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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kim Cramton,

10 Plaintiff,

11 v.

12 Grabbagreen Franchising LLC, et al.,

13 Defendants.  
14

No. CV-17-04663-PHX-DWL

**ORDER**

15 Pending before the Court is an amended motion to seal filed by Defendants and  
16 Counterclaimants Eat Clean Holdings LLC, Eat Clean Operations LLC, Grabbagreen  
17 Franchising LLC, and Keely Newman (collectively, “the movants”). (Doc. 224.) For the  
18 following reasons, the motion will be denied.

19 The background for the sealing request is that the movants have filed a motion for  
20 sanctions. In that motion, the movants have argued “that relevant evidence in the  
21 possession of the Plaintiff was hidden, withheld or destroyed, and that the evidence could  
22 not be recovered from other sources through the exercise of reasonable and diligent  
23 efforts.” (*Id.* at 2.) However, because “[a]ll discovery and disclosure were completed  
24 before undersigned counsel was retained,” the movants’ new attorneys have obtained a  
25 declaration from the movants’ previous attorney that “describes in detail [the movants’]  
26 efforts to obtain the evidence from all sources, including his explanations as to why certain  
27 actions were taken and why other actions were not.” (*Id.*) According to the movants, this  
28 declaration should be filed under seal because “[a]rguably . . . [it] touches upon both


1 [a]ttorney-client and work product privileged communications regarding decisions and  
2 actions by Defendants and [their prior law firm] to find the missing evidence from Plaintiff  
3 and from other third-party sources. While the Declaration does not directly reveal any  
4 privileged communications, and is not intended as to waive any privileges, it does contain  
5 information which [their prior law firm] is required to protect under E.R. 1.6, which is the  
6 broader duty to protect client confidentiality.” (*Id.*)

7 This argument is not compelling. As an initial matter, the declaration was not filed  
8 on an *ex parte* basis with the Court—it has already been provided to the movants’  
9 adversaries in this lawsuit. This means that any expectation of confidentiality has already  
10 been extinguished. The Court is aware of no rule that would permit a privileged or  
11 confidential communication to retain that status so long as it’s only disclosed to one set of  
12 outsiders, but not to the rest of the world. Moreover, it seems to the Court that the movants  
13 have already (if implicitly) released their prior law firm from any duty to maintain  
14 confidentiality by choosing to inject the contents of the declaration into this lawsuit in  
15 support of their claims. *See* E.R. 1.6(a) (“A lawyer shall not reveal information relating to  
16 the representation of a client *unless the client gives informed consent . . .*”) (emphasis  
17 added).

18 Accordingly, **IT IS ORDERED** that:

- 19 (1) The amended motion to seal (Doc. 224) is **denied**; and  
20 (2) Pursuant to LRCiv 5.6(e), the lodged document (Doc. 222-1) will not be  
21 filed. The submitting party may, within five days of the entry of this Order, resubmit the  
22 document for filing in the public record.

23 Dated this 16th day of September, 2019.

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28 Dominic W. Lanza  
United States District Judge