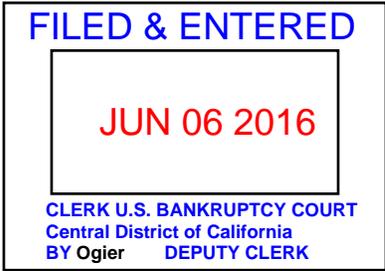


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NOT FOR PUBLICATION



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

REXFORD PROPERTIES, LLC,
a California limited liability company

Debtor.

Case No.: :15-bk-12116-MB

Chapter 11

**MEMORANDUM OF DECISION
(1) DENYING WITHOUT PREJUDICE
MOTION FOR AUTHORITY TO FILE
DOCUMENTS UNDER SEAL (CASE
DKT. 295) AND (2) DIRECTING
PROCEDURE FOR FUTURE REQUESTS
TO FILE DOCUMENTS UNDER SEAL IN
THIS CASE AND ANY RELATED
ADVERSARY PROCEEDING**

I. INTRODUCTION

1
2 Creditors The 1979 Ehrlich Investment Trust, Lee Investment Company LP, Lurline
3 Gardens Limited Housing Partnership, Rexford Development Corp., and Rexford Development of
4 Nevada LLC (collectively, “Claimants”) filed on Friday, June 3, 2016, at 3:06 p.m., their *Motion*
5 *for Order Directing Parties To File Documents Under Seal Under LBR 5003-2, For Hearing on*
6 *USF&G’s Objections to Claim Nos, 17 Through 21 and Other Contested Matters* (Case Dkt. 295)
7 (the “Motion”).

8 The Motion requests an order, pursuant to Bankruptcy Code section 107, authorizing and
9 requiring all parties in interest to file under seal any “Confidential Information” filed in connection
10 with the pending objections to the Claimants’ claims in these cases by creditor United States
11 Fidelity & Guaranty Company (“USF&G”) and other contested matters.

12 Prior to the filing of the Motion, the Court had conducted three status conferences during
13 the month of May to discuss scheduling and discovery in connection *with* these heavily litigated
14 claim objections. As a result of these status conferences, and their own efforts to meet and confer,
15 USF&G, the Claimants and the Debtor entered into several discovery stipulations to date.

16 The first is the *Stipulation and Protective Order re Documents To Be Produced By*
17 *Creditors* (Case Dkt. 282) and the Order thereon (Case Dkt. 285) (collectively, the “Protective
18 Order”). The second is the *Stipulation re Discovery Plan re USF&G’s Objections to Claim Nos.*
19 *17, 18, 19, 20 and 21 and re Debtor’s Motion to Determine Non-Insider Status* (Case Dkt. 294) and
20 the Order thereon (Case Dkt. 297) (collectively, the “Discovery and Scheduling Stipulation”).

21 The Protective Order defines certain information as “Confidential Information,” and
22 requires any party that seeks to utilize Confidential Information in a pleading filed with the Court
23 to obtain the authority of the Court to file such pleading under seal:

24 4. Where any Confidential Information is included in
25 any motion or other matter to be provided to the Court, the parties
26 shall comply with the Federal Rules of Civil Procedure and the Local
27 Rules of this Court.

1 5. A party seeking to file under seal must file a written
2 motion with the Court requesting such relief pursuant to Local
3 Bankruptcy Rule 5003-2(c).

4 Protective Order at ¶¶ 4-5. The term "Confidential Information" is defined broadly:

5 All documents Claimants produce or make available to
6 USF&G for copying in response to USF&G's discovery requests and
7 in connection with the USF&G Claim Objections and USF&G's
8 oppositions to Debtor's Classification Motion and Non-Insider
9 Motion, plus any and all information Claimants make available to
10 USF&G that is not in documentary form such as CDs, DVDs,
11 computer hard drives, and electronically stored information, shall be
12 deemed to be "Confidential Information" hereunder unless Claimants
13 designate any such information as not being "Confidential
14 Information." All documents constituting business records of
15 Claimants and Debtor produced by Rose, Snyder & Jacobs LLP
16 ("Rose Snyder") in response to any subpoenas issued to Rose Snyder
17 or any of its employees in connection with the matters described in
18 the Permitted Uses (as defined below), shall also constitute
19 Confidential Information hereunder. All such Confidential
20 Information shall be used by USF&G, Debtor and any other recipients
21 (collectively, the "Receiving Persons") only for the USF&G Claim
22 Objections, Classification Motion, Non-Insider Motion and
23 USF&G's objections to confirmation of any Chapter 11 plan
24 proposed in Debtor's pending case, including any appeal or retrial
25 (collectively, the "Permitted Uses"), and shall not be used for any
26 other purpose, including without limitation, any business,
27 governmental, commercial, or litigation (administrative or judicial)
28 purpose, unless Claimants pre-approve in writing any other use.

1 Pursuant to the Discovery and Scheduling Stipulation, the deadline for Claimants and
2 certain other parties in interest to file any supplemental pleadings, declarations and documentary
3 evidence in support of their claims is Monday, June 6, 2016. The deadline for objecting creditor
4 USF&G to file any supplemental pleadings, declarations and documentary evidence is June 10,
5 2016. It appears that Claimants are seeking relief with respect to the filing of Confidential
6 Information under seal in advance of these filing deadlines.

7 II. APPLICABLE LAW

8 Access to papers filed in a bankruptcy case is governed by Bankruptcy Code section 107(a).
9 *See Father M v. Various Tort Claimants (In re Roman Catholic Archbishop)*, 661 F.3d 417, 429-31
10 (9th Cir. 2011). Bankruptcy Code section 107(a) creates a strong presumption in favor of public
11 access to all papers filed in a bankruptcy case:

12 Except as provided in subsections (b) and (c) and subject to section
13 112, a paper filed in a case under this title and the dockets of a
14 bankruptcy court are public records and open to examination by an
15 entity at reasonable times without charge.

16 11 U.S.C. § 107(a). The only exception potentially applicable here is under Bankruptcy Code
17 section 107(b), which provides:

18 On request of a party in interest, the bankruptcy court shall, and on
19 the bankruptcy court's own motion, the bankruptcy court may—

- 20 (1) protect an entity with respect to a trade secret or
21 confidential research, development, or commercial
22 information; or
23 (2) protect a person with respect to scandalous or defamatory
24 matter contained in a paper filed in a case under this title.

25 11 U.S.C. § 107(b). Rule 9018 of the Federal Rules of Bankruptcy Procedure parallels the
26 foregoing statute, providing:

27 On motion or on its own initiative, with or without notice, the court
28 may make any order which justice requires (1) to protect the estate or

1 any entity in respect of a trade secret or other confidential research,
2 development, or commercial information, (2) to protect any entity
3 against scandalous or defamatory matter contained in any paper filed
4 in a case under the Code, or (3) to protect governmental matters that
5 are made confidential by statute or regulation. If an order is entered
6 under this rule without notice, any entity affected thereby may move
7 to vacate or modify the order, and after a hearing on notice the court
8 shall determine the motion.

9 Under Bankruptcy Code section 107(b) (and Rule 9018) information “is not commercial
10 simply because it relates to business affairs.” *Robbins v. Tripp*, 510 B.R. 61, 67 (E.D. Va. 2014).
11 Rather, it is “information which would cause ‘unfair advantage to competitors by providing them
12 information as to the commercial operations of the [subject entity].” *Video Software Dealers Ass’n*
13 *v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994), citing *In re Intel*
14 *Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982).

15 Local Bankruptcy Rule 5003-2(c) addresses the process of requesting authority to file a
16 pleading under seal:

17 Subject to 11 U.S.C. § 107, a document may not be filed under seal
18 without a prior written order of the court. If a filing under seal is
19 requested, a written motion requesting such relief and a proposed
20 order must be presented to the judge in the manner set forth in the
21 Court Manual.

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1 In turn, the Court Manual describes the process and the requirements for filing a motion
2 requesting such authority:

3 No documents may be presented to the court for filing under seal
4 unless and until the court has granted a motion authorizing the filing
5 of such documents under seal. All motions for authority to file
6 documents under seal must be filed electronically, if the filer is an
7 attorney.

- 8 a. The motion should include as exhibits, or in a separate appendix
9 also filed electronically, the documents that the movant seeks to
10 file under seal with the confidential portions redacted; provided,
11 however, that, if the documents are voluminous, the motion may
12 be accompanied by a declaration under penalty of perjury to this
13 effect and a schedule of the documents that movant seeks to file
14 under seal.
- 15 b. The motion must describe the nature of the information that the
16 party asserts is confidential (without disclosing the confidential
17 information itself) and explain why the information should not be
18 publically disclosed. If and when the court grants the motion for
19 authority to file documents under seal, unredacted versions of the
20 documents, together with an entered copy of the order authorizing
21 the sealed filing, should be presented for filing under seal in the
22 manner directed by the court in its order authorizing the filing
23 under seal.

24 Court Manual, § 2.8.
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1 **III. ANALYSIS**

2 By the Motion, the Claimants appear to be asking the Court for blanket authorization to file
3 Confidential Information under seal, and to *require* the filing of Confidential Information under
4 seal, without knowing the substance of that information and without having any way to determine
5 whether it actually qualifies for protection under Bankruptcy Code section 107 and Federal Rule of
6 Bankruptcy Procedure 9018. The Court cannot and will not make determinations under these
7 provisions in a vacuum.

8 First, the Claimants have not complied with Section 2.8 of the Court Manual, which is
9 applicable pursuant to Local Bankruptcy Rule 5003-2(c). Specifically, they have not: included “as
10 exhibits, or in a separate appendix also filed electronically, the documents that the movant seeks to
11 file under seal with the confidential portions redacted.” Nor have the Claimants filed a declaration
12 under penalty of perjury testifying to the voluminous nature of the documents *and* a schedule of the
13 documents that movant seeks to file under seal.

14 Second, even if the Claimants had complied with Section 2.8, the Court likely would need
15 to review the actual information and documents that the parties claim are entitled to filing under
16 seal. By virtue of the broad definition of “Confidential Information,” the Claimants and USF&G
17 are required to seek the filing under seal of *any* document produced by the Claimants to USF&G
18 and any information contained therein. But only those documents and information that meet the
19 standards of Bankruptcy Code section 107 and Federal Rule of Bankruptcy Procedure 9018 may be
20 filed under seal.

21 The Claimants state in the Motion that “Debtor and all five Claimants are privately-held
22 companies. They do not want their private, confidential financial information to be made public.”
23 But the Claimants—each of which elected to file proofs of claim in this case—do not have a
24 general right to maintain the privacy of information discovered in this case and used in litigating
25 objections to their proofs of claim. They only have a right to maintain the privacy of such
26 information that is actually entitled to protection under Bankruptcy Code section 107 and Federal
27 Rule of Bankruptcy Procedure 9018.

1 To be sure, the Claimants make other arguments, but the Court is not in a position to assess
2 these arguments without access to the documents and information that are at issue. For instance,
3 the Claimants contend that the public filing of the subject documents and information may result in
4 competitive disadvantage to Claimants. But there is no evidence to support this contention and no
5 way to determine whether it is factually correct (or even plausible) without knowing seeing the
6 documents and the information they seek to protect. The Claimants also argue that certain (or all)
7 of the documents and information they have produced in the claims litigation are entitled to
8 protection because they were filed under seal in another proceeding. But again, there are no
9 specifics provided, let alone evidence.

10 For these reasons, the Motion will be DENIED WITHOUT PREJUDICE. However, the
11 Court will establish the following procedures so that the parties can timely meet the briefing
12 schedule set forth in the Discovery and Scheduling Stipulation, but also protect the Confidential
13 Information from public disclosure pending the Court's determination of a motion for authority to
14 file the brief (or other materials) under seal pursuant to Local Bankruptcy Rule 5003-2:

15 Notwithstanding Section 2.8 of the Court Manual, any party that is obligated under
16 the Protective Order to seek an order authorizing the filing of a pleading or other document
17 under seal under Local Bankruptcy Rule 5003-2 because it contains "Confidential
18 Information" (within the meaning of the Protective Order) shall:

19 (a) timely file electronically a version of the pleading or other document
20 from which all Confidential Information (but only the Confidential Information) has
21 been redacted;

22 (b) indicate in the caption of such redacted pleading or other document that it
23 has been redacted. e.g., "[REDACTED VERSION];"

24 (c) indicate in the body of such pleading or other document where the
25 redactions have been made;

26 (c) concurrently file electronically a motion for authority to file the
27 unredacted version of the pleading or other document under seal;

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(d) deliver to the chambers of Judge Barash (for receipt no later than 24 hours after the filing of the motion to seal) a hardcopy of the motion to seal and an unredacted version of the pleading or other document for *in camera* review; and

(e) serve on all other parties to the Protective Order (for receipt no later than 24 hours after the filing of the motion to seal) a hardcopy of the motion to seal and the unredacted pleading or document provided to the chambers of Judge Barash for *in camera* review.

3. Any motion to seal shall be served on the parties to the Protective Order and all other creditors in the case.

4. Any party filing a motion to seal shall promptly call Judge Barash's chambers and advise his staff of such filing.

5. No later than seven (7) calendar days after the filing of a motion to seal, the Claimants may file and serve a response in support of the motion to seal and any evidence in support of such response. Any such response likewise shall be served on the parties to the Protective Order and all other creditors in the case.

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Date: June 6, 2016



Martin R Barash
United States Bankruptcy Judge