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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Travis Grant, *et al.*,

10 Plaintiffs,

11 v.

12 Andrew Ivchenko, *et al.*,

13 Defendants.
14

No. CV-21-00108-PHX-JJT

ORDER

15
16 At issue is Defendants’ Motion to Seal Case (Doc. 31), to which Plaintiffs filed a
17 Response (Doc. 32) and Defendants filed a Reply (Doc. 33).

18 The Court set forth the factual background of this case in a previous Order (Doc. 27)
19 resolving Defendants’ Motion to Strike the Amended Complaint, and the Court need not
20 repeat the background here. In denying Defendants’ Motion to Strike the Amended
21 Complaint, the Court found, “None of the language in the Amended Complaint strikes the
22 Court as impertinent, scandalous, or prejudicial.” (Doc. 27 at 5.) After the Court entered
23 that Order, the parties filed a Notice of Dismissal with Prejudice, in which the parties
24 informed the Court that “[a]ll claims in this matter have been settled.” (Doc. 29.) The Court
25 thus dismissed this matter. (Doc. 30.)

26 Defendants now ask the Court to seal the entire record of this case because the
27 Amended Complaint contains “unsubstantiated allegations” that are “spiteful, libelous,
28 [and] scandalous” and harm Defendants’ reputations. (Doc. 31 at 7.) In the Ninth Circuit,

1 courts “start with a strong presumption in favor of access to court records.” *Ctr. for Auto*
2 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *Foltz v. State*
3 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “In order to overcome this
4 strong presumption, a party seeking to seal a judicial record must articulate justifications
5 for sealing that outweigh the historical right of access and the public policies favoring
6 disclosure.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir.
7 2006). Where a document is “more than tangentially related to the merits” of a case, the
8 party seeking to seal the document must demonstrate “compelling reasons to keep the
9 documents under seal.” *Ctr. for Auto Safety*, 809 F.3d at 1103. A party seeking to seal the
10 entire record of a case faces “an even heavier burden.” *Oliner v. Kontrabecki*, 745 F.3d
11 1024, 1026 (9th Cir. 2014) (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)).

12 To begin with, the Court cannot determine whether Plaintiffs’ allegations are
13 substantiated or not, because the Court never reached the merits of this case before the
14 parties reached a settlement and the Court dismissed the case. Simply because Defendants
15 state the allegations are unsubstantiated does not make them so. The same goes for
16 Defendants’ contention that the allegations are libelous. Indeed, an essential purpose of the
17 litigation was to determine whether Plaintiffs’ allegations were substantiated, or true, but
18 the parties ended the litigation by agreement without any determination by the Court.
19 Defendants thus have not demonstrated a basis to seal this matter by way of their contention
20 that Plaintiffs’ allegations are unsubstantiated or libelous.

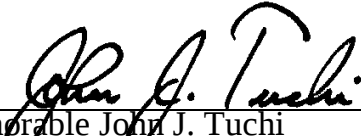
21 Next, Defendants have not demonstrated that the allegations are sufficiently
22 scandalous for the Court to exercise its discretion to take the extraordinary step to seal this
23 matter. A statement is considered “scandalous” when it improperly casts a “cruelly
24 derogatory light on a party.” *Mazzeo v. Gibbons*, 649 F. Supp. 2d 1182, 1201-02 (D. Nev.
25 2009). However, as the Court stated in its prior Order (Doc. 27), when an allegation is
26 relevant to a claim, then the allegation is “not subject to being stricken even if it is
27 potentially embarrassing.” *Mishra v. Tandon*, No. 12 C 50390, 2013 WL 887681, at *4
28 (N.D. Ill. Mar. 8, 2013); *see also Barba v. Lee*, No. CV 09-1115-PHX-SRB, 2009 WL

1 8747368, at *30 (D. Ariz. Nov. 4, 2009). Since the Court already found that the allegations
2 were not sufficiently scandalous to strike the Amended Complaint (Doc. 27), they are
3 certainly not sufficiently scandalous to seal the entire matter.

4 Defendants also seem to seek a finding from the Court that Plaintiffs engaged in
5 abuse of process by filing this case. Again, the Court will not reach such a conclusion
6 without a finding that Plaintiffs' claims had no merit, and the Court never reached the
7 merits of this case. Moreover, an abuse of process claim by Defendants against Plaintiffs
8 is a separate legal claim, and such a claim would require a separate lawsuit. The Court
9 dismissed this lawsuit with prejudice over a year ago based on the agreement of the parties.
10 (Doc. 30.) For all these reasons, the Court will deny Defendants' Motion to Seal Case
11 (Doc. 31).

12 **IT IS THEREFORE ORDERED** denying Defendants' Motion to Seal Case
13 (Doc. 31).

14 Dated this 3rd day of May, 2023.

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16 Honorable John J. Tuchi
17 United States District Judge
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