

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 INAG, INC., a Nevada corporation, and
5 MARK H. JONES and SHERYLE L. JONES
6 as Trustees of the Mark Hamilton Jones and
7 Sheryle Lynn Jones Family Trust U/A/D
8 November 7, 2013,

Case No. 2:16-cv-00722-JAD-EJY

ORDER

9 Plaintiffs,

10 v.

11 RICHAR, INC., a Nevada corporation,

12 Defendant.

13 Pending Before the Court is Plaintiffs' Motion for Leave to File Under Seal Exhibits 3, 12,
14 and 14 to Plaintiffs' Motion for Summary Judgment (ECF No. 98). No response to this Motion was
15 filed.

16 As explained in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006),
17 courts generally recognize a "right to inspect and copy public records and documents, including
18 judicial records and documents." *Id.* at 1178 citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589,
19 597 & n. 7 (1978). This right is justified by the interest of citizens who "keep a watchful eye on the
20 workings of public agencies." *Id.* A party seeking to file a document under seal must file a motion
21 to seal and must comply with the Ninth Circuit's directives in *Kamakana*. A party seeking to
22 maintain the secrecy of documents attached to dispositive motions must show compelling reasons
23 sufficient to overcome the presumption of public access. *Id.* If a sealing order is permitted, it must
24 be narrowly tailored. *Press-Enterprise Co. v. Superior Ct. of Cal., Riverside Cty.*, 464 U.S. 501,
25 512 (1984). When a document is attached to a non-dispositive motion, the "public policies that
26 support the right of access to dispositive motions ... do not apply with equal force . . ." *Kamakana*,
27 447 F.3d at 1179 (citation omitted). "Thus a particularized showing, under the good cause standard
28 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).

1 The documents at issue here are attached to a dispositive motion (a motion for summary
2 judgment). Thus, there must be a compelling reason to maintain the secrecy of these documents.
3 However, as explained by the Ninth Circuit, the “presumption of access is not rebutted where, as
4 here, documents subject to a protective order are filed under seal as attachments to a dispositive
5 motion.” *Foltz v. state Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th. Cir. 2003) (internal
6 citation omitted). Plaintiffs’ Motion offers no argument in favor of sealing 216 pages of documents
7 other than these documents were produced by Defendant with an “Attorneys Eyes Only” designation
8 established pursuant to the Stipulated Protective Order (ECF No. 28). As Plaintiffs point out, they
9 are not the parties seeking to maintain the secrecy of these exhibits. Rather, it is Defendant who
10 seeks to do so and, therefore, it is Defendant’s obligation to justify the request to seal. Defendant
11 has submitted nothing to the Court establishing a basis for the secrecy of the document, which the
12 Court reviewed. The Court notes that, other than a handful of pages, the Court could not identify
13 anything in any of the documents that required the secrecy Defendant apparently seeks.

14 Accordingly,

15 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Leave to File Under Seal Exhibits 3,
16 12, and 14 to Plaintiffs’ Motion for Summary Judgment (ECF No. 98) is DENIED without prejudice.

17 IT IS FURTHER ORDERED that Defendant shall have fourteen (14) days from the date of
18 this Order to file a memorandum with the Court providing the Court with the compelling reason(s)
19 any or all of Exhibits 3, 12, and 14 should be sealed.

20 IT IS FURTHER ORDERED that Exhibits 3, 12, and 14 to Plaintiffs’ Motion for Summary
21 Judgment (ECF No. 95) shall remain sealed until the Court issues a further order.

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23 Dated this 23rd day of November, 2020

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ELAYNA J. YOUCHAK
UNITED STATES MAGISTRATE JUDGE