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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AYLUS NETWORKS, INC.,
Plaintiff,
v.
APPLE INC.,
Defendant.

Case No. 13-cv-04700-EMC
**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION TO SEAL**
Docket No. 256

I. INTRODUCTION

On February 4, 2016, Defendant Apple, Inc. filed its motion for an exceptional case finding and an award of attorney’s fees and costs. Docket No. 257. Apple also filed an administrative motion to seal certain portions of the motion and attached exhibits. Docket No. 256. Having reviewed Apple’s filings, the Court **GRANTS** in part and **DENIES** in part Apple’s motion to file under seal.

II. DISCUSSION

A. Applicable Legal Standard

In determining whether to grant a motion to file under seal, the Court “must conscientiously balance the competing interests of the public and the party who seeks to keep certain judicial records secret.” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation and internal modifications omitted). Where the records pertain to a dispositive motion, sealing must be justified by a compelling reason and supported by an articulated factual basis. *Id.* “Compelling reasons sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate

1 libelous statements, or release trade secrets.” *Id.*

2 The presumption of the public’s right of access is rebutted when at issue is a non-
3 dispositive motion. *Id.* at 1179. The rationale is that “the public has less of a need for access to
4 court records attached only to non-dispositive motions because these documents are often
5 unrelated, or only tangentially related, to the underlying cause of action.” *Id.* Thus, “[t]he public
6 policies that support the right of access to dispositive motions, and related materials, do not apply
7 with equal force to non-dispositive materials.” *Id.* However, even a party seeking to seal
8 materials related to non-dispositive motions must still show good cause by making a
9 “particularized showing” that “*specific* prejudice or harm” will result should the information be
10 disclosed. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th Cir. 2003); *see also*
11 *Kamakana*, 447 F.3d at 1186.

12 B. Application of the Good Cause Standard

13 The Court now applies the good cause standard to the materials sought to be sealed in
14 Apple’s administrative motion, because no dispositive motion is at issue.

15 1. Motion for Attorney’s Fees (Page 8)

16 The Court grants the motion to seal with respect to page 8 of Apple’s motion for attorney’s
17 fees. The redacted information pertains to Apple’s proprietary information, and the Court
18 previously permitted such information to be sealed with respect to Apple’s motion for summary
19 judgment.

20 2. Motion for Attorney’s Fees (Page 10)

21 The Court denies the motion to seal with respect to page 10 of Apple’s motion for
22 attorney’s fees. Apple seeks to redact the number of hours spent on litigating the case. As
23 explained by numerous courts in this district, attorney rates and hours are generally not considered
24 privileged information that is sealable. *See Linex Techs., Inc. v. Hewlett-Packard Co.*, No. C-13-
25 159, 2014 WL 6901744, at *1 (N.D. Cal. Dec. 8, 2014) (denying motion to seal hours and billing
26 rates as to non-dispositive motion for attorney’s fees); *Ferrington v. McAfee, Inc.*, Nos. 10-cv-
27 1455-LHK, 11-cv-721-LHK, 2013 WL 3814474, at *2 (same); *Travelers Prop. Cas. Co. of Am. v.*
28 *Centex Homes*, No. 11-cv-3638-SC, 2013 WL 707918, at *2 (N.D. Cal. Feb. 26, 2013) (noting

1 that billing rates and number of hours billed was non-privileged information); *Real v. Cont'l Grp.,*
2 *Inc.*, 116 F.R.D. 211, 214 (N.D. Cal. 1986) (“simply the number of hours billed, the parties’ fee
3 arrangement, costs and total fees paid do not constitute privileged information.”). Instead, “[i]t is
4 commonplace for the number of hours billed and the hourly rate of attorneys to be openly filed on
5 court dockets; without this information the final fees award appears to be drawn from thin air.”
6 *Linex Techs., Inc.*, 2014 WL 6901744, at *1. Furthermore, Apple provides no particularized
7 showing of a specific harm that will result from the disclosure of the number of hours spent on this
8 case since May 2015. For these reasons, the Court denies Apple’s motion to seal page 10, and will
9 require that this page be filed on the public docket with no redactions.

10 3. Corbett Declaration

11 The Court denies the motion to seal with respect to the Corbett Declaration. Apple seeks
12 to redact the number of hours spent on litigating the case, the billing rates, and generalized
13 descriptions of tasks. In support of its request to seal, Apple contends that the information is
14 “confidential and proprietary business information that could be used by DLA Piper’s competitors
15 to its disadvantage, as disclosure of the redacted information will reveal confidential rate and
16 business information.” Docket No. 256-1 (Corbett Dec. ISO Mot. to Seal) at ¶ 3. Apple also
17 argues that such information “could be used by Apple’s competitors to its disadvantage.” Docket
18 No. 258 (Moore Dec. ISO Mot. to Seal) at ¶ 4.

19 As discussed above, the number of hours spent litigating a case and billing rates are not
20 considered proprietary information. Furthermore, in *Muench Photography, Inc. v. Pearson*
21 *Education, Inc.*, the court rejected similar arguments in a motion for fees and costs. Case No. 12-
22 cv-1927-WHO, 2013 U.S. Dist. LEXIS 178495 (N.D. Cal. Dec. 18, 2013). For example, the court
23 rejected the defendant’s argument that disclosure of negotiated billing rates would be prejudicial,
24 stating that the defendant “does not adequately explain why disclosure of Pearson’s ‘negotiated
25 billing structures’ would prejudice it or how ‘competitors could imitate or exploit their knowledge
26 of this information for their own financial gain and, accordingly, to the detriment of Pearson and
27 its attorneys.” *Id.* at *5. The court also was “unclear [on] how disclosure of mundane descriptions
28 of typical attorney tasks, such as ‘[r]eview and revise documents and reports’ or ‘confer with

1 [attorney] re: same and collection and production of documents,’ even taken as a whole, reveals
2 sensitive information or confidential litigation strategy.” *Id.* In short, absent a particularized
3 showing of harm, the court was not persuaded that sealing was necessary.

4 Here, Apple provides no specific information on how disclosure of negotiated billing rates
5 will be used by its competitors to Apple’s disadvantage. Further, the task descriptions that Apple
6 seeks to have sealed are generalized descriptions of typical attorney tasks, *i.e.*, “Draft and revise
7 updated case management statements,” “continue to research Aylus’s factual allegations,”
8 “Prepare position statements for the following joint letter briefs,” and “Draft and oppose motions
9 for summary judgment.” Corbett Dec. at ¶ 7. Like the court in *Muench Photography, Inc.*, this
10 Court is unclear on how disclosure of such information will reveal sensitive information or
11 confidential litigation strategy. It is also unclear how a general description of what area each
12 attorney focused on, *i.e.*, Mr. Fowler “overseeing” all aspects of the litigation and Ms. Corbett
13 managing the development of case strategy, would reveal sensitive information or confidential
14 litigation strategy. Corbett Dec. at ¶¶ 11-18. The summary of the work performed per month is
15 equally general, *i.e.*, “case management,” “Technical expert discovery disclosures,” “Review
16 motion briefs,” and “Legal research.” *Id.* at ¶ 25. Absent a particularized showing of specific
17 prejudice or harm that Apple or its attorneys will suffer from disclosure of such generalized
18 information, the Court will deny Apple’s motion to seal. The Corbett Declaration must be filed on
19 the public docket with no redactions.

20 4. Corbett Declaration, Exhibits A and B

21 The Court grants the motion to seal the Corbett Declaration, Exhibits A and B. The
22 redacted information pertains to Apple’s proprietary information, and the Court previously
23 permitted such information to be sealed with respect to Apple’s motion for summary judgment.

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III. CONCLUSION

As the *Muench Photography, Inc.* court observed, “[the defendant] is not allowed to petition the Court for fees but hide from the public the basis for its request.” 2013 U.S. Dist. LEXIS 178495, at *7. For the reasons stated above, the Court **GRANTS** in part and **DENIES** in part Apple’s motion to seal.

This order disposes of Docket No. 256.

IT IS SO ORDERED.

Dated: March 30, 2016



EDWARD M. CHEN
United States District Judge