

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, for the use and)
benefit on behalf of GREGG CHAMBERS &)
SONS, LLC,)

Plaintiff,)

vs.)

TRAVELERS CASUALTY & SURETY)
COMPANY OF AMERICA, et al.,)

Defendants.)

Case No. 2:13-cv-00400-JCM-CWH

ORDER

This matter came before the Court on the parties' Stipulated Protective Order (#35), filed on June 26, 2013. The Court approved that Protective Order to facilitate discovery in this case. This order reminds counsel that there is a presumption of public access to judicial files and records. A party seeking to file a confidential document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). Additionally, this order modifies the parties' stipulated protective order with respect to any documents filed or submitted with any dispositive motions filed in this case, and with respect to any documents the parties seek to maintain as confidential for purposes of identification in the joint pretrial order.

The Court has adopted electronic filing procedures, and with a few exceptions not applicable here, the Clerk of the Court no longer maintains paper records. Special Order 109 requires the Clerk of the Court to maintain the official files for all cases filed on or after November 7, 2005, in electronic form. The electronic record constitutes the official record of the court. Attorneys must file documents under seal using the Court's electronic filing procedures. *See* LR 10-5(b). That rule provides:

Unless otherwise permitted by statute, rule or prior Court order, papers filed

1 with the Court under seal shall be accompanied by a motion for leave to file
2 those documents under seal, and shall be filed in accordance with the Court's
3 electronic filing procedures. If papers are filed under seal pursuant to prior
4 Court order, the papers shall bear the following notation on the first page,
5 directly under the case number: "FILED UNDER SEAL PURSUANT TO
6 COURT ORDER DATED ____." All papers filed under seal will
7 remain sealed until such time as the Court may deny the motion to seal or
8 enter an order to unseal them, or the documents are unsealed pursuant to
9 Local Rule.

10 *Id.* Documents filed under seal are not accessible to the public.

11 The Court has approved the parties' blanket protective order to facilitate their discovery
12 exchanges. But the parties have not shown, and the Court has not found, that any specific
13 documents are secret or confidential. The parties have not provided specific facts supported by
14 declarations or concrete examples to establish that a protective order is required to protect any
15 specific trade secret or other confidential information pursuant to Rule 26(c) or that disclosure would
16 cause an identifiable and significant harm. The Ninth Circuit has held that there is a presumption of
17 public access to judicial files and records and that parties seeking to maintain the confidentiality of
18 documents attached to nondispositive motions must show good cause exists to overcome the
19 presumption of public access. *See Kamakana* 447 F.3d at 1179. Parties seeking to maintain the
20 secrecy of documents attached to dispositive motions must show compelling reasons sufficient to
21 overcome the presumption of public access. *Id.* at 1180.

22 Based on the foregoing and good cause appearing therefore,

23 **IT IS HEREBY ORDERED** that the parties shall comply with the requirements of LR 10-
24 5(b), the Ninth Circuit's decision in *Kamakana*, 447 F.3d 1172, and the procedures outlined above,
25 with respect to any documents filed under seal.

26 **IT IS FURTHER ORDERED** that in regard to discovery and other non-dispositive
27 motions, only those portions of the motion, response or reply pleadings which contain specific
28 reference to the contents of confidential documents or information, and the exhibits which contain
such confidential information, shall be filed under seal. The remainder of the pleading and other
exhibits, which do not contain confidential information, shall be filed as publicly accessible
documents unless otherwise specifically ordered by the court.

IT IS FURTHER ORDERED that no documents filed with the court as attachments to a

1 summary judgment or other dispositive motion, or documents which are identified in the joint
2 pretrial order, may be filed under seal unless the proponent seeking protected status of the
3 document(s) establishes “compelling reasons” to rebut the presumption of public access.

4 Any party seeking to seal attachments to a motion for summary judgment or other dispositive
5 motion filed with the court, or documents which are identified in the joint pretrial order, shall submit
6 a separate memorandum of points and authorities which presents articulable facts identifying the
7 interests favoring continuing the secrecy of the attachments, and shows that these specific interests
8 outweigh the public’s interests in disclosure sufficient to overcome the presumption of public access
9 to dispositive pleadings and attachments.

10 Any application to seal documents attached to a motion for summary judgment or other
11 dispositive motion, or documents identified in the joint pretrial order, shall be served on opposing
12 counsel together with the documents proposed to be filed under seal. Opposing counsel shall have
13 **fourteen (14) days** from service of any application to seal documents attached to a motion for
14 summary judgment or other dispositive motion, or documents identified in the joint pretrial order, in
15 which to file a response.

16 DATED this 27th day of June, 2013.

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19 **C.W. Hoffman, Jr.**
20 **United States Magistrate Judge**
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