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 28 DONNA CORBELLO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

19 DONNA CORBELLO, an individual,
 20 Plaintiff,
 21 vs.
 22 THOMAS GAETANO DEVITO, an
 23 individual, *et al.*,
 24 Defendants.

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

**PLAINTIFF'S MOTION FOR LEAVE
 TO FILE CERTAIN EXHIBITS
 UNDER SEAL FOR HER *REPLY* IN
 SUPPORT OF *MOTION FOR
 RECONSIDERATION (DOC. 347)***

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

1 exhibits to her *Reply to Defendant's Response to Motion for Reconsideration and Supplement*
2 (Docs. 354 & 355), to be filed on or before January 17, 2011.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

- 11 • JB-0038550-0038553, consisting of undated "speeches" by the Tommy DeVito,
12 Bob Gaudio, Nick Massi and Frankie Valli characters in *Jersey Boys*.
- 13 • JB-0033160, JB-0028619, JB-0028644, JB-0029170, JB-0029171, JB-0029172,
14 JB-0028420, JB-0028639, JB-0028647, JB-0028655, consisting of various emails
15 to and from Defendant Elice.
- 16 • JB-0026531-0026537, JB-0026663, consisting of excerpts from the script change
17 master archive allegedly maintained by Defendant, Dodger Theatricals for the
18 New York production of *Jersey Boys*.
- 19 • JB-0074393, JB-0053465, JB-0053449, JB-0053388, JB-0053315, JB-0053289,
20 JB-0053173, consisting of various Stage Manager Reports.
- 21 • JB-0002932, consisting of 1 page of a draft script for *Jersey Boys* dated
22 "8/11/04."
- 23 • JB-0072056-0072057, JB-0072061-JB-0072062, JB-0072066, JB-0072080-JB-
24 0072083, and JB-0072098, consisting of excerpts from an outline/treatment for
25 *Jersey Boys*, dated February 13, 2004.
- 26 • JB-0048300-0048317, consisting of an undated outline/treatment for *Jersey Boys*.

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- KINSELLA-006981, KINSELLA-006832, KINSELLA-007619, KINSELLA-007392, KINSELLA-008247, KINSELLA-000013, consisting of various letters and emails addressed to Kevin Kinsella.
- JB-0052032-JB-0052033, JB-0048086, consisting of undated correspondence that was originally attached to unidentified emails.
- JB-0060655, JB-0043011, JB-0047399, JB-0038555, JB-0047821, JB-0043251, JB-0043663, JB-0043986, JB-0049851, JB-0044570, JB-0038469, JB-0038541, JB-0038582, JB-0048145, JB-0065311, JB-0044357, JB-0062838, JB-0044374, JB-0050071, JB-0048145, JB-0045717, JB-0043986, JB-0043177, JB-0043989, JB-0046449, consisting of the first pages of various undated scripts and fragments of scripts for *Jersey Boys*.
- JB-0038304-JB-0038307, consisting of “Bob Gaudio notes” dated June 25, 2004 .
- JB-0027611, JB-0027621, JB-0027625, consisting of emails which had attachments that were not produced with the emails.
- KINSELLA-008563, consisting of emails from Michael David to Kevin Kinsella and others concerning the *Jersey Boys* movie.
- JB-0065233-JB-0065236, consisting of various emails to and from Rick Elice relating to issues regarding *Jersey Boys* profits adjudicated in Frankie Valli’s divorce proceeding.
- JB-0002916, consisting of a cover page for a *Jersey Boys* script.
- JB-0022560-JB-0023388, consisting of a production disk from the New Defendants dated May 26, 2009, bearing a label from Summitt Reprographics, and including scripts and related material in non-searchable pdf format.
- JB-0033050 to JB-0074364, consisting of a production disk from the New Defendants dated October 26, 2010, bearing a label from ABC Digital Solutions and including tens of thousands of pages of scripts and related material, in non-searchable single page TIFF file format.

1 **I. ARGUMENT**

2 There is an exception to the normal presumption of access to judicial records, for “sealed
3 discovery document[s] [attached] to a non-dispositive motion,” such that “the usual presumption
4 of the public's right of access is rebutted.” *Kamakana v. City & County of Honolulu*, 447 F.3d
5 1172, 1179-1180 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213
6 (9th Cir. 2002)). The public has less of a need for access to court records attached only to non-
7 dispositive motions because those documents are often “unrelated, or only tangentially related,
8 to the underlying cause of action.” *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33,
9 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)). Moreover, “public policies that support the right of
10 access to dispositive motions, and related materials, do not apply with equal force to non-
11 dispositive materials.” *Id.* (citing *Phillips*, 307 F.3d at 1213). Finally, when a district court
12 grants a protective order to seal documents during discovery, “it already has determined that
13 ‘good cause’ exists to protect this information from being disclosed to the public by balancing
14 the needs for discovery against the need for confidentiality.” *Id.* Accordingly, “good cause”
15 exists for the filing of the foregoing documents under seal.

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

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II. CONCLUSION


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

Dated: January 13, 2011

RESPECTFULLY SUBMITTED:

/s/Gregory H. Guillot
Gregory H. Guillot
George L. Paul
John L. Krieger
Robert H. McKirgan
Attorneys for Plaintiff, Donna Corbello

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE
DATED: January 18, 2011

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I, Gregory H. Guillot, hereby certify that on January 13,
3 2011, I electronically filed the foregoing document and this *Certificate of Service* with the Clerk
4 of Court using the CM/ECF system which will send notifications of such filing to the following:

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Des McAnuff, DSHT, Inc., and Dodger Theatricals, Ltd.*

27 /s/Gregory H. Guillot