

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KILOPASS TECHNOLOGY, INC.,
Plaintiff,
v.
SIDENSE CORPORATION,
Defendant.

No. C 10-02066 SI
Related Case No. C 11-04112 SI

**ORDER DENYING IN PART AND
GRANTING IN PART THE PARTIES' EX
PARTE APPLICATIONS TO FILE
UNDER SEAL; RESETTING
DEADLINES AND CONTINUING
HEARING**

Currently before the Court are the parties' *ex parte* applications to file documents under seal in conjunction with their respective motions for attorneys' fees and sanctions. In response to this Court's order (Docket No. 355), the parties have conceded that many of the documents that they originally sought to file under seal do not contain any information that should be concealed from the public. Accordingly, the Court hereby DENIES the parties' *ex parte* applications to file under seal as to those conceded documents, listed herein.

Documents Conceded by Kilopass:

- Exhibit A to the Declaration of Mark L. Hogge (Docket No. 351-2)
- Exhibit 10 to the Declaration of Mark L. Hogge (Docket No. 348-11);
- Exhibits 1-3 to the Declaration of Harry Luan (Docket No. 348-6);
- [Unredacted] Declaration of Harry Luan in Support (Docket No. 348-5);
- [Unredacted] Declaration of Chun Ng (Docket No. 348-2); and

- 1 • [Unredacted] Declaration of Charlie Cheng (Docket No. 348-1);

2 *Documents Conceded by Sidense:*

- 3 • Exhibits A, D, & E to the Declaration of Mark L. Hogge (Docket No. 351-2)
- 4 • Exhibits 1-5 and 9 of the Declaration of Mark L. Hogge (Docket Nos. 348-8, 348-11);
- 5 • Exhibits 1-2 to the Declaration of Harry Luan (Docket No. 348-6);
- 6 • Exhibit 25 to the Declaration of Robert D. Tadlock (Docket No. 341-25);
- 7 • [Unredacted] Declaration of Roger L. Cook (Docket No. 340);
- 8 • Exhibit 9 to the Declaration of Mark L. Hogge Docket No. 337-3).

9 The parties submitted responses and declarations wherein they maintained that the remaining
10 documents should be filed under seal. The Court finds that the parties have sufficiently justified sealing
11 with respect to some documents, and failed to justify sealing with respect to others, as discussed below.

12 With the exception of a narrow range of documents that are “traditionally kept secret,” none of
13 which are present here, courts begin their sealing analysis with “a strong presumption in favor of
14 access.” *Foltz v. State Farm Mut. Auto. Ins.*, 331 F.3d 1122, 1135 (9th Cir. 2003). When applying to
15 file documents under seal in connection with a dispositive motion, the submitting party bears the burden
16 of “articulating compelling reasons supported by specific factual findings that outweigh the general
17 history of access and the public policies favoring disclosure, such as the public interest in understanding
18 the judicial process.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir.
19 2006) (internal quotations and citations omitted). A motion is considered dispositive even when it is
20 only “connected to” a traditionally-dispositive order, like one for summary judgment. *In re Midland*
21 *Life Ins. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119-20 (9th Cir. 2012).

22 However, when parties attach to a non-dispositive motion discovery documents that have been
23 sealed pursuant to a blanket protective order, the general presumption of access is rebutted. *Id.*; *Phillips*
24 *v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). In that instance, a showing of “good
25 cause” under Federal Rule of Civil Procedure 26(c) is sufficient for the Court to file the documents
26 under seal. *Kamakana*, 447 F.3d at 1179-80; *see also* Fed. R. Civ. P. 26(c). To show good cause, the
27 moving party must still make a “particularized showing” that “specific harm or prejudice will result if
28 the information is disclosed.” *Kamakana*, 447 F.3d at 1179-80; *Apple, Inc. v. Samsung Elecs. Co. Ltd.*,

1 Case No. 11–CV–01846 LHK (PSG), 2012 WL 4120541, at *1 (N.D. Cal. Sept. 18, 2012). “Simply
2 mentioning a general category of privilege, without any further elaboration or any specific linkage with
3 the documents, does not satisfy the burden.” *Kamakana*, 447 F.3d at 1184. Neither do “[b]road
4 allegations of harm, unsubstantiated by specific examples or articulated reasoning.” *Phillips*, 307 F.3d
5 at 1211. In addition, all requests to file under seal must be “narrowly tailored,” such that only sealable
6 information is sought to be redacted from public access. Civil Local Rule 79-5(a).

7 Here, the parties’ motions for attorneys’ fees and for sanctions, to which the pending *ex parte*
8 applications to file under seal are attached, are non-dispositive. *See Phillips*, 307 F.3d at 1213
9 (sanctions motions not dispositive). Their adjudication will not affect the substantive claims or defenses
10 of any parties to the litigation, which has already concluded on the merits. *See* Docket No. 328.
11 Accordingly, for good cause shown under Federal Rule of Civil Procedure 26(c), or lack thereof, the
12 Court concludes as follows:

<u>Docket No.</u>	<u>Material</u>	<u>Court’s Ruling</u>	<u>Ex Parte Appl. Docket No.</u>
337-2	Exhibits 1-3 to the Declaration of Mark L. Hogge in Support of Kilopass’s Motion for Sanctions	DENIED. Kilopass’s request to seal their attorneys’ fee rates, hours billed, and costs incurred does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	336
341-1	Exhibit 1 to the Declaration of Robert D. Tadlock in Support of Sidense’s Motion for Attorneys’ Fees	DENIED. Kilopass’s request to seal this email chain containing conversations between Kilopass and their counsel does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	338
341-2	Exhibit 2 to the Declaration of Robert D. Tadlock in Support of Sidense’s Motion for Attorneys’ Fees	DENIED. Kilopass’s request to seal this email chain containing conversations between Kilopass and their counsel does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	338
341-3	Exhibit 3 to the Declaration of Robert D. Tadlock in Support of Sidense’s Motion for Attorneys’ Fees	DENIED. Kilopass’s request to seal this email chain containing conversations between Kilopass and their counsel does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	338

1	341-9	Exhibit 9 to the Declaration of Robert D. Tadlock in Support of Sidense's Motion for Attorneys' Fees	DENIED. Kilopass's request to seal this email chain containing conversations between Kilopass and their counsel does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	338
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5	341-10	Exhibit 10 to the Declaration of Robert D. Tadlock in Support of Sidense's Motion for Attorneys' Fees	DENIED. Kilopass's request is overbroad in that segments of the deposition transcript Kilopass seeks to seal discuss public information.	338
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8	341-11	Exhibit 11 to the Declaration of Robert D. Tadlock in Support of Sidense's Motion for Attorneys' Fees	GRANTED. The exhibit in its entirety contains confidential and commercially sensitive information that is sealable under Rule 26(c)(1)(G).	338
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11	341-12	Exhibit 12 to the Declaration of Robert D. Tadlock in Support of Sidense's Motion for Attorneys' Fees	GRANTED. The exhibit in its entirety contains confidential and commercially sensitive information that is sealable under Rule 26(c)(1)(G).	338
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14	341-26	Exhibit 26 to the Declaration of Robert D. Tadlock in Support of Sidense's Motion for Attorneys' Fees	DENIED. Sidense's request to seal its attorney fee arrangements does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	338
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17	348-8	Exhibit 6 to the Declaration of Mark L. Hogge in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	344
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20	348-8	Exhibit 7 to the Declaration of Mark L. Hogge in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	344
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23	348-6	Exhibit 4 to the Declaration of Harry Luan in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure.	344
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26	348-6	Exhibit 5 to the Declaration of Harry Luan in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	GRANTED. This exhibit is sealed in its entirety, because it contains non-public proprietary information.	344
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1	348-14	Exhibit 13 to the Declaration of Mark L. Hogge in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	GRANTED. This exhibit contains commercially sensitive information. The request is narrowly tailored because Sidense will only redact the extraneous information not cited by Kilopass in its opposition, which will also be public.	344
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5	348-14	Exhibit 14 to the Declaration of Mark L. Hogge in Support of Kilopass's Opposition to Sidense's Motion for Attorneys' Fees	GRANTED. This exhibit contains commercially sensitive information. The request is narrowly tailored because Sidense will only redact the extraneous information not cited by Kilopass in its opposition, which will also be public.	344
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8	351-2	Exhibit B to the Declaration of Mark L. Hogge in Support of Kilopass's Reply Brief in Support of Kilopass's Motion for Sanctions	DENIED. Sidense's request does not make a particularized showing how or articulate a reason why a specific harm or prejudice will result from disclosure. The deposition testimony does not contain any discussion of commercially-sensitive information.	350
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12	351-2	Exhibit C to the Declaration of Mark L. Hogge in Support of Kilopass's Reply Brief in Support of Kilopass's Motion for Sanctions	GRANTED. This exhibit contains commercially sensitive information. The request is narrowly tailored because Sidense will only redact the extraneous information not cited by Kilopass in its reply, which will be public.	350
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15	353-2	Exhibit 38 to the Declaration of Robert D. Tadlock in Support of Sidense's Reply Brief in Support of its Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how disclosure of non-privileged legal strategy will result in a specific harm or prejudice.	352
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19	353-2	Exhibit 39 to the Declaration of Robert D. Tadlock in Support of Sidense's Reply Brief in Support of its Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how disclosure of non-privileged legal strategy will result in a specific harm or prejudice.	352
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22	353-2	Exhibit 40 to the Declaration of Robert D. Tadlock in Support of Sidense's Reply Brief in Support of its Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how disclosure of non-privileged legal strategy will result in a specific harm or prejudice.	352
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25	353-2	Exhibit 41 to the Declaration of Robert D. Tadlock in Support of Sidense's Reply Brief in Support of its Motion for Attorneys' Fees	DENIED. Kilopass's request does not make a particularized showing how disclosure of non-privileged legal strategy will result in a specific harm or prejudice.	352
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1 Pursuant to Civil Local Rule 79-5(e), the Court shall not file any documents for which the
2 parties' applications to file under seal have been denied, including the documents conceded as public
3 by the parties. The submitting party may retain the document and not make it part of the record in the
4 case, or, by **December 5, 2012**, re-submit the document for filing in the public record with any
5 necessary amendments that are not inconsistent with this order. The parties' briefs may also be redacted
6 and resubmitted as consistent with the Court's ruling on the documents above. The hearing on these
7 matters currently set for November 30, 2012, is hereby CONTINUED to **December 21, 2012**. This
8 order resolves Docket Nos. 336, 338, 344, 347, 350 and 352.

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10 **IT IS SO ORDERED.**

11 Dated: November 29 , 2012



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13 SUSAN ILLSTON
14 United States District Judge