

1 Gregory H. Guillot
 2 ggmark@radix.net
 3 *Admitted Pro Hac Vice*
 4 GREGORY H. GUILLOT, P.C.
 5 13455 Noel Road, Suite 1000
 6 Dallas, TX 75240
 7 Telephone: (972) 774-4560
 8 Facsimile: (214) 515-0411

9 John L. Krieger, (Nevada Bar No. 6023)
 10 JKrieger@LRLaw.com
 11 LEWIS AND ROCA LLP
 12 3993 Howard Hughes Parkway, Suite 600
 13 Las Vegas, NV 89169
 14 Telephone: (702) 949-8200
 15 Facsimile: (702) 949-8389

16 George L. Paul
 17 GPaul@LRLaw.com
 18 *Admitted Pro Hac Vice*
 19 Robert H. McKirgan,
 20 RMckirgan@LRLaw.com
 21 *Admitted Pro Hac Vice*
 22 LEWIS AND ROCA LLP
 23 40 North Central Avenue, Suite 1900
 24 Phoenix, AZ 85004
 Telephone: (602) 262-5326
 Facsimile: (602) 734-3857

Attorneys for Plaintiff,
 DONNA CORBELLO

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONNA CORBELLO, an individual,
 Plaintiff,
 vs.
 THOMAS GAETANO DEVITO, an
 individual, *et al.*,
 Defendants.

Case No. 2:08-cv-00867-RCJ-PAL

**PLAINTIFF’S MOTION FOR LEAVE
 TO FILE CERTAIN EXHIBITS TO
 PLAINTIFF’S MOTION TO COMPEL
 ANSWERS TO INTERROGATORIES
 AND THE PRODUCTION OF
 DOCUMENTS BY DEFENDANTS,
 MARSHALL BRICKMAN AND ERIC S.
 ELICE (DOC. 375) UNDER SEAL**

Plaintiff Donna Corbello, by her attorneys, and pursuant to the *Stipulated Protective Order* (Doc. 94) entered into by the parties, and the Court’s *Protective Order Governing Confidentiality of Documents* entered on January 5, 2009 (“Order Regarding Sealing Requirements”) (Doc. 95), herewith requests leave to file certain documents under seal as

1 exhibits to *Plaintiff's Motion to Compel Answers to Interrogatories and the Production of*
2 *Documents by Defendants, Marshall Brickman and Eric S. Elice* (Doc. 375) (“Motion to
3 Compel”).

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Pursuant to her obligations under the *Stipulated Protective Order* and *Order Regarding*
6 *Sealing Requirements*, Plaintiff seeks an order permitting her to file the following documents
7 under seal, which were produced by Defendants Frankie Valli, Robert J. Gaudio, Marshall
8 Brickman, Eric S. Elice, DSHT, Inc., Dodger Theatricals, Inc., and/or JB Viva Vegas, LP (the
9 “New Defendants”), and/or by third party Charles Alexander (“Alexander”), and marked
10 “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” thereby, which she intends to attach as
11 exhibits to her *Motion to Compel*, as to Defendants Marshall Brickman and Eric S. Elice::

- 12 • J B-0032766, consisting of an e-mail from Ed Strong to Michael David and Nan
13 Bases, regarding a conference with Plaintiff’s counsel before this action was filed.
- 14 • *Marshall Brickman’s Answer to Plaintiff’s First Set of Interrogatories to*
15 *Defendant Marshall Brickman.*
- 16 • *Answer to Plaintiff’s First Set of Interrogatories to Defendant Eric S. Elice.*
- 17 • *Defendants Eric S. Elice’s, Marshall Brickman’s and Des McAnuff’s Responses to*
18 *Plaintiff’s First Request for Production of Documents, Electronically Stored*
19 *Information and Things.*
- 20 • JB-0027295 to JB-002796, JB-0027602, JB-0027335, JB-0062289, and JB-
21 0022805 to JB-0022806, consisting of emails, notes, and memos from and to
22 Defendants Brickman and Elice, which mention the Work at issue in this case.
- 23 • JB-0010213 to JB-0010255, consisting of an unsigned agreement to which
24 Defendant Elice’s corporation, Getting Home, Inc., is a signatory.
- 25 • JB-0002156, JB-0002225, and JB-0002282, consisting of excerpts from Michael
26 David’s trial testimony in Frankie Valli’s divorce proceeding.
- 27 • JB-0069802, consisting of a letter from Rick Elice to Ed Strong of Dodger
28 Theatricals, concerning an investment in the Las Vegas company of *Jersey Boys*.

- ALEX-00134, consisting of an e-mail regarding the authorship of The Work, produced by a third party.

I. ARGUMENT

There is an exception to the normal presumption of access to judicial records, for “sealed discovery document[s] [attached] to a non-dispositive motion,” such that “the usual presumption of the public's right of access is rebutted.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179-1180 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). The public has less of a need for access to court records attached only to non-dispositive motions because those documents are often “unrelated, or only tangentially related, to the underlying cause of action.” *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)). Moreover, “public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Id.* (citing *Phillips*, 307 F.3d at 1213). Finally, when a district court grants a protective order to seal documents during discovery, “it already has determined that ‘good cause’ exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.” *Id.* Accordingly, “good cause” exists for the filing of the foregoing documents under seal.

Pursuant to the *Stipulated Protective Order* herein, Plaintiff has an obligation to maintain the confidentiality of any document marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” by an opposing party, and the documents identified above were so marked by the New Defendants and Alexander. Accordingly, Plaintiff may not file the documents with the Court without obtaining an Order and/or filing them under seal. Whereas, Plaintiff’s *Motion to Compel* is not a dispositive motion, the filing of these documents under seal falls within the exception to the general presumption of public access carved out by the courts of this Circuit for documents attached to non-dispositive motions. Accordingly, leave to file the subject documents under seal should be granted.

///

///

1 **II. CONCLUSION**

2 IN VIEW OF THE ABOVE, Plaintiff respectfully requests that her present motion be
3 granted.

4 Dated: December 26, 2010

5 RESPECTFULLY SUBMITTED:

6
7 /s/Gregory H. Guillot
8 Gregory H. Guillot
9 George L. Paul
10 John L. Krieger
11 Robert H. McKirgan
12 Attorneys for Plaintiff, Donna Corbello

13
14
15 IT IS SO ORDERED:

16
17 
18 UNITED STATES MAGISTRATE JUDGE
19 DATED: January 3, 2011
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I, Gregory H. Guillot, hereby certify that on December
3 26, 2010, I electronically filed the foregoing document and this *Certificate of Service* with the
4 Clerk of Court using the CM/ECF system which will send notifications of such filing to the
5 following:

6 L. Bradley Hancock
7 Christopher B. Payne
8 Greenberg Traurig, LLP
9 1000 Louisiana
10 Suite 1800
11 Houston, TX 77002

12 Booker T. Evans, Jr.
13 Greenburg Traurig, LLP
14 2375 East Camelback Road
15 Suite 700
16 Phoenix, AZ 85016

17 Alma Chao
18 Greenburg Traurig, LLP
19 3773 Howard Hughes Parkway
20 Suite 500 North
21 Las Vegas, Nevada 89169

22 *Attorneys for Thomas Gaetano DeVito*

23 Daniel M. Mayeda
24 LEOPOLD, PETRICH & SMITH, P.C.
25 2049 Century Park East, Suite 3110
26 Los Angeles, California 90067-3274

27 David S. Korzenik
28 MILLER KORZENIK SOMMERS LLP
488 Madison Avenue, Suite 1120
New York, New York 10022-5702

Samuel S. Lionel
Todd Kennedy
LIONEL, SAWYER & COLLINS
300 So. 4th Street #1700
Las Vegas, Nevada 89101

*Attorneys for Defendants Frankie Valli, Robert J. Gaudio, Marshall Brickman, Eric S. Elice,
Des McAnuff, DSHT, Inc., and Dodger Theatricals, Ltd.*

28 /s/Gregory H. Guillot