

**BAILEY ♦ KENNEDY**  
 8984 SPANISH RIDGE AVENUE  
 LAS VEGAS, NEVADA 89148-1302  
 702.562.8820

DENNIS L. KENNEDY  
 Nevada Bar No. 1462  
 JOSEPH A. LIEBMAN  
 Nevada Bar No. 10125  
 JOSHUA P. GILMORE  
 Nevada Bar No. 11576  
**BAILEY ♦ KENNEDY**  
 8984 Spanish Ridge Avenue  
 Las Vegas, Nevada 89148-1302  
 Telephone: 702.562.8820  
 Facsimile: 702.562.8821  
 DKennedy@BaileyKennedy.com  
 JLiebman@BaileyKennedy.com  
 JGilmore@BaileyKennedy.com

*Attorneys for Defendants & Counterclaimants*  
 RUSSELL J. SHAH, M.D.; DIPTI R. SHAH,  
 M.D.; RUSSELL J. SHAH, MD, LTD.; DIPTI  
 R. SHAH, MD, LTD.; and RADAR  
 MEDICAL GROUP, LLP dba UNIVERSITY  
 URGENT CARE

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

ALLSTATE INSURANCE COMPANY,  
 ALLSTATE PROPERTY & CASUALTY  
 INSURANCE COMPANY, ALLSTATE  
 INDEMNITY COMPANY, and ALLSTATE  
 FIRE & CASUALTY INSURANCE  
 COMPANY,

Plaintiffs,

vs.

RUSSELL J. SHAH, M.D.; DIPTI R. SHAH,  
 M.D.; RUSSELL J. SHAH, MD, LTD.; DIPTI  
 R. SHAH, MD, LTD.; and RADAR MEDICAL  
 GROUP, LLP dba UNIVERSITY URGENT  
 CARE, Does 1-100, and ROES 101-200,

Defendants.

AND RELATED CLAIMS.

Case No. 2:15-cv-01786-APG-CWH

**DEFENDANTS' MOTION FOR LEAVE  
 TO FILE UNDER SEAL EXHIBITS 43-  
 J AND 44-46 SUPPORTING  
 DEFENDANTS' MOTION TO  
 COMPEL PLAINTIFFS' RESPONSES  
 TO FIRST SET OF REQUESTS FOR  
 PRODUCTION OF DOCUMENTS AND  
 FIRST SETS OF INTERROGATORIES**

Defendants Russell J. Shah, M.D. (“Russell”); Dipti R. Shah, M.D. (“Dipti”); Radar Medical Group, LLP (“Radar Medical Group”); Russell J. Shah, MD, Ltd. (“Russell PC”); and Dipti R. Shah, MD, Ltd. (“Dipti PC”) (collectively, the “Radar Parties”) move this Court for leave to file under seal Exhibits 43-J and 44-46 in support of their Motion to Compel Plaintiffs’ Responses to First Set of Requests for Production of Documents and First Sets of Interrogatories [ECF No. 95] (the “Motion to Compel”).

This Motion is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any argument heard by the Court.

DATED this 9<sup>th</sup> day of March, 2017.

BAILEY ♦ KENNEDY

By: /s/ Joshua P. Gilmore

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

JOSHUA P. GILMORE

*Attorneys for Defendants &  
Counterclaimants*

### **MEMORANDUM OF POINTS AND AUTHORITIES**

A party seeking to seal documents attached to a non-dispositive motion must identify “good cause” to do so in accordance with Fed. R. Civ. P. 26(c). *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). This is a less exacting standard than the “compelling reasons” standard for seeking to seal documents attached to a dispositive motion, because the “usual presumption of the public’s right of access” to dispositive motions “is rebutted.” *See id.* at 1178-80.

On March 9, 2017, the Radar Parties filed their Motion to Compel. The Radar Parties attached four exhibits to their Motion to Compel that qualify (or may qualify) for sealing: Exhibits 43-J and 44-46.

Exhibit 43-J is an excerpt of the Insurance Companies’ privilege log, while Exhibit 46 is an excerpt of their internal claims manual. The Insurance Companies designated these documents as “CONFIDENTIAL” pursuant to Section V of the Stipulated Confidentiality Agreement and Protective Order [ECF No. 39] (the “Protective Order”). As a result, the Radar Parties are required

1 to file them under seal, pursuant to Section X of the Protective Order, pending a response to this  
2 Motion to Seal from the Insurance Companies regarding the need, if any, to keep them under seal.

3 Exhibits 44-45 consist of reports generated by computer software programs known as  
4 DecisionPoint and Colossus utilized by the Insurance Companies when adjusting bodily injury  
5 claims. They describe medical treatment rendered to a patient purportedly at issue in this matter.  
6 Because the patient is a non-party, sealing these exhibits is warranted in order to protect that  
7 patient's privacy interests under the Health Insurance Portability and Accountability Act of 1996.<sup>1</sup>  
8 *See, e.g., Brodsky v. Baca*, No. 3:14-cv-00641-RCJ-WGC, 2015 WL 6962867, at \*1 (D. Nev. Nov.  
9 10, 2015) (recognizing that protecting medical privacy qualifies as a "compelling reason" to seal  
10 judicial records).

11 For these reasons, the Court should grant this Motion to Seal.

12 DATED this 9<sup>th</sup> day of March, 2017.

13 BAILEY ♦ KENNEDY

14 By: /s/ Joshua P. Gilmore

15 DENNIS L. KENNEDY

16 JOSEPH A. LIEBMAN

17 JOSHUA P. GILMORE

18 *Attorneys for Defendants &*  
19 *Counterclaimants*

20 IT IS SO ORDERED.

21 DATED: April 4, 2017

22   
C.W. HOFFMAN, JR.

23 UNITED STATES MAGISTRATE JUDGE

24  
25  
26  
27  
28 <sup>1</sup> On September 20, 2016, the Court entered an Order [ECF No. 67] sealing excerpts of claims notes for two other patients purportedly at issue in this matter because they contained "sensitive medical information of non-parties."

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 9<sup>th</sup> day of March 2017, service of the foregoing **DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBITS 43-J AND 44-46 SUPPORTING DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST SETS OF INTERROGATORIES** was made by mandatory electronic service through the United States District Court's electronic filing system and/or by emailing a true and correct copy to the following:

JARED P. GREEN, ESQ.  
**MCCORMICK, BARSTOW,  
SHEPPARD, WAYTE &  
CARRUTH LLP**  
8337 West Sunset Road, Suite 350  
Las Vegas, NV 89113

Email:  
jared.green@mccormickbarstow.com  
Kristin.thomas@mccormickbarstow.com  
Debbie.sizemore@mccormickbarstow.com  
Jennifer.deboer@mccormickbarstow.com  
Michael.merritt@mccormickbarstow.com

*Attorneys for Plaintiffs/  
Counterdefendants*

ERON Z. CANNON, ESQ.  
**FAIN ANDERSON  
VANDERHOEF ROSENDAHL  
O'HALLORAN SPILLANE PLLC**  
701 Fifth Avenue, Ste. 4750  
Seattle, WA 98104

Email:  
Eron@favros.com  
donna@favros.com

*Attorneys for Plaintiffs/  
Counterdefendants*

/s/ Jennifer Kennedy  
Employee of BAILEY ♦ KENNEDY