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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

AF HOLDINGS LLC,
Plaintiffs,
v.
JOE NAVASCA,
Defendants.

Case No. [12-cv-02396-EMC](#) (NJV)

**ORDER DENYING SECOND *EX PARTE*
APPLICATION**

Re: Dkt. No. 111

Plaintiff filed a second *ex parte* application asking to submit -- *in camera* -- an affidavit explaining why Mark Lutz did not appear at the August 28, 2013 hearing. Doc. No. 111. Whereas the first application sought to file under seal a declaration addressing both the reasons for Lutz’s absence and the substantive matters the court ordered AF to address at the hearing (Doc. No. 108), Plaintiff now only wants to explain why Lutz was absent. Plaintiff “is informed and believes that Mr. Lutz was prevented from boarding his aircraft to travel from Miami Beach, Florida to San Francisco California for reasons that were completely unforeseeable to him at the time and entirely beyond his control. Mr. Lutz has informed Plaintiff that he wishes to explain to the Court the reasons for his absence, but the reasons are of a very sensitive nature and would expose Mr. Lutz to undue scrutiny.” *Id.* Plaintiff’s vague allegations of “sensitivity,” the fact that Plaintiff makes this representation on information and belief, and Plaintiff’s litigation strategy to date, all suggest that Lutz’s absence and his attempt to excuse it after the fact amount to gamesmanship. Moreover, Plaintiff’s counsel did not request a continuance of the evidentiary hearing when Lutz failed to appear. Finally, Northern District Local Rule 79-5 sets forth the procedure litigants must follow, and the standards they must meet, to file documents under seal; Plaintiff’s application does not follow this Local Rule.

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For these reasons, Plaintiff's second *ex parte* application is denied. If Lutz wants to explain his absence, he may file a declaration on the record or proceed according to Local Rule 79-5.

IT IS SO ORDERED.

Dated: September 12, 2013



NANDOR J. VADAS
United States Magistrate Judge