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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 PHOENIX TECHNOLOGIES LTD.,

7 Plaintiff,

8 v.

9 VMWARE, INC.,

10 Defendant.

Case No. [15-cv-01414-HSG](#)

**ORDER GRANTING IN PART AND
DENYING IN PART THE PARTIES'
ADMINISTRATIVE MOTIONS TO
FILE UNDER SEAL**

Re: Dkt. Nos. 120, 124, 143, 148, 157, 166

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12 Before the Court are several administrative motions to file various documents under seal
13 pursuant to Civil Local Rule 79-5, relating to Plaintiff Phoenix Technologies (“Plaintiff”) and
14 Defendant VMware, Inc.’s (“Defendant”) cross-motions for summary judgment. See Dkt. Nos.
15 120, 124, 143, 148, 157 & 166. No oppositions to the motions were filed. Having carefully
16 considered each of the requested redactions, the Court **GRANTS IN PART** and **DENIES IN**
17 **PART** the administrative motions to seal.

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19 **I. LEGAL STANDARD**

20 Courts generally apply a “compelling reasons” standard when considering motions to seal
21 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 677-78 (9th Cir. 2010). “This standard
22 derives from the common law right ‘to inspect and copy public records and documents, including
23 judicial records and documents.’” *Id.* (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
24 1172, 1178 (9th Cir. 2006)). “[A] strong presumption in favor of access is the starting point.”
25 *Kamakana*, 447 F.3d at 1178 (citation and internal quotation marks omitted). To overcome this
26 strong presumption, the moving party must “articulate compelling reasons supported by specific
27 factual findings that outweigh the general history of access and the public policies favoring
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1 disclosure, such as the public interest in understanding the judicial process.” Id. at 1178-79
2 (citations, internal quotation marks, and alterations omitted). “In general, compelling reasons
3 sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist
4 when such court files might have become a vehicle for improper purposes, such as the use of
5 records to gratify private spite, promote public scandal, circulate libelous statements, or release
6 trade secrets.” Id. at 1179 (citation and internal quotation marks omitted). The court must
7 “balance the competing interests of the public and the party who seeks to keep certain judicial
8 records secret. After considering these interests, if the court decides to seal certain judicial
9 records, it must base its decision on a compelling reason and articulate the factual basis for its
10 ruling, without relying on hypothesis or conjecture.” Id. (citations, brackets, and internal
11 quotation marks omitted).
12

13 Civil Local Rule 79-5 supplements the “compelling reasons” standard. The party seeking
14 to file under seal must “establish[] that the document, or portions thereof, are privileged,
15 protectable as a trade secret or otherwise entitled to protection under the law. . . . The request
16 must be narrowly tailored to seek sealing only of sealable material” Civ. L.R. 79-5(b).
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18 Finally, records attached to motions that are only “tangentially related to the merits of a
19 case” are not subject to the strong presumption of access. *Ctr. for Auto Safety v. Chrysler Grp.,*
20 *LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). Accordingly, parties moving to seal such records must
21 meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure. *Id.* at
22 1097. The “good cause” standard requires a “particularized showing” that “specific prejudice or
23 harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors*
24 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (citation and internal quotation marks omitted); see
25 also Fed. R. Civ. P. 26(c).
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27 **II. DISCUSSION**

28 Here, the Court applies the “compelling reasons” standard because the documents at issue

1 have more than a tangential relation to the merits of the case. See Ctr. for Auto Safety, 809 F.3d at
2 1101. The Court rules as follows:

Motion	Document	Ruling	Reason
120	Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion"), Exhibit 6	GRANTED as to pp. 22; 23, 26, 29, 30, 32, 33, 34, 35 ¹	Confidential source code.
120	Plaintiff's Motion, Exhibit 9	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 10	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 11	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 14	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 15	GRANTED	Confidential Business Agreement.
120	Plaintiff's Motion, Exhibit 16	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 19	GRANTED	Confidential Business Agreement.
120	Plaintiff's Motion, Exhibit 20	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 21	GRANTED	Confidential Business Agreement.
120	Plaintiff's Motion, Exhibit 22	GRANTED	Confidential Business Agreement.
120	Plaintiff's Motion, Exhibit 23	GRANTED	Confidential Business Agreement.
120	Plaintiff's Motion, Exhibit 26	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 27	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 35	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 37	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 38	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 42	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 43	GRANTED	Confidential Product Development Information.
120	Plaintiff's Motion, Exhibit 44	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 45	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 47	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 48	GRANTED	Confidential Copyright Information.
120	Plaintiff's Motion, Exhibit 51	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 54	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 59	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 60	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 61	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 62	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 63	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 65	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 68	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 71	DENIED	No Declaration in Support.
120	Plaintiff's Motion, Exhibit 72	DENIED	No Declaration in Support.
148	Plaintiff's Opposition to Defendant's Motion for summary judgment ("Plaintiff's Opp.")	DENIED as to pp. 2, 3, 4, 7, 12, 13, 19	No Declaration in Support.
148	Plaintiff's Opp., Exhibit 74	GRANTED	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 75	GRANTED as to 146, 147	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 76	DENIED	No Declaration in Support.
148	Plaintiff's Opp., Exhibit 77	GRANTED	Confidential Product Development Information.

¹ Two of Plaintiff's motions to file documents under seal refer to entire pages rather than the discrete portions of text on each page that have been redacted. See Dkt. Nos. 120, 148. Unless otherwise stated, the Court's order applies only to the previously proposed redactions.

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148	Plaintiff's Opp., Exhibit 79	GRANTED as to 53, 161-62	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 80	DENIED	No Declaration in Support.
148	Plaintiff's Opp., Exhibit 81	GRANTED	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 82	GRANTED as to 46, 47, 48, 49	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 84	GRANTED as to 1, 3	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 85	GRANTED as to 94, 95	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 87	GRANTED	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 88	GRANTED as to 9:3-11:25; 30:4-25; 51, 53	Confidential Business Information.
148	Plaintiff's Opp., Exhibit 101	GRANTED	Confidential Business Agreement.
148	Plaintiff's Opp., Exhibit 102	GRANTED	Confidential Business Presentation.
148	Plaintiff's Opp., Exhibit 104	DENIED	No Declaration in Support.
148	Plaintiff's Opp., Exhibit 105	DENIED	No Declaration in Support.
157	Plaintiff's Reply to Defendant's Motion for Summary Judgment ("Plaintiff's Reply"), Exhibit 106	DENIED	No Declaration in Support.
157	Plaintiff's Reply, Exhibit 107	DENIED	No Declaration in Support.
157	Plaintiff's Reply, Exhibit 108	DENIED	No Declaration in Support.
157	Plaintiff's Reply, Exhibit 112	DENIED	No Declaration in Support.
157	Plaintiff's Reply, Exhibit 115	DENIED	No Declaration in Support.
124	Defendant's Motion for Summary Judgment ("Defendant's Motion")	GRANTED as to 5:21-22; 10:3-4 DENIED as to 4:24-27; 8:3-7, 13-14; 9:18-22; 10:5-9, 11-12; 11:11, 15-16, 22-24; 12:10-13, 19-25; 13:5-9, 11-12, 21-24, 28; 14:1-9, 15-16; 15:4-5, 11- 13; 18:1, 25, 27-28; 20:9-12, 24-25; 21:12-14, 20-28; 22:1; 23:4-24; 24:1-17 & n.16; 25:13, 21; 28:17	Confidential Business Information. No Declaration in Support.
124	Defendant's Motion, Exhibit 2	DENIED as to pp. 22 ¶ 68; 23 ¶¶ 69-70; 26 ¶ 85; 29 ¶ 92; 32 ¶ 102; 34 ¶ 114; 35 ¶ 118	Relevant Pages Not Included in Exhibit 2.
124	Defendant's Motion, Exhibit 3	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 5	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 6	GRANTED as to 510:17- 514:25; 589:10-19	Confidential Business Information.
124	Defendant's Motion, Exhibit 7	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 8	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 9	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 10	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 11	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 12	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 13	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 14	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 18	GRANTED as to 39:3, 13, 15- 16, 18-20; 44:21, 24-25; 45:16; 46:11-12	Confidential Business Information.
124	Defendant's Motion, Exhibit 29	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 33	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 35	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 37	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 38	GRANTED as to PHX00000597, PHX00000598,	Confidential Business and Personal Information.

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124	Defendant's Motion, Exhibit 39	GRANTED as to 101:10-17	Confidential Business Information.
124	Defendant's Motion, Exhibit 40	GRANTED as to 2:22-28, 3:1-22, 4:5-6, 7:8, 8:12-28, 9:1-10, 15-17	Confidential Business and Personal Information.
124	Defendant's Motion, Exhibit 41	GRANTED	Confidential Business Agreement.
124	Defendant's Motion, Exhibit 42	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 46	6:17-24	Confidential Business Information.
124	Defendant's Motion, Exhibit 47	9:25	Confidential Personal Information.
124	Defendant's Motion, Exhibit 48	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 60	GRANTED as to PHX00019323	Confidential Personal Information.
124	Defendant's Motion, Exhibit 61	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 63	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 64	DENIED	No Declaration in Support.
124	Defendant's Motion, Exhibit 65	GRANTED as to 142:17-19; 143:24-144:4	Confidential Business Information.
124	Defendant's Motion, Exhibit 66	GRANTED	Confidential Business Information.
124	Defendant's Motion, Exhibit 67	GRANTED as to licensing and pricing information on p. PHX00050644	Confidential Business Information.
124	Defendant's Motion, Exhibit 69	GRANTED as to as to licensing and pricing information on p. PHX00050546	Confidential Business Information.
124	Defendant's Motion, Exhibit 72	GRANTED as to 1, 3: ¶ 4; ¶ 6; Schedule A DENIED as to 11: Header C, ¶¶ 21-23; 12: ¶¶ 23, 25; 13: ¶ 26; 19: ¶¶ 44-45; 20: ¶ 46; 22: ¶ 53; 23: ¶ 55; 26: ¶ 62, n.95; 28: ¶ 69; 30: ¶ 73; 31: Header F, ¶¶ 77-78; 32: ¶ 80; 33: ¶¶ 84-85; 40: ¶ 103 n.175, Schedules B, C	Relevant Pages Not Included in Exhibit 72.
143	Defendant's Opposition to Plaintiff's Motion for summary judgment ("Defendant's Opp.")	DENIED as to 2:12, 17-18; 6:10-15, 20-23; 7:23-24; 8:2-5; 10:5-7; 13:25; 15:2-4; 18:16, 21, 23-25; 21:13-14; 22:9; 25:20-21	No Declaration of Support.
143	Defendant's Opp., Exhibit A	DENIED	No Declaration of Support.
143	Defendant's Opp., Exhibit B	DENIED	No Declaration of Support.
143	Defendant's Opp., Exhibit E	DENIED	No Declaration of Support.
143	Defendant's Opp., Exhibit F	GRANTED	Confidential Customer Agreement.
143	Defendant's Opp., Decl. of Todd C. Mowry	DENIED as to 2:19-21; 6:7-8	No Declaration of Support.
143	Defendant's Opp., Decl. of Todd C. Mowry, Exhibit 2	DENIED	No Declaration of Support.
166	Defendant's Reply to Plaintiff's Motion for Summary Judgment ("Defendant's Reply")	GRANTED as to 7: DENIED as to 12:7-9	Confidential Business Information. No Declaration of Support.
166	Defendant's Reply, Decl. of Michael A. Jacobs, Exhibit 77	DENIED	No Declaration of Support.
166	Defendant's Reply, Decl. of Michael A. Jacobs, Exhibit 78	DENIED	No Declaration of Support.
166	Defendant's Reply, Decl. of	DENIED	No Declaration of Support.

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Michael A. Jacobs, Exhibit 79		
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III. CONCLUSION

Pursuant to Civil Local Rule 79-5(f)(3), the parties must, within 7 days, file the necessary revised versions of the documents listed in the chart above. Defendant may also file, within 7 days of this Order, unredacted versions of Exhibits 2 and 72 to Defendant’s Motion for Summary Judgment that include all relevant pages to which Defendant’s motion to seal refers.

IT IS SO ORDERED.

Dated: 12/6/2016


HAYWOOD S. GILLIAM, JR.
United States District Judge