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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.  
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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. 181, 182, 230, 247, 279, 280

12 Pending before the Court are several administrative motions to file various documents  
13 under seal pursuant to Civil Local Rule 79-5, relating to Plaintiff Phoenix Technologies'  
14 ("Plaintiff") and Defendant VMware, Inc.'s ("Defendant") motions in limine ("MIL") and  
15 charging conference statements. See Dkt. Nos. 181, 182, 230, 247, 279, 280. No oppositions to  
16 the motions were filed. Having carefully considered each of the requested redactions, the Court  
17 **GRANTS IN PART** and **DENIES IN PART** the administrative motions to seal.

18 **I. LEGAL STANDARD**

19 Courts generally apply a "compelling reasons" standard when considering motions to seal  
20 documents. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2010). "This standard  
21 derives from the common law right 'to inspect and copy public records and documents, including  
22 judicial records and documents.'" *Id.* (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d  
23 1172, 1178 (9th Cir. 2006)). "[A] strong presumption in favor of access is the starting point."  
24 *Kamakana*, 447 F.3d at 1178 (citation and internal quotation marks omitted). To overcome this  
25 strong presumption, the moving party must "articulate compelling reasons supported by specific  
26 factual findings that outweigh the general history of access and the public policies favoring  
27 disclosure, such as the public interest in understanding the judicial process." *Id.* at 1178-79  
28 (citations, internal quotation marks, and alterations omitted). "In general, compelling reasons

1 sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist  
2 when such court files might have become a vehicle for improper purposes, such as the use of  
3 records to gratify private spite, promote public scandal, circulate libelous statements, or release  
4 trade secrets.” *Id.* at 1179 (citation and internal quotation marks omitted). The court must  
5 “balance the competing interests of the public and the party who seeks to keep certain judicial  
6 records secret. After considering these interests, if the court decides to seal certain judicial  
7 records, it must base its decision on a compelling reason and articulate the factual basis for its  
8 ruling, without relying on hypothesis or conjecture.” *Id.* (citations, brackets, and internal  
9 quotation marks omitted).

10 Civil Local Rule 79-5 supplements the “compelling reasons” standard. The party seeking  
11 to file under seal must “establish[ ] that the document, or portions thereof, are privileged,  
12 protectable as a trade secret or otherwise entitled to protection under the law. . . . The request must  
13 be narrowly tailored to seek sealing only of sealable material . . . .” Civ. L.R. 79-5(b).

14 Finally, records attached to motions that are only “tangentially related to the merits of a  
15 case” are not subject to the strong presumption of access. *Ctr. for Auto Safety v. Chrysler Grp.,*  
16 *LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). Accordingly, parties moving to seal such records must  
17 meet the lower “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure. *Id.* at  
18 1097. The “good cause” standard requires a “particularized showing” that “specific prejudice or  
19 harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors*  
20 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (citation and internal quotation marks omitted); see  
21 also Fed. R. Civ. P. 26(c).

22 **II. DISCUSSION**

23 Here, the Court applies the “compelling reasons” standard because the documents at issue  
24 have more than a tangential relation to the merits of the case. See *Ctr. for Auto Safety*, 809 F.3d at  
25 1099 (stating that “plenty of technically non-dispositive motions—including routine motions in  
26 limine—are strongly correlative to the merits of a case.”). The Court rules as follows:

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<b>Motion</b>	<b>Document</b>	<b>Ruling</b>	<b>Reason</b>
181	Plaintiff's MIL No. 2	GRANTED	Confidential Business Agreement.
181	Plaintiff's MIL No. 3	DENIED as to 2:21; 3:10-12; 3:21-22; 3:27; 4:1;	No Declaration in Support
181	Declaration of Whitty Somvichian in Support of Plaintiff's MIL ("Somvichian Decl."), Exhibit 4	GRANTED as to 93:17-95:11	Confidential Business Agreement.
181	Somvichian Decl., Exhibit 5	DENIED	No Declaration in Support
181	Somvichian Decl., Exhibit 6	DENIED	No Declaration in Support
181	Somvichian Decl., Exhibit 7	GRANTED	Confidential Business Information.
181	Somvichian Decl., Exhibit 8	GRANTED as to 111:12, 111:18-113:21; 127:15	Confidential Business Information.
181	Somvichian Decl., Exhibit 11	GRANTED	Confidential Business Agreement.
181	Somvichian Decl., Exhibit 12	GRANTED	Confidential Business Information.
181	Somvichian Decl., Exhibit 14	DENIED as to 2:1-28  DENIED as to rest of Exhibit	No Declaration in Support
182	Defendant's MIL #1	DENIED as to 3:7-9; 3:15-17; 3:21-22; 3:27; 4:25; 4:25-26	No Declaration in Support.
182	Defendant's MIL #2	GRANTED as to 1:19; 2:24-28	No Declaration in Support
182	Defendant's MIL #3	GRANTED as to 1:20; 1:21; 1:22	Confidential Business Information.
182	Defendant's MIL #4	GRANTED as to 1:8; 1:9; 1:10; 2:23; 2:24	Confidential Business Information.
182	Defendant's MIL #5	GRANTED as to 1:12; 1:13; 2:13; 2:15	Confidential Business Information.
182	Declaration of Michael A. Jacobs in Support of Defendant's MIL # 1-5 ("Jacobs Decl."), Exhibit 2	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 3	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 4	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 5	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 7	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 9	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 10	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 13	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 16	GRANTED	Confidential Business Information.
182	Jacobs Decl., Exhibit 17	GRANTED	Confidential Business Information.
182	Jacobs Decl., Exhibit 18	GRANTED	Confidential Business Information.
182	Jacobs Decl., Exhibit 21	GRANTED as to 409:1-15, 409:22-410:1, 410:5-15, 410:24-411:4, 411:12-18, 411:23-412:3, 412:6, 413:14	Confidential Business Information.
182	Jacobs Decl., Exhibit 22	DENIED	No Declaration in Support
182	Jacobs Decl., Exhibit 23	DENIED	No Declaration in Support
230	Defendant's Opposition to Plaintiff's MIL No. 2	GRANTED as to 1:2-3; 1:22-24; 2:4; 3:3; 3:4-5; 3:7; 3:10-11; 3:28-4:4; 4:13; 4:27; and 5:1	Confidential Business Information.
230	Defendant's Opposition to Plaintiff's MIL No. 4	DENIED as to 1:4-6; 1:7-9	No Declaration in Support
230	Defendant's Opposition to Plaintiff's MIL No. 5	DENIED as to 1:8-12; 1:14-15	No Declaration in Support
230	Declaration of Michael A. Jacobs in Opposition to	GRANTED as to 333:20-335:6	Confidential Business Information.

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	Plaintiff's MIL Nos. 1-5 ("Jacobs Decl. in Opposition"), Exhibit 12		
230	Jacobs Decl. in Opposition, Exhibit 13	GRANTED	Confidential Business Agreement.
230	Jacobs Decl. in Opposition, Exhibit 14	GRANTED as to 227:11-229:2	Confidential Business Information.
230	Jacobs Decl. in Opposition, Exhibit 15	GRANTED	Confidential Business Agreement.
230	Jacobs Decl. in Opposition, Exhibit 18	GRANTED	Confidential Business Agreement.
230	Jacobs Decl. in Opposition, Exhibit 21	DENIED	No Declaration in Support
230	Jacobs Decl. in Opposition, Exhibit 22	DENIED as to 50:1-51:25	No Declaration in Support
230	Jacobs Decl. in Opposition, Exhibit 25	GRANTED	Proprietary Third Party Information.
230	Jacobs Decl. in Opposition, Exhibit 26	DENIED as to 44:1-48:25	No Declaration in Support
230	Jacobs Decl. in Opposition, Exhibit 30	DENIED	No Declaration in Support
230	Jacobs Decl. in Opposition, Exhibit 36	DENIED as to 45:1-48:25	No Declaration in Support
230	Jacobs Decl. in Opposition, Exhibit 38	DENIED	No Declaration in Support
247	Plaintiff's Opposition to Defendant's MIL No. 5	GRANTED as to 5:6-7; 5:n.3; 5:n.5	Confidential Commercial Information.
247	Declaration of Whitty Somvichian in Support of Plaintiff's Opposition to Defendant's MIL Nos. 1-5, Exhibit 77	DENIED	No Declaration in Support.
279	Trial Exhibit 163	DENIED	No Declaration in Support
280	VMware's Charging Conference Statement	DENIED as to 8:10 8:13-16	No Declaration in Support
280	Gonzalez Exhibit 1	DENIED as to 122:7 122:17-18 123:3 123:6 123:8 124:2	No Declaration in Support

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**III. CONCLUSION**

While Civil Local Rule 79-5(f)(3) typically requires the parties to file all required revised redacted versions within 7 days, in the interest of receiving all revised documents in advance of the April 17, 2017 charging conference, the parties are **ORDERED** to file all revised documents by 5:00 p.m. on April 12, 2017. In addition, while VMware attorney Krystia Przepiorski provided a specific reason for sealing Exhibits 19 and 20 to the Declaration of Michael A. Jacobs in Opposition to Plaintiff’s MIL Nos. 1-5, see Dkt. No. 230-2, such a request was not included in the motion to seal itself, see Dkt. No. 230. The Court will thus allow VMware the opportunity to file such a request by 5:00 p.m. on April 12, 2017, if it chooses to do so.

**IT IS SO ORDERED.**

Dated: 4/10/2017

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge