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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MOTOGOLF.COM, LLC, a Nevada
limited liability company,

Plaintiff,

v.

TOP SHELF GOLF, LLC, a Maine limited
liability company; TOP SHELF IT
SOLUTIONS, INC., a Maine corporation;
IVAN SOKOLOVICH, an individual; INNA
SOKOLOVICH, an individual; KEVIN P.
MURPHY, an individual; KEVIN E.
MURPHY, an individual; ALIAKSANR
SHAVIALEVICH, an individual,

Defendants.

Case No. 2:20-cv-00674-APG-EJY

ORDER

I. Background

Pending before the Court is Defendants’ Motion to Strike ECF No. 76-1 and for Attorneys’ Fees and Costs. ECF Nos. 78 and 80. The exhibit that is filed as ECF No. 76-1 is Exhibit 1 to Plaintiff Motogolf’s Opposition to Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint. ECF No. 76. The Motion to Dismiss filed by Defendants remains pending. ECF No. 74. Exhibit 1 is three pages long consisting of a cover sheet and a two page email that is marked in big red letters “Confidential Pursuant to Protective Order.” Defendants did not agree to remove the confidentiality designation and Plaintiff did not seek to and did not file this document under seal.

In opposition to Defendants’ Motion to Strike, and citing to the Protective Order entered by the Court at ECF No. 39, Plaintiff states the document marked by Defendants as confidential is known to a person outside the parties without being protected by the confidentiality designation; that is, someone associated with MGI Golf. ECF No. 81 at 3. Plaintiff concludes, therefore, that ECF No. 76-1 was improperly designated as confidential by Defendants. Plaintiff further claims the filing (1) absent a motion to seal was inadvertent, (2) was “required” because the Court previously dismissed Plaintiff’s intentional interference with contractual relationship claim based on Plaintiff’s

1 failure to identify any such relationship that suffered alleged interference, and (3) the document
2 marked as confidential “was [filed] within the four corners of the instant litigation.” *Id.* at 3-4.

3 Defendants argue in reply that Plaintiff’s contention of inadvertence is disingenuous because
4 Plaintiff admits it filed ECF No. 76-1 without seeking to seal after Plaintiff unilaterally decided the
5 confidentiality designation was improper. ECF No. 84 at 1-2. Defendants point to the Protective
6 Order that includes a procedure for challenging a confidentiality designation, which Plaintiff did not
7 follow. *Id.* at 2-3 *citing* ECF No. 39 at 10. Defendants contend that Plaintiff’s argument that it was
8 “required” to file the document is absurd and that Plaintiff’s contention it gained nothing from the
9 disclosure is unavailing as the Protective Order precludes dissemination of confidential information,
10 not financial gain. *Id.* at 4-5.

11 Defendants seek their attorneys’ fees and costs associated with bringing their Motion to
12 Strike in accordance with the terms of the Protective Order allowing for an award of sanctions under
13 Fed. R. Civ. P. 37(d)(2). ECF No. 80 at 3. Defendants also cite to LR IA 11-8(e), which allows for
14 an award of sanctions if a party or attorney fails to comply with a court order. Plaintiff contends
15 that the request for attorneys’ fees and costs is meritless because Defendants’ designation of the
16 document was improper. ECF No. 82 at 4-5.

17 **II. Discussion**

18 The Protective Order agreed to by the parties and entered by the Court contains a thorough
19 procedure for challenging a confidentiality designation. ECF No. 39 at 10. That process includes
20 that any party may object to a confidentiality designation by contending the information is
21 improperly designated within ninety calendar days of the designation date. *Id.* The designating
22 party has thirty calendar days to respond to the objection after which the objecting party may arrange
23 for a meet and confer within ten court days of service of the designating party’s response. *Id.* If the
24 parties cannot come to agreement upon conclusion of the meet and confer, the party challenging the
25 designation may bring a motion to resolve the dispute. *Id.*

26 There is no doubt that Plaintiff did not follow the process to which it agreed. *Id.* at 12.
27 Plaintiff instead reached a unilateral decision that the document at issue was improperly designated
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1 as confidential and could therefore be filed in the public record without any discussion with
2 Defendants or order from the Court.

3 In *Garcia v. Service Employees International Union*, Case No. 2:17-cv-01340-APG-NJK,
4 2019 WL 8750273, at *1 (D. Nev. May 23, 2019), the Court stated:

5 District courts have authority to strike an improper filing under their inherent power
6 to control the docket. *E.g., Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402,
7 404 (9th Cir. 2010); *Metzger v. Hussman*, 682 F. Supp. 1109, 1110-11 (D. Nev.
8 1988). Courts may use their inherent power to strike from the record publicly-filed
9 information that should have been filed under seal pursuant to the terms of a
protective order. *See, e.g., SolarCity Corp. v. Doria*, 2018 WL 4204024, at **10-
11 (S.D. Cal. Sept. 4, 2018). “Striking material under the Court’s inherent power
is wholly discretionary.” *Fed. Nat’l Mortg. Assoc. v. Willis*, 2016 WL 11247554,
at *1 (D. Nev. Oct. 14, 2016).

10 *See also id.* at *2 n.2. As described in *Garcia*, the instant action allows the Court to exercise its
11 inherent authority to strike the document improperly filed by Plaintiff in the public record despite
12 the confidential designation by Defendants and despite the process established by the Protective
13 Order entered by the Court. Plaintiff’s contention that it was required to file the document is
14 specious as there is nothing to support the proposition that this document needed to be filed at all,
15 let alone in the public record. That Plaintiff did not misuse the document or gain financially is a red
16 herring as the issue is dissemination of confidential information not financial gain.

17 With respect to attorneys’ fees and costs, Section II.B of the Protective Order states, in
18 pertinent part, that “[t]he [p]arties acknowledge and agree that the unauthorized use and/or disclosure
19 of Confidential Information beyond this litigation shall subject the offending Party ... to sanctions
20 contemplated in FRCP 37(b)(2)” ECF No. 39 at 7. Local Rule 11-8(e) allows the Court to
21 impose appropriate sanctions on a party that fails to comply with a court order. Here, one could
22 potentially argue that Plaintiff did not use or disclose the confidential document beyond this
23 litigation; however, by filing ECF No. 76-1 in the public record, Plaintiff effectively disclosed the
24 document to any member of the public who wanted to view the information. However, and more
25 importantly, the Court is concerned with Plaintiff’s disregard for the process to which it agreed if it
26 believed ECF No. 76-1 was improperly marked as confidential. Plaintiff submitted a stipulation to
27 the Court together with Defendants, as a proposed order, that set forth an easy to follow process for
28 challenging Defendants’ designation. Instead of following the process, Plaintiff ignored the

1 Protective Order, and the process to which it agreed, and filed ECF No. 76-1 in the public record.
2 The Court cannot ignore that conduct. Under Local Rule IA 11-8(e) the Court exercises its inherent
3 authority and grants Defendants' request for attorneys' fees and costs associated with bringing the
4 Motion to Strike.

5 **III. Order**

6 IT IS HEREBY ORDERED that Defendants' Motion to Strike ECF No. 76-1 (ECF No. 78)
7 is GRANTED.

8 IT IS FURTHER ORDERED that ECF No. 76-1 shall be struck from the record.

9 IT IS FURTHER ORDERED that the Clerk of Court shall file ECF No. 76-1 as a separate
10 entry on the docket under seal.

11 IT IS FURTHER ORDERED that Defendants' Motion for Attorneys' Fees and Costs (ECF
12 No. 80) is GRANTED.

13 IT IS FURTHER ORDERED that Defendants shall within 14 days of the date of this Order,
14 submit a memorandum, supported by affidavit of counsel, establishing the amount of attorneys' fees
15 and costs incurred preparing its Motion to Strike and Reply in Support (ECF Nos. 78 and 84). The
16 memorandum shall provide a reasonable itemization and description of work performed, identify the
17 attorney(s) or staff member(s) performing the work, the customary fee of the attorney(s) or staff
18 member(s) for such work, and the experience, reputation and ability of the attorney performing the
19 work. The attorney's affidavit shall authenticate the information contained in the memorandum,
20 provide a statement that the bill has been reviewed and edited, and a statement that the fees and costs
21 charged are reasonable.

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1 IT IS FURTHER ORDERED that Plaintiff shall have five (5) days from service of the
2 memorandum of costs and attorney's fees, in which to file a responsive memorandum addressing
3 the reasonableness of the costs and fees sought, and any equitable considerations deemed appropriate
4 for the Court to consider in determining the amount of costs and fees which should be awarded.

5 Dated this 3rd day of December, 2021.

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8 ELAYNA J. YOUCHAH
9 UNITED STATES MAGISTRATE JUDGE

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