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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL CASUALTY COMPANY, Plaintiff, v. NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, Defendant, NATIONAL STRENGTH AND CONDITIONING ASSOCIATION, Counter-Claimant, v. NATIONAL CASUALTY COMPANY, Counter-Defendant.

Case No.: 18-CV-1292 JLS (KSC)

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANT’S
MOTION TO SEAL**

(ECF No. 57)

Presently before the Court is Defendant and Counter-Claimant National Strength and Conditioning Association’s (“NSCA”) Motion for Order to Seal Exhibits Filed in Support of Motion for Partial Summary Judgment (“Mot.,” ECF No. 57). Having carefully considered the Motion, the proposed documents, and the relevant law, the Court **DENIES WITHOUT PREJUDICE** the NSCA’s Motion.

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LEGAL STANDARD

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2 “[T]he courts of this country recognize a general right to inspect and copy public
3 records and documents, including judicial records and documents.” *Nixon v. Warner*
4 *Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record is one
5 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”
6 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*
7 *v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “The presumption
8 of access is ‘based on the need for federal courts, although independent—indeed,
9 particularly because they are independent—to have a measure of accountability and for the
10 public to have confidence in the administration of justice.’” *Ctr. for Auto Safety v. Chrysler*
11 *Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States v. Amodeo*, 71 F.3d
12 1044, 1048 (2d Cir. 1995)).

13 A party seeking to seal a judicial record bears the burden of overcoming the strong
14 presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet this burden
15 depends upon whether the documents to be sealed relate to a motion that is “more than
16 tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809 F.3d at 1102. When
17 the underlying motion is more than tangentially related to the merits, the “compelling
18 reasons” standard applies. *Id.* at 1096–98. When the underlying motion does not surpass
19 the tangential relevance threshold, the “good cause” standard applies. *Id.*

20 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in
21 disclosure and justify sealing court records exists when such ‘court files might have
22 become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
23 promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*,
24 447 F.3d at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the
25 production of records may lead to a litigant’s embarrassment, incrimination, or exposure
26 to further litigation will not, without more, compel the court to seal its records.” *Id.* (citing
27 *Foltz*, 331 F.3d at 1136). The decision to seal documents is “one best left to the sound

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1 discretion of the trial court” upon consideration of “the relevant facts and circumstances of
2 the particular case.” *Nixon*, 435 U.S. at 599.

3 ANALYSIS

4 The NSCA seeks leave to file the following documents under seal:

5 1. Portions of the NSCA’s Memorandum of Points and Authorities in Support
6 of Its Motion for Partial Summary Judgment (“MPSJ”) (the “Memorandum”);

7 2. Exhibit G to the NSCA’s Compendium of Evidence in Support of Its MPSJ
8 (the “Compendium”), which is a June 21, 2016 letter from John R. Hapner, Claims
9 Litigation Analyst, K&K Insurance, to Thomas M. James, Law Office of Thomas M.
10 James, P.C.;

11 3. Exhibit H to the Compendium, which is a July 25, 2016 letter from Mr. James
12 to Mr. Hapner; and

13 4. Exhibit I to the Compendium, which is a July 12, 2017 letter from Lisa
14 Lampkin of Selman Breitman LLP, counsel for Plaintiff and Counter-Defendant National
15 Casualty Company (“NCC”), to Daniel H. Rylaarsdam (then of Kilpatric Townsend &
16 Stockton LLP), counsel for the NSCA.

17 *See* ECF No. 57-1 at 1. The NSCA contends that “there are ‘compelling reasons’ to seal”
18 these documents because “Exhibits G, H, and I are designated as ‘Confidential’ [by the
19 NSCA] pursuant to the signed Protective Order in place because they contain confidential
20 and privileged insurance information not available to the public” and the “Memorandum
21 includes quotes from Exhibits G, H, and I.” *See id.* at 1–2. The NSCA also argues that
22 these documents “should be treated as **confidential** communications between NSCA and
23 its insurer, National Casualty,” and that “National Casualty has taken the position that
24 documents containing information similar to the information contained in Exhibits G, H,
25 and I contain proprietary information of National Casualty.” *Id.* at 2 (emphasis in original).

26 Given the strong presumption in favor of access to court records, a party seeking to
27 file under seal materials in support of a dispositive motion, such as a motion for summary
28 judgment, must articulate compelling reasons to maintain their confidentiality. *See Foltz*,

1 331 F.3d at 1136. Under the compelling reasons standard, “the party seeking protection
2 bears the burden of showing specific prejudice or harm will result if no [protection] is
3 granted.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002). That
4 the documents sought to be filed under seal are subject to a protective order, without more,
5 does not satisfy the compelling reasons standard. *Foltz*, 331 F.3d at 1136. Further, “[t]he
6 mere fact that the production of records may lead to a litigant’s embarrassment,
7 incrimination, or exposure to further litigation will not, without more, compel the court to
8 seal its records.” *Kamakana*, 447 F.3d at 1179 (citing *Foltz*, 331 F.3d at 1136).

9 The NSCA has failed to meet its burden here. The NSCA’s argument for sealing
10 Exhibits G, H, and I and those portions of the Memorandum quoting those documents
11 hinges on its own designation of the documents as “Confidential” pursuant to the Protective
12 Order in this case, the purported “privileged and confidential” nature of the
13 communications, and NCC’s prior arguments—rejected by this Court, *see* ECF No. 54—
14 that similar documents “contain proprietary information.” *See* ECF No. 57-1 at 1–2.
15 Review of Exhibits G, H, and I, however, reveals that they primarily consist of matters of
16 public record, including California statutes and federal court records, including the
17 insurance policies issued by NCC to the NSCA. *See generally* ECF Nos. 58-1–3; *see also*
18 ECF Nos. 1-7–8. It is also clear from the pleadings in this case that NCC agreed to defend
19 the NSCA in *CrossFit, Inc. v. National Strength and Conditioning Association*, No. 14-
20 CV-1191 JLS (KSC) (S.D. Cal. filed May 12, 2014), subject to a reservation of rights. *See,*
21 *e.g.*, ECF No. 1 ¶ 13; ECF No. 7 ¶ 16. It is therefore unclear to the Court what portions of
22 Exhibits G, H, and I—if any—contain “confidential” or “proprietary information” or what
23 specific prejudice or harm NCC or the NSCA may suffer if those exhibits are not filed
24 under seal. Because the NSCA has failed to meet its burden of establishing “compelling
25 reasons” sufficient to outweigh the public’s interest in Exhibit G, H, and I in support of its
26 pending MPSJ, the Court **DENIES WITHOUT PREJUDICE** the NSCA’s Motion.

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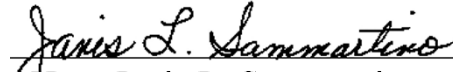
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1 **CONCLUSION**

2 In light of the foregoing, the Court **DENIES WITHOUT PREJUDICE** the
3 NSCA’s Motion (ECF No. 57). Within seven (7) days of the electronic docketing of this
4 Order, the NSCA or NCC **SHALL FILE** a renewed motion to seal that meets the
5 “compelling reasons” standard **OR** the NSCA **SHALL FILE** full, unredacted copies of
6 the documents previously lodged under seal at ECF No. 58.

7 **IT IS SO ORDERED.**

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9 Dated: February 28, 2020

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11 Hon. Janis L. Sammartino
12 United States District Judge
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