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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Quanta Indemnity Company,)

No. CV 11-1807-PHX-JAT

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Plaintiff,)

ORDER

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vs.)

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North American Specialty Insurance)
Company; General Fidelity Insurance)
Company; Amberwood Development Inc.;)
Amberwood Homes LLC; Roll Tide LLP;)
Summerset Marketing Enterprises Inc.;)
Winston Casas LLC,)

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Defendants.)

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18 Pending before the Court are a motion to seal and a motion for protective order. The
19 motion fails to meet the Ninth Circuit’s strict requirements for filing under seal and will be
20 denied. As this Court has previously articulated,

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A party seeking to seal a document attached to a dispositive motion must
overcome a “strong presumption in favor of access” and meet a “compelling
reasons” standard. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172,
1178–79 (9th Cir.2006). That is, “the party must articulate compelling reasons
supported by specific factual findings that outweigh the general history of
access and the public policies favoring disclosure, such as the public interest
in understanding the judicial process.” *Id.* (citations and punctuation omitted).
It is then a court’s duty to balance the competing interests of the public and the
party seeking to seal the record. *Id.* at 1179. If a court decides to grant the
motion to seal, it must “base its decision on a compelling reason and articulate
the factual basis for its ruling, without relying on hypothesis or conjecture.” *Id.*
(quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir.1995)).

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Compelling reasons to seal a judicial record typically will exist when such
court files might become “a vehicle for improper purposes, such as the use of

1 records to gratify private spite, promote public scandal, circulate libelous
2 statements, or release trade secrets.” *Id.* (citing *Nixon v. Warner Commc'ns,*
3 *Inc.*, 435 U.S. 589, 598 (1978)). However, “[t]he mere fact that the production
4 of records may lead to a litigant’s embarrassment, incrimination, or exposure
5 to further litigation will not, without more, compel the court to seal its
6 records.” *Id.* (citation omitted).

7 *Aviva USA Corp. v. Vazirani* 902 F.Supp.2d 1246, 1273 (D. Ariz. 2012).

8 In summary, generalized statements supporting sealing are inadequate; a party must
9 articulate specific facts to justify sealing, and must do so with respect to each item sought to
10 be sealed. *Kamakana*, 447 F.3d at 1183-84. The motion to seal in this case, which makes
11 a blanket assertion of attorney client privilege, fails to meet the showing required to file a
12 dispositive motion in its entirety under seal. By way of example, the motion at page 4, lines
13 7 through 24, is solely a discussion of law; the Court cannot envision how an argument on
14 the governing law could qualify for sealing under the test required in *Kamakana*.
15 Accordingly, the motion to seal will be denied.

16 Further, in the request for a protective order, the parties state the following:

17 While the parties agree that there is no evidence that any pleadings filed with
18 the Court at this stage would constitute a breach of confidentiality or
19 attorney-client privilege, out of an abundance of caution, the parties hereby
20 agree to request that the Court place under seal the Motions for Summary
21 Judgment and Statements of Fact which have been filed in this matter.

22 Doc. 154, n. 2. This assertion is even more deficient than the blanket claim of attorney client
23 privilege in the motion. *See e.g., In re Midland Nat. Life Ins. Co. Annuity Sales Practices*
24 *Litig.*, 686 F.3d 1115, 1120-21 (9th Cir. 2012) (remanding to the district court to unseal the
25 records because the parties did not meet the compelling reasons test). Accordingly, the Court
26 will deny this request for retroactive sealing.

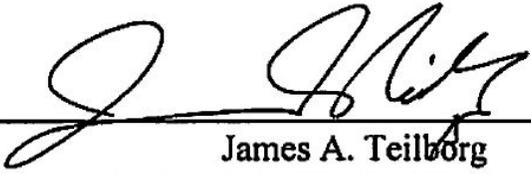
27 Additionally, the Court will deny, without prejudice, the parties’ stipulated-to
28 protective order. If the parties choose to re-file the proposed protective order, they shall
submit a proposed form of Order to the chambers’ email address. Further, the sole basis for
the protective order appears to be attorney-client privilege. If the parties re-file the proposed
protective order, the parties must address whether, by disclosure in this case, the claimed
attorney-client privilege has already been waived.

1 Based on the foregoing,

2 **IT IS ORDERED** that the motion to seal (Doc. 148) is denied. The Documents
3 Lodged at Docs. 149 and 150 are stricken, but may remain under seal. General Fidelity shall
4 file a response to the motion for summary judgment and controverting statement of facts by
5 November 1, 2013. As indicated above, General Fidelity may not file both documents in
6 their entirety under seal. If General Fidelity believes it can make the particularized showing
7 required by *Kamakana* to file a particular exhibit or a particular fact in the response under
8 seal, General Fidelity may move to file solely those items under seal. If General Fidelity so
9 moves, it shall simultaneously file a redacted, unsealed version of both documents.¹

10 **IT IS FURTHER ORDERED** that the stipulated protective order (Doc. 154) is
11 denied, without prejudice.

12 DATED this 23rd day of October, 2013.

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17 James A. Teilborg
18 Senior United States District Judge
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28 ¹ These same requirements apply to any other to-be-filed responses and replies,
should any party seek to file under seal.