. Dev., LLC*, Case No. C14-0823-RSM, Dkt. No.
14 132 at 5 (W.D. Wash. 2015)). “Contribution bar orders are ‘consistent with the public policy in
15 Washington of encouraging settlement.’” *Id.* at 3 (quoting *Puget Sound Energy v. Certain*
16 *Underwriters at Lloyd’s*, 138 P.3d 1068, 1079 (Wash. Ct. App. 2006)); *accord Franklin v.*
17 *Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989). “In determining whether a contemplated
18 contribution bar is appropriate, the court considers whether the proposed settlement is reasonable
19 and the interests of non-settling defendants are protected.” *Canal Indem. Co.*, Case No. C14-
20 0823-RSM, Dkt. No. 132 at 6.

21 1. *Reasonableness*

22 The parties agree that the settlement is reasonable. (Dkt. No. 23 at 4); *see Nautica*, Case.
23 No. C15-1788-JLR, Dkt. No. 83 at 3. The parties state that their mediation was held before a
24 mediator with substantial experience in insurance coverage disputes, that the resultant settlement
25 was negotiated at arm’s-length and in good faith, and that both parties were represented by
26 competent counsel. (*See* Dkt. Nos. 24, at 1, 25 at 1–2.) There is no evidence of bad faith,

1 collusion, or fraud regarding the settlement negotiations or the ultimate settlement agreement.
2 (*See generally* Dkt. Nos. 23, 24, 25.) And having reviewed the memorandum of settlement and
3 the terms of the settlement agreement, the Court finds that the settlement is not “[p]atently
4 collusive or inadequate” and thus clears the low bar of reasonableness. *Franklin v. Kaypro Corp.*,
5 884 F.2d 1222, 1231 (9th Cir. 1989); *see Bank of Am. v. Travelers Indem. Co.*, Case No. C07-
6 0322-RSL, Dkt. No. 148 at 2 (W.D. Wash. 2009); (Dkt. No. 26).

7 2. *Interests of Non-Settling Defendants*

8 “There is no single formula for determining whether non-settling parties’ rights are
9 protected when a bar order is entered.” *Canal Indem. Co.*, Case No. C14-0823-RSM, Dkt. No.
10 132 at 7; *see Nautica*, Case. No. C15-1788-JLR, Dkt. No. 83 at 4 (collecting cases); *Puget Sound*
11 *Energy*, 138 P.3d at 1078–80 (setting forth various ways to protect interests of non-settling
12 defendants). “[T]he prospect that the non-settling defendant may face greater financial exposure
13 if it is barred from seeking contribution does not, in itself, render a bar order inappropriate.”
14 *Nautica*, Case. No. C15-1788-JLR, Dkt. No. 83 at 4.

15 The parties assert that Defendant is the only defendant in this lawsuit and that Plaintiff
16 has previously tendered claims to several other insurers, thus demonstrating that several
17 defendants remain from whom contribution may be sought. *See Nautica*, Case. No. C15-1788-
18 JLR, Dkt. No. 83 at 4; (Dkt. No. 23 at 4). In addition, the parties’ settlement agreement specifies
19 that Defendant agrees to dismiss its equitable contribution and other claims against potentially-
20 liable insurers on a reciprocal basis. (*See* Dkt. Nos. 23 at 5, 26 at 6.) Further, the parties’
21 settlement agreement does not affect any non-settling defendant’s rights to its existing claims
22 and defenses, and thus non-settling defenses may be entirely excused from liability. *See Nautica*,
23 Case. No. C15-1788-JLR, Dkt. No. 83 at 4; (Dkt. No. 23 at 5). Therefore, the parties’ proposed
24 settlement adequately protects the interests of non-settling defendants.

25 In sum, the Court finds that the parties’ proposed settlement is reasonable and that the
26 interests of non-settling defendants are adequately protected. *See Canal Indem. Co.*, Case No.

1 C14-0823-RSM, Dkt. No. 132 at 6. Therefore, the parties' joint motion for an order approving
2 settlement and barring contribution claims (Dkt. No. 23) is GRANTED.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendant's motion to seal (Dkt. No. 22) is DENIED.
5 Defendant is DIRECTED to file publicly-available versions of the documents at issue no later
6 than 14 days from the date this order is issued. Pursuant to the parties' joint request, Defendant
7 may redact the settlement amount from the publicly-available versions of the exhibits. (See Dkt.
8 No. 22 at 4.)

9 The parties' joint motion for an order approving settlement and barring contribution
10 claims (Dkt. No. 23) is GRANTED. It is hereby ORDERED that:

- 11 1. The settlement agreement between Defendant Oregon Mutual Insurance Company and
12 Plaintiff Village on James Street Association is reasonable; and
- 13 2. Any claims, under any theory or combination of theories, including but not limited to
14 equitable contribution or subrogation, that may be brought by any non-settling insurer of
15 Plaintiff Village on James Street Association arising out of Plaintiff Village on James
16 Street Association's property insurance claim for hidden damages at the 6711 239th Place
17 location to Defendant Oregon Mutual Insurance Company are hereby BARRED.

18 DATED this 10th day of December 2019.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE
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