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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Archer Western Contractors, LLC,

Plaintiff,

v.

The Erection Company, Inc.

And

Travelers Casualty and Surety Company of
America,

Defendants.

Case No. 2:17-cv-03032-GMN-DJA

Order

14 This matter is before the Court on the parties' stipulation for inadvertent disclosures and
15 clawback (ECF No. 42). The parties request that the Court enter an order to govern the potential
16 inadvertent exchange of privileged information. The parties include a line, taken from Federal
17 Rule of Civil Procedure 26(b)(5)(B) that they "may promptly present the information to the Court
18 under seal for a determination of the [privilege or protection] claim." However, the parties fail to
19 state the governing standard for filing documents under seal with the Court. This order reminds
20 counsel that there is a presumption of public access to judicial files and records. A party seeking
21 to file a confidential document under seal must file a motion to seal and must comply with the
22 Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.
23 2006) and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir. 2016).

24 **IT IS THEREFORE ORDERED** that the parties' stipulation for inadvertent disclosures
25 and clawback (ECF No. 42) is **granted subject to the following modifications:**

- 26 • The Court has adopted electronic filing procedures. Attorneys must file
27 documents under seal using the Court's electronic filing procedures. *See* Local
28 Rule IA 10-5. Papers filed with the Court under seal must be accompanied with a

1 concurrently-filed motion for leave to file those documents under seal. *See* Local
2 Rule IA 10-5(a).

- 3 • The Court has approved the instant stipulation to facilitate discovery exchanges,
4 but there has been no showing, and the Court has not found, that any specific
5 documents are secret or confidential. The parties have not provided specific facts
6 supported by declarations or concrete examples to establish that a protective order
7 is required to protect any specific trade secret or other confidential information
8 pursuant to Rule 26(c) or that disclosure would cause an identifiable and
9 significant harm.
- 10 • All motions to seal shall address the standard articulated in *Ctr. for Auto Safety*
11 and explain why that standard has been met. 809 F.3d at 1097.
- 12 • Specifically, a party seeking to seal judicial records bears the burden of meeting
13 the “compelling reasons” standard, as previously articulated in *Kamakana*. 447
14 F.3d 1172. Under the compelling reasons standard, “a court may seal records only
15 when it finds ‘a compelling reason and articulate[s] the factual basis for its ruling,
16 without relying on hypothesis or conjecture.’” *Ctr. for Auto Safety*, 809 F.3d at
17 1097. (quoting *Kamakana*, 447 F.3d at 1179). “The court must then
18 ‘conscientiously balance[] the competing interests of the public and the party who
19 seeks to keep certain judicial records secret.’” *Ctr. for Auto Safety*, 809 F.3d at
20 1097.
- 21 • There is an exception to the compelling reasons standard where a party may satisfy
22 the less exacting “good cause” standard for sealed materials attached to a
23 discovery motion unrelated to the merits of the case. *Id.* “The good cause
24 language comes from Rule 26(c)(1), which governs the issuance of protective
25 orders in the discovery process: ‘The court may, for good cause, issue an order to
26 protect a party or person from annoyance, embarrassment, oppression, or undue
27 burden or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the
28 party seeking protection bears the burden of showing specific prejudice or harm

1 will result if no protective order is granted.” *Phillips v. General Motors*, 307 F.3d
2 1206, 1210-11 (9th Cir. 2002).

- 3 • The labels of “dispositive” and “non-dispositive” will not be the determinative
4 factor for deciding which test to apply because the focal consideration is “whether
5 the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto*
6 *Safety*, 809 F.3d at 1101.
- 7 • The fact that the Court has entered the instant stipulated protective order and that a
8 party has designated a document as confidential pursuant to that protective order
9 does not, standing alone, establish sufficient grounds to seal a filed document. *See*
10 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003); *see*
11 *also Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). If
12 the sole ground for a motion to seal is that the opposing party (or non-party) has
13 designated a document as confidential, the designator shall file (within seven days
14 of the filing of the motion to seal) either (1) a declaration establishing sufficient
15 justification for sealing each document at issue or (2) a notice of withdrawal of the
16 designation(s) and consent to unsealing. If neither filing is made, the Court may
17 order the document(s) unsealed without further notice.
- 18 • To the extent any aspect of the stipulated protective order may conflict with this
19 order or Local Rule IA 10-5, that aspect of the stipulated protective order is hereby
20 superseded with this order.

21 IT IS SO ORDERED.

22 DATED: September 16, 2021



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24 DANIEL J. ALBREGTS
25 UNITED STATES MAGISTRATE JUDGE
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