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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7
8 EB HOLDINGS II, INC., et al.,
9 Plaintiff(s),

10 v.

11 ILLINOIS NATIONAL INSURANCE
12 COMPANY, et al.,
Defendant(s).

Case No. 2:20-cv-02248-JCM-NJK

Order

[Docket Nos. 181, 187, 197]

13 Pending before the Court is Defendant Illinois National's motion to seal. Docket No. 181.
14 Plaintiff EB Holdings II filed a response. Docket No. 183. Also pending before the Court is
15 Plaintiff EB Holdings II's motion to seal. Docket No. 187. Defendant Illinois National filed a
16 response. Docket No. 198. Also pending before the Court is Defendant Illinois National's motion
17 to seal. Docket No. 197. Plaintiffs EB Holdings II and QXH II filed a response. Docket No. 200.
18 For the reasons discussed more fully below, the Court **DEFERS** ruling on the motions to seal and
19 **ORDERS** the parties to file a joint supplement as identified below.

20 **I. STANDARDS**

21 There is a strong presumption in favor of the public's access to judicial filings. *See, e.g.,*
22 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Documents filed in
23 relation to a dispositive matter may not be sealed absent a specific showing of compelling reasons.
24 *Id.* at 1179-80.

25 Any request to seal documents must be "narrowly tailored" to remove from the public
26 sphere only the material that warrants secrecy. *Harper v. Nev. Prop. I, LLC*, 552 F. Supp. 3d
27 1033, 1040-41 (D. Nev. 2021) (citing *Ervine v. Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal.
28 2016)). To the extent any confidential information can be easily redacted while leaving

1 meaningful information available to the public, the Court must order that redacted versions be filed
2 rather than sealing entire documents. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137
3 (9th Cir. 2003); *see also In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417,
4 425 (9th Cir. 2011) (the district court must “keep in mind the possibility of redacting the sensitive
5 material”).

6 **II. MOTION TO SEAL AT DOCKET NO. 181**

7 This motion to seal relates to a one-page financial summary. Docket No. 182. The motion
8 is predicated on the declaration of counsel that such information has been kept confidential and
9 that its public disclosure may cause competitive harm to Plaintiff. Docket No. 181-1. It is not
10 clear that outside counsel (as opposed to a corporate representative) has personal knowledge as to
11 the declared facts. *See Knaggs v. Yahoo! Inc.*, 2016 WL 3916350, at *5 (N.D. Cal. July 20, 2016)
12 (courts may refuse to consider declarations that lack sufficient foundational information such as
13 the requisite personal knowledge). Moreover, although it appears redaction may not be feasible
14 with respect to this document, no argument has been presented on that issue.

15 **III. MOTION TO SEAL AT DOCKET NO. 187**

16 This sealing request relates to eight exhibits, two of which were designated as confidential
17 by Plaintiff and six of which were designated as confidential by Defendant.

18 With respect to Exhibit LLL (Docket No. 188-5) and Exhibit MMM (Docket No. 188-6),
19 Plaintiff’s counsel attests that the exhibits are expert reports that contain sensitive information.
20 Docket No. 187-1. With respect to Exhibit FF (Docket No. 188-2) and Exhibit GG (Docket No.
21 188-3), Defendant’s counsel attests that these documents contain sensitive business information.
22 Docket No. 198-1. It is not clear that the declarations submitted are based on personal knowledge
23 and no showing has been made that redaction is not feasible.

24 With respect to Exhibit AA (Docket No. 188-1), Exhibit III (Docket No. 188-4), Exhibit
25 RRR (Docket No. 188-7), and Exhibit SSS (Docket No. 188-8), Defendant designated those
26 documents as confidential. *See* Docket No. 187 at 2. As such, Defendant was required to do one
27 of two things upon their filing in this case: (1) provide a basis for their sealing or (2) file a notice
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1 of withdrawal of the confidentiality designation and consent to unsealing. Docket No. 59 at 2.¹
2 Defendant does not appear to have done either for these documents.

3 **IV. MOTION TO SEAL AT DOCKET NO. 197**

4 This motion to seal relates to a rater worksheet. Docket No. 189-12. Defendant's counsel
5 attests that such information has been kept confidential and that its public disclosure may cause
6 competitive harm. Docket No. 197-1. It is not clear that the declaration submitted is based on
7 personal knowledge and no showing has been made that redaction is not feasible.

8 **V. CONCLUSION**

9 For the reasons discussed more fully above, the Court **DEFERS** ruling on the motions to
10 seal. The parties must file a joint supplement by August 8, 2022. With respect to any exhibits for
11 which sealing is no longer sought, the joint supplement must include an unambiguous statement
12 that the parties consent to unsealing. With respect to any exhibits for which sealing continues to
13 be sought, the joint supplement must include the factual or legal showing addressing the issues
14 raised above.

15 IT IS SO ORDERED.

16 Dated: August 1, 2022

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19 _____
20 Nancy J. Koppe
21 United States Magistrate Judge
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27 ¹ The Court retains the discretion to unseal documents for which no showing has been made
28 that sealing is warranted, *see id.*, but the Court's preference is to have a clear indication from the
parties that the information at issue does not actually warrant sealing prior to revealing that
information to the public.