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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAFORTINET, INC.,
Plaintiff,
v.
SOPHOS, INC., et al.,
Defendants.Case No. [13-cv-05831-EMC](#) (DMR)**ORDER RE: MOTIONS TO SEAL**

Re: Dkt. No. 178, 194

Fortinet has filed a motion for sanctions that is now fully briefed. Associated with the motion for sanctions are Fortinet's motions to file under seal portions of its motion for sanctions (and exhibits thereto) and certain exhibits to its reply. [Docket Nos. 178, 194.] This order addresses only the motions to seal.

I. LEGAL STANDARDS

Civil Local Rule 79-5(b) states that "no document may be filed under seal (i.e., closed to inspection by the public) except pursuant to a court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law (hereinafter referred to as 'sealable')." "The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d)." *Id.* Furthermore, "[r]eference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable." Civ. L.R. 79-5(d)(1)(A).

Pursuant to Civil Local Rule 79-5(e), a party must file under seal a document designated as confidential by the opposing party or a document containing information so designated by an

opposing party. “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1). “If the Designating Party does not file a responsive declaration as required by subsection 79-5(e)(1) and the Administrative Motion to File Under Seal is denied, the Submitting Party may file the document in the public record no earlier than 4 days, and no later than 10 days, after the motion is denied.” Civ. L.R. 79-5(e)(2).

II. DOCKET NO. 178

In Docket No. 178, Fortinet moves to seal documents or portions of documents as summarized in the chart below:

Item	Fortinet moves to seal	Rationale	Sophos’s response
1	Portions of Motion for Sanctions	Designated confidential by Sophos	Agrees is sealable
2	Portions of Neukom Decl.	Designated confidential by Sophos	Agrees is sealable
3	Neukom Decl. Ex. C	Designated confidential by Sophos	Agrees is sealable
4	Neukom Decl. Ex. S	Designated confidential by Sophos	Agrees is sealable
5	Neukom Decl. Ex. T	Designated confidential by Sophos	Agrees is sealable
6	Neukom Decl. Ex. V	Designated confidential by Sophos	Agrees is sealable
7	Neukom Decl. Ex. Y	Designated confidential by Sophos	Documents are not sealable after all
8	Neukom Decl. Ex. Z	Designated confidential by Sophos	Documents are not sealable after all
9	Neukom Decl. Ex. AA	Designated confidential by Sophos	Documents are not sealable after all
10	Neukom Decl. Ex. BB	Contains Fortinet trade secrets	Disagrees, documents are not sealable
11	Neukom Decl. Ex. CC	Contains Fortinet trade secrets	Disagrees, documents are not sealable
12	Neukom Decl. Ex. DD	Contains Fortinet trade secrets	Disagrees, documents are not sealable
13	Neukom Decl. Ex. EE	Contains Fortinet trade secrets	Disagrees, documents are not sealable

Items 1-9 were designated confidential by Sophos. Sophos has filed the responsive declaration required by Civil Local Rule 79-5(e)(1). *See* Docket No. 186. For Items 7-9, Sophos concedes that “certain of the information contained therein was derived from materials designated as ‘Highly Confidential,’ [but] Sophos does not believe that these exhibits themselves are sealable.” Accordingly, the motion to seal is **DENIED** as to Items 7-9.

For Items 1-6, Sophos has sufficiently explained why these documents are sealable, for they contain the confidential outcome of a non-public arbitration (Items 1-3, 6); or the serial numbers of various Sophos employees’ computers, which could enable a person to penetrate Sophos’ security networks (Items 4-5). The motion to seal is **GRANTED** as to Items 1-6.

1 For Items 10-13, Fortinet asserts that these documents contain Fortinet’s disclosures of
2 trade secrets, and that Fortinet’s business would be harmed if these trade secrets were disclosed.
3 Item 10 is Fortinet’s response to Sophos’s interrogatory requesting that Fortinet “[i]dentify all
4 trade secrets and/or confidential information Fortinet contends has been misappropriated by
5 Sophos.” Items 11-13 are Fortinet’s disclosures and supplemental disclosures of trade secrets
6 pursuant to Cal. Code Civ. Proc. § 2019.20. Sophos contends that the information contained in
7 Items 10-13 are not actually trade secrets and are therefore not sealable. The court declines to
8 opine on the ultimate issue of whether Fortinet’s trade secret disclosures have sufficiently
9 identified items that can be regarded as trade secrets, because doing so could encroach upon the
10 presiding judge’s authority to determine the merits of the misappropriation of trade secrets claim.
11 Out of an abundance of caution, the court **GRANTS** the motion to seal as to Items 10-13. *See*
12 *Synopsys v. ATopTech*, 13-cv-2965-MMC (DMR) (N.D. Cal.), at Docket Nos. 314, 34 (granting
13 plaintiff’s motion to seal material relating to plaintiff’s trade secrets over defendant’s objection
14 that the material was not sealable and noting that court was acting “out of an abundance of
15 caution” and explicitly not reaching the merits of plaintiff’s trade secret claim).

16 **III. DOCKET NO. 194**

17 In Docket No. 194, Fortinet moves to seal exhibits filed with its Reply to the Motion for
18 Sanctions. Specifically, Fortinet moves to seal Exhibits HH and II to the declaration of Grant
19 Margeson because they have been designated by Sophos as confidential. In Sophos’s declaration
20 pursuant to Civil Local Rule 79-5(e)(1), Sophos states, “Although th[e]se documents have been
21 designated by Sophos as ‘Highly Confidential,’ Sophos does not believe that these exhibits are
22 sealable.” *See* Docket No. 200. Fortinet’s motion to seal is therefore **DENIED**.

23
24 **IT IS SO ORDERED.**

25 Dated: August 20, 2015

26 

27 Donna M. Ryu
28 United States Magistrate Judge