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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHOENIX TECHNOLOGIES LTD.,
Plaintiff,
v.
VMWARE, INC.,
Defendant.

Case No.15-cv-01414-HSG

**ORDER GRANTING DEFENDANT'S
ADMINISTRATIVE MOTIONS TO
FILE UNDER SEAL**

Re: Dkt. Nos. 460, 482

Pending before the Court are two unopposed motions to seal by Defendant VMware, Inc. See Dkt. Nos. 460, 482. For the reasons set forth below, the Court **GRANTS** the motions.

I. BACKGROUND

On August 17, 2017, Defendant filed a motion for attorney's fees and costs. Dkt. No. 462. Also on August 17, Defendant filed a Bill of Costs, Dkt. No. 461, accompanied by a motion to seal certain documents relating to the motion for attorney's fees and the Bill of Costs, Dkt. No. 460. On September 14, 2017, Defendant filed an Amended Bill of Costs. Dkt. No. 478. No motion to seal accompanied that filing. Then, on September 20, 2017, Defendant filed a Second Amended Bill of Costs, Dkt. No. 483, accompanied by another motion to seal portions of the latter. Dkt. No. 482.

While Defendant was not clear as to the relation between the two motions to seal, it appears that the second motion, Dkt. No. 482, does not supersede or moot the first motion, Dkt. No. 460. For example, in its first motion, Defendant sought to seal portions of Exhibit 1 to the Declaration of Michael A. Jacobs, filed in support of the motion for attorney's fees, as well as the following documents filed in support of the Bill of Costs: Schedule E, Schedule F, the Declaration of Claudia Galvez, and Exhibit 1 to the Declaration of Farhad Hajimirzaee. See Dkt. No. 460. In

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1 its second motion, Defendant sought only to seal the Second Revised Schedule F, which it filed in
2 support of its Second Amended Bill of Costs. See Dkt. No. 482.

3 Given this ambiguity, the Court will address each of the requests for sealing in both
4 motions.

5 **II. LEGAL STANDARD**

6 Courts generally apply a “compelling reasons” standard when considering motions to seal
7 documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*
8 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from
9 the common law right ‘to inspect and copy public records and documents, including judicial
10 records and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in
11 favor of access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotation omitted). To
12 overcome this strong presumption, the party seeking to seal a judicial record attached to a
13 dispositive motion must “articulate compelling reasons supported by specific factual findings that
14 outweigh the general history of access and the public policies favoring disclosure, such as the
15 public interest in understanding the judicial process” and “significant public events.” *Id.* at 1178-
16 79 (quotation omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s
17 interest in disclosure and justify sealing court records exist when such ‘court files might have
18 become a vehicle for improper purposes,’ such as the use of records to gratify private spite,
19 promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179
20 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the
21 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
22 litigation will not, without more, compel the court to seal its records.” *Id.*

23 The Court must “balance[] the competing interests of the public and the party who seeks to
24 keep certain judicial records secret. After considering these interests, if the court decides to seal
25 certain judicial records, it must base its decision on a compelling reason and articulate the factual
26 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5
27 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a
28 document or portions of it under seal must “establish[] that the document, or portions thereof, are

1 privileged, protectable as a trade secret or otherwise entitled to protection under the law . . . The
2 request must be narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b).

3 Records attached to nondispositive motions are not subject to the strong presumption of
4 access. See *Kamakana*, 447 F.3d at 1179. Because the documents attached to nondispositive
5 motions “are often unrelated, or only tangentially related, to the underlying cause of action,”
6 parties moving to seal must meet the lower “good cause” standard of Rule 26(c) of the Federal
7 Rules of Civil Procedure. *Id.* at 1179-80 (quotation omitted). The “good cause” standard requires
8 a “particularized showing” that “specific prejudice or harm will result” if the information is
9 disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir.
10 2002); see also Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
11 examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
12 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

13 **III. ANALYSIS**

14 Because a motion for attorney’s fees and costs and a bill of costs are nondispositive
15 motions, the Court applies the “good cause” standard to Defendant’s motions to seal. Defendant’s
16 overarching argument is that the material it seeks to seal “contains or discusses highly confidential
17 business information about the negotiated payments that VMware made to its contract attorneys,
18 e-discovery vendors, and graphics consultants supporting VMware in this lawsuit.” Dkt. No. 460
19 at 2; see also Dkt. No. 482 at 1. The Court considers each document in turn.

20 **A. Exhibit 1 to the Declaration of Michael A. Jacobs in Support of Defendant’s**
21 **Motion for Attorney’s Fees and Costs**

22 Defendant moves to seal portions of Exhibit 1 to the Declaration of Michael A. Jacobs in
23 support of its motion for attorney’s fees and costs, Dkt. No. 460 at 1, which Defendant contends
24 “contain[s] highly sensitive business information involving the confidential information about the
25 amount it paid contract attorneys through Hire Counsel,” Dkt. No. 460-1 (Declaration of Claudia
26 Galvez in Support of the Motion to Seal, or “Galvez Decl.”) ¶ 3. Hire Counsel “assist[ed] with
27 legal staffing during discovery,” and Defendant argues the portion of the declaration which it
28 seeks to have sealed “constitute[s] VMware’s and its third party vendors’ highly sensitive business

1 information.” Id. ¶ 4.

2 Upon review of the exhibit, the Court finds that the negotiated pricing terms Defendants
3 seek to seal constitute “business information that might harm a litigant’s competitive standing” if
4 publicly disclosed. See Nixon, 435 U.S. at 598 (citation omitted). Moreover, the redaction is
5 sufficiently “narrowly tailored” such that Defendant is seeking to seal only those portions of the
6 exhibit that might put sensitive business information at risk. Accordingly, the Court grants
7 Defendant’s motion as to this exhibit.

8 **B. Schedules E and F in Support of Defendant’s Bill of Costs; Declaration of**
9 **Claudia Galvez in Support of Defendant’s Bill of Costs; Exhibit 1 to the**
10 **Declaration of Farhad Hajimirzaee in Support of Defendant’s Bill of Costs**

11 Defendant next moves to seal portions of Schedules E and F, the Declaration of Claudia
12 Galvez (in Support of the Bill of Costs), and Exhibit 1 to the Declaration of Farhad Hajimirzaee,
13 all of which it filed in support of its Bill of Costs. Dkt. No. 460 at 1. With the exception of
14 Schedule F, Defendant argues these documents “reveal highly-confidential pricing terms charged
15 by Discovia and OpenAxes, third-party vendors who provided VMware with eDiscovery services
16 in this lawsuit.” Id.; see also Galvez Decl. ¶ 5 (characterizing these documents as “contain[ing]
17 highly sensitive business information involving the confidential information about the amount it
18 paid third-party e-discovery and visual aid vendors”). Schedule F “contains invoices from Impact
19 Trial Consulting and Core TrialTech, third-party vendors who provided VMware with trials
20 graphics, foam boards, and deposition designation clips during trial.” Dkt. No. 460 at 3.
21 Defendant seeks to seal Schedule F because it contains the “negotiated rates” the vendors charged
22 VMware. See id.; see also Galvez Decl. ¶ 7 (“Both Impact Trial Consulting’s and Core
23 TrialTech’s financial information is contained in the invoices attached in Schedule F.”).

24 Upon review of Exhibit 1 to the Hajimirzaee Declaration, the Declaration of Claudia
25 Galvez (in Support of the Bill of Costs), and Schedules E and F, the Court finds that the pricing
26 and rates information therein is sealable material, see Nixon, 435 U.S. at 598, and sufficiently
27 narrowly tailored. Accordingly, the Court grants Defendant’s motion as to these documents.

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1 **C. Second Revised Schedule F in Support of Defendant’s Second Amended Bill of**
2 **Costs**

3 Last, Defendant moves to seal portions of the Second Revised Schedule F, which it filed in
4 support of its Second Amended Bill of Costs. Dkt. No. 482 at 1.¹ Defendant contends that the
5 Second Revised Schedule F contains invoices from Impact Trial Consulting and CoreTrial Tech,
6 as well as “Impact’s internal descriptions of [its] invoices.” Id. at 1-2. It claims an “interest[] in
7 maintaining the confidentiality of highly-sensitive business and pricing information.” Id. at 2; see
8 also Dawson Decl. ¶ 4.

9 Upon review of the Second Revised Schedule F, the Court finds that the pricing
10 information and billing designations therein are sealable material, see Nixon, 435 U.S. at 598, and
11 sufficiently narrowly tailored. Accordingly, the Court grants Defendant’s motion as to the Second
12 Revised Schedule F.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Court **GRANTS** Defendant’s motions to seal. Under Civil
15 Local Rule 79-5(f)(1), the unredacted versions of the documents specified in Defendant’s motions
16 will remain under seal and the public will have access only to the redacted versions originally filed
17 by Defendant:

- 18 1. Exhibit 1 to the Declaration of Michael A. Jacobs. See Dkt. No. 460-3 (redacted);
19 Dkt. No. 460-4 (sealed).
- 20 2. Schedule E. See Dkt. No. 460-9 (redacted); Dkt. No. 460-10 (sealed).
- 21 3. Schedule F. See Dkt. No. 460-11 (redacted); Dkt. No. 460-12 (sealed).
- 22 4. Declaration of Claudia Galvez (in Support of the Bill of Costs). See Dkt. No. 460-
23 7 (redacted); Dkt. No. 460-8 (sealed).
- 24 5. Exhibit 1 to the Declaration of Farhad Hajimirzaee. See Dkt. No. 460-5 (redacted);
25 Dkt. No. 460-6 (sealed).

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27 ¹ In its original Bill of Costs, Defendant sought to seal Schedule F. See Dkt. No. 460 at 3; Galvez
28 Decl. I ¶ 7. Defendant then filed an Amended Bill of Costs, and a Revised Schedule F. See Dkt.
 No. 478. No motion to seal accompanied the Amended Bill of Costs. Defendant thereafter
 revised Schedule F again, and here seeks to seal the Second Revised Schedule F. See Dkt. No.
 482-1 (Declaration of Shaelyn Dawson, or “Dawson Decl.”) ¶ 3.

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6. Second Revised Schedule F. See Dkt. No. 482-2 (redacted); Dkt. No. 482-3
(sealed).

IT IS SO ORDERED.

Dated: 2/14/2018


HAYWOOD S. GILLIAM, JR.
United States District Judge