

**United States District Court**  
Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, et al.,  
  
Plaintiffs,

v.

CENTEX HOMES and DOES 1 through  
10 inclusive,

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CENTEX HOMES,  
  
Counterclaimant,

v.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, et al.,  
  
Counterdefendant.

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) Case No. 11-3638-SC  
)  
) ORDER RE: MOTIONS TO SEAL

1           Now before the Court are two motions to seal filed in  
2 connection with the parties' pending cross-motions for summary  
3 judgment. ECF No. 141 (First Motion to Seal ("MTS1")), 158 (Second  
4 Motion to Seal ("MTS2")). For the reasons set forth below, the  
5 First Motion to Seal is DENIED and the Second Motion to Seal is  
6 GRANTED in part and DENIED in part.

7           Federal courts have long recognized a common law right of  
8 access to inspect various judicial documents. See Nixon v. Warner  
9 Commc'ns, Inc., 435 U.S. 589, 597 (1978). "This common law right  
10 creates a strong presumption in favor of access to judicial  
11 documents which can be overcome only by showing sufficiently  
12 important countervailing interests." Phillips ex rel. Estates of  
13 Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1212 (9th Cir. 2002). In  
14 consideration of this strong presumption, Civil Local Rule 79-5  
15 provides: "A sealing order may issue only upon a request that  
16 establishes that the document, or portions thereof, is privileged  
17 or protectable as a trade secret or otherwise protectable under the  
18 law." A party seeking to seal a document must "articulate[]  
19 compelling reasons supported by specific factual findings, that  
20 outweigh the general history of access and the public policies  
21 favoring disclosure . . . ." Kamakana v. City & County of  
22 Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal  
23 citations and quotations omitted).

24           The First Motion to Seal pertains to Plaintiff's "Construction  
25 Defect Review Guidelines 2008" (the "Guidelines"). MTS1 at 1.  
26 Plaintiff argues that the Guidelines should be sealed because they  
27 constitute a trade secret and because they are irrelevant to the  
28 instant action. ECF No. 157 ("Resp. to MTS1") at 3-5. Neither

1 argument is particularly compelling. Plaintiff concedes that the  
2 Guidelines are "outdated and no longer in use." Id. at 2.  
3 Accordingly, it is unclear how Plaintiff's competitors could derive  
4 any economic benefit from their use. Plaintiff argues that the  
5 Guidelines are trade secrets, regardless of whether they are  
6 outdated, because they were never disclosed to Plaintiff's  
7 competitors. Id. at 4. This argument conflates trade secrets with  
8 ordinary secrets. Information does not have value to a competitor  
9 merely because the competitor does not have access to it. Further,  
10 Plaintiff's argument that the Guidelines are irrelevant is belied  
11 by Judge Ryu's January 10, 2013 Order requiring their production.  
12 ECF No. 127. Accordingly, the First Motion to Seal is DENIED.

13       The Second Motion to Seal pertains to the attorney invoices  
14 and billing records from the firm of Newmeyer & Dillon ("Newmyer")  
15 regarding its representation of Defendant in a number of underlying  
16 actions, as well as copies of checks evidencing payments made on  
17 these invoices by Plaintiff and other participating insurers. MTS2  
18 at 3. Neither party objects to filing the check copies in the  
19 public record. MTS 2 at 3; ECF No. 161 ("Resp. to MTS2") at 2.  
20 However, Defendant argues that the invoices and billing records  
21 should be sealed because they are protected by the attorney-client  
22 privilege and the work product doctrine. Resp. to MTS2 at 3-4.  
23 Under Ninth Circuit authority, "attorney-client privilege embraces  
24 attorney time, records and statements to the extent that they  
25 reveal litigation strategy and the nature of the services  
26 provided." Real v. Cont'l Group, Inc., 116 F.R.D. 211, 213 (N.D.  
27 Cal. 1986). "However, simply the number of hours billed, the  
28 parties' fee arrangement, costs and total fees paid do not

1 constitute privileged information." Id.

2 Here, portions the invoices and billing records at issue  
3 reveal the nature of the services provided by Newmeyer and could  
4 potentially reveal Defendant's litigation strategy in the  
5 underlying actions. However, the records also include a  
6 significant amount of non-privileged information, including  
7 Newmeyer's billing rates and the number of hours billed.  
8 Accordingly, the Second Motion to Seal is GRANTED in part and  
9 DENIED in part. Defendant shall file unredacted versions of the  
10 billing records under seal with the Court. Defendant shall also  
11 file redacted versions in the public record. Only the descriptions  
12 of the work performed by Newmeyer shall be redacted. Defendant  
13 shall also file in the public record copies of the checks discussed  
14 above.

15 For the foregoing reasons, the First Motion to Strike (ECF No.  
16 141) is DENIED, and the Second Motion to Strike (ECF No. 158) is  
17 GRANTED in part and DENIED in part.

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19 IT IS SO ORDERED

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21 Dated: February 26, 2013

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UNITED STATES DISTRICT JUDGE