UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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NEWMARK GROUP, INC., G&E ACQUISITION COMPANY, LLC and BGC REAL ESTATE OF NEVADA, LLC

Plaintiffs,

v.

AVISON YOUNG (CANADA) INC.; AVISON YOUNG (USA) INC.; AVISON YOUNG-NEVADA, LLC, MARK ROSE, THE NEVADA COMMERCIAL GROUP, JOHN PINJUV, and JOSEPH KUPIEC; DOES 1 through 5; and ROE BUSINESS ENTITIES 6 through 10,

Defendants.

Case No. 2:15-cv-00531-RFB-EJY

ORDER

Before the Court is Defendants' Motion for Leave to File Exhibits Under Seal and Redact Portions of Opposition to Plaintiffs' Motion to Compel (ECF No. 407).

As explained in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), courts generally recognize a "right to inspect and copy public records and documents, including judicial records and documents." *Id*. at 1178 *citing Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). This right is justified by the interest of citizens who "keep a watchful eye on the workings of public agencies." *Id*. As Defendants know, a party seeking to file a document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana*. A party seeking to maintain the secrecy of documents attached to dispositive motions must show compelling reasons sufficient to overcome the presumption of public access. *Id.* If a sealing order is permitted, it must be narrowly tailored. *Press–Enterprise Co. v. Superior Ct. of Cal., Riverside Cty.*, 464 U.S. 501, 512 (1984). When a document is attached to a non-dispositive motion, which is the case here, the "public policies that support the right of access to dispositive motions … do not apply with equal force . . .." *Kamakana*, 447 F.3d at 1179 (citation omitted). "Thus a particularized

showing, under the good cause standard of Rule 26(c), will suffice to warrant preserving the secrecy of sealed discovery material attached to non-dispositive motions." *Id.* at 1180 (citations, quotation marks and brackets omitted).

Here, Defendants seek to seal exhibits to an opposition to a non-dispositive motion as well as portions of the opposition itself. Defendants have demonstrated good cause for filing Exhibit B, page Bates Numbered AYNV-108190 and Exhibit E in its entirety. These documents contain confidential or proprietary information the public disclosure of which could result in misuse that would harm Defendants. Defendants have not demonstrated good cause for filing Exhibit B, pages Bates Numbered AYNV-108187-189, or Exhibit C, pages Bates Numbered AYNV-108191-193. Defendants also did not attach Exhibit G to its filing under seal rendering it impossible for the Court to review this document.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Leave to File Exhibits Under Seal and Redact Portions of Opposition to Plaintiffs' Motion to Compel (ECF No. 407) is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that Exhibit B, page Bates Numbered AYNV-108190 and Exhibit E in its entirety shall remain sealed.

IT IS FURTHER ORDERED that Exhibit B, pages Bates Numbered AYNV-108187-189 and Exhibit C, pages Bates Numbered AYNV-108191-193 contain no privileged or confidential information, and nothing the Court can discern that is potentially privileged or confidential. As such, these documents shall be unsealed.

IT IS FURTHER ORDERED that Exhibit G to Defendants' Opposition, identified as the Declaration of Robert Z. Slaughter attaching Exhibits A-E was *not* filed under seal. Therefore, Defendants must either move to strike this filing and refile this document with a request to file under seal or take no action in which case the declaration and exhibits thereto shall remain unsealed.

IT IS FURTHER ORDERED that the portions of Defendants' Opposition to ECF No. 397 referring to Exhibit B, page Bates Numbered AYNV-108190, or any portion of Exhibit E shall remain redacted and sealed.

IT IS FURTHER ORDERED that Defendants shall file a revised, unsealed and unredacted Opposition to ECF No. 397 removing redactions referencing Exhibit B, Bates Numbered pages AYNV-108187-189, or Exhibit C, Bates Numbered pages AYNV-108191-193.

Dated this 13th day of October, 2020

ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE