

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JOHN DAVIS,

Plaintiff,

v.

INGA DOW, et al.,

Defendant.

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Civil Action No. 4:22-cv-00970-O

ORDER

Before the Court are Defendants Keller Williams Realty, Inc., Gary Keller, and Josh Team’s Motion to Seal (“First Motion to Seal”) (ECF No. 35), filed February 8, 2023; Defendants Keller Williams Realty, Inc., Gary Keller, and Josh Team’s Second Motion to Seal or and Motion to Enter Protective Order (ECF No. 38), filed February 13, 2023; Plaintiff John Davis’s Emergency Request for Extension and Expedited Ruling (ECF No. 40), filed February 15, 2023; and Defendants’ Request to Immediately Seal Record Pending Expedited Ruling on Motions to Seal or Alternatively for Expedited Ruling on Motions to Seal (ECF No. 43), filed February 17, 2023. The Court finds that all three of Defendants’ motions (ECF Nos. 35, 38, 43) should be **DENIED**, and that Plaintiff’s motion (ECF No. 40) is **MOOT**.

In their First Motion to Seal, Defendants Keller Williams Realty, Inc., Gary Keller, and Josh Team request to file their motion to dismiss under seal.¹ At least, the Court presumes that is their request.² In their Second Motion to Seal, Defendants Keller Williams Realty, Inc., Gary

¹ Defs.’ First Mot. to Seal 3, ECF No. 35.

² More precisely, “Defendants respectfully request that the Court grant them leave to file Exhibit 1-A to the Motion to Dismiss under seal.” Defs.’ First Mot. to Seal 3, ECF No. 35. But there are only two attachments to the First Motion to Seal: Defendants’ Motion to Dismiss (ECF No. 35-1) and the Brief in Support of Defendants’ Motion to Dismiss (ECF No. 35-2). Since the Court cannot locate a specific Exhibit 1-A, the Court presumes that Defendants seek to file and seal both the attachments to its First Motion to Seal. This

Keller, and Josh Team request (1) that the underlying agreements at issue in this litigation be filed under seal, (2) that all briefing related to the Motion to Compel Arbitration be filed under seal, (3) that all briefing related to the Motion to Dismiss to be filed under seal, and (4) that the Court enter a protective order with attorneys'-eyes-only provisions to govern discovery and future motion practice in this case.³ In their Request to Immediately Seal Record, Defendants ask the Court to immediately seal Plaintiff's Response to Defendants' Motion to Compel Arbitration (ECF No. 42), pending the resolution of their other motions to seal.⁴ The Court cannot grant Defendants the sweeping relief that they request.

Indeed, the public has a right to access judicial records. *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 519 (5th Cir. 2022). In recognition of that right, courts "heavily disfavor sealing information placed in the judicial record." *Id.* "To decide whether something should be sealed, the court must undertake a document-by-document, line-by-line balancing of the public's common law right of access against the interests favoring nondisclosure." *Id.* at 521 (cleaned up). The presumption is that records should not be sealed, and any sealing of records "must be 'congruent to the need.'" *Id.* (quoting *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 420 (5th Cir. 2021)). "Litigants and others seeking secrecy have the burden to overcome the strong presumption favoring public access. They 'must explain in particularity the necessity for sealing.'" *Trans Tool, LLC v. All State Gear Inc.*, No. 19-cv-1304, 2022 WL 608945, at *6 (W.D. Tex. Mar. 1, 2022) (citation omitted) (quoting *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 211 (5th Cir. 2019)). Indeed, "[t]ransparency in judicial proceedings is a fundamental element of the rule of law—so fundamental that sealing and unsealing orders are immediately appealable under

interpretation is consistent with Defendants' Second Motion to Seal. *See* Defs.' Second Mot. to Seal, ECF No. 38.

³ Defs.' Second Mot. to Seal 4–5, ECF No. 38.

⁴ Defs.' Request to Immediately Seal Record 2, ECF No. 43.

the collateral-order doctrine.” *Carter v. Sw. Airlines Co.*, No. 3:17-CV-02278-X, 2022 WL 283025, at *1 (N.D. Tex. Jan. 31, 2022) (citing *June Med. Servs.*, 22 F.4th 512, 2022 WL 72074, at *4). A court thus has “discretion to summarily deny a request to seal when it is apparent that the submitter has not conducted its own document-by-document, line-by-line review.” *Trans Tool*, No. 19-cv-1304, 2022 WL 608945, at *6.

Even more specifically, the fact that Defendants’ motions are pursuant to a confidentiality agreement does not lighten Defendants’ burden. Once again, “[i]t is the public that has the right of access, so private litigants should not be able to contract that right away.” BP Expl. & Prod., 920 F.3d at 211. “The public’s right to access judicial records is independent from—and sometimes even adverse to—the parties’ interest. That’s why the judge must serve as the representative of the people and, indeed, the First Amendment, in scrutinizing requests to seal.” *Carter*, No. 3:17-CV-02278-X, 2022 WL 283025, at *1 (citing *June Med. Servs.*, 22 F.4th 512, 2022 WL 72074, at *5). Based on this precedent, and upon review of Defendants’ arguments, the Court finds all of Defendants’ motions to seal insufficient. Therefore, all three of Defendants’ motions to seal (ECF Nos. 35, 38, 43) should be, and are hereby, **DENIED**.

As for Plaintiff’s Emergency Request for Extension and Expedited Ruling, the Court finds it to be **MOOT**. All the filing deadlines at issue in that motion have either been satisfied by Plaintiff or are now cancelled by this Order.⁵

The Court also takes this opportunity to address concerning behavior that the litigants have exhibited. Earlier today, the Parties engaged in vigorous advocacy through a string of email communications with Court staff. That is an entirely inappropriate way to conduct litigation before this Court. But even after Court staff informed the Parties of the need to file any requests for relief

⁵ Pl.’s Emergency Request for Extension 1–2, ECF No. 40.

on the official docket, the Parties continued to send emails urging the Court to provide or deny relief. Such querulous behavior disserves the ordered administration of justice that this Court is constitutionally obligated to provide. Moreover, this is not the first time that the Parties have allowed their personal disagreements to detract from the efficient functioning of this Court. As recently as yesterday, Plaintiff filed his Emergency Request for Extension (ECF No. 40) without a proper certificate of conference due to failures of communication between the Parties which necessitated the Court's electronic order (ECF No. 41) late in the evening. It also bears mentioning that the Court has now received two motions for emergency relief in as many days. The Court cannot allow this pattern of abrasive conduct to continue. In their Joint Status Report due February 20, 2023, counsel for each Party **SHALL CERTIFY** that they have re-read *Dondi Properties Corp. v. Com. Sav. & Loan Ass'n*, 121 F.R.D. 284 (N.D. Tex. 1988). Any future deviations from the high standard of professional conduct outlined in *Dondi* will result in an order to show cause why the offending Party should not be sanctioned.

SO ORDERED on this **17th day of February, 2023**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE