

1 As this Court has explained in its previous sealing orders in this case, courts have
2 recognized a “general right to inspect and copy public records and documents, including judicial
3 records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978).
4 “Unless a particular court record is one ‘traditionally kept secret,’ a ‘strong presumption in favor of
5 access’ is the starting point. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th
6 Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).
7 In order to overcome this strong presumption, a party seeking to seal a judicial record must
8 articulate justifications for sealing that outweigh the public policies favoring disclosure. *See id.* at
9 1178-79. Because the public’s interest in non-dispositive motions is relatively low, a party seeking
10 to seal a document attached to a non-dispositive motion need only demonstrate “good cause.”
11 *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (applying “good cause” standard
12 to all non-dispositive motions, because such motions “‘are often unrelated, or only tangentially
13 related, to the underlying cause of action’” (citing *Kamakana*, 447 F.3d at 1179)).

14 Conversely, “the resolution of a dispute on the merits, whether by trial or summary
15 judgment, is at the heart of the interest in ensuring the ‘public’s understanding of the judicial
16 process and of significant public events.’” *Kamakana*, 447 F.3d at 1179 (quoting *Valley*
17 *Broadcasting Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)). Thus,
18 a party seeking to seal a judicial record attached to a dispositive motion or presented at trial must
19 articulate “compelling reasons” in favor of sealing. *See id.* at 1178. “In general, ‘compelling
20 reasons’ . . . exist when such ‘court files might have become a vehicle for improper purposes,’ such
21 as the use of records to . . . release trade secrets.” *Id.* at 1179 (citing *Nixon*, 435 U.S. at 598). The
22 Ninth Circuit has adopted the Restatement’s definition of “trade secret” for purposes of sealing,
23 holding that “[a] ‘trade secret may consist of any formula, pattern, device or compilation of
24 information which is used in one’s business, and which gives him an opportunity to obtain an
25 advantage over competitors who do not know or use it.’” *In re Electronic Arts*, 298 Fed. App’x
26 568, 569-70 (9th Cir. 2008) (quoting *Restatement of Torts* § 757, cmt. b). Additionally,
27 “compelling reasons” may exist if sealing is required to prevent judicial documents from being
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1 used “as sources of business information that might harm a litigant's competitive standing.” *Id.* at
2 569 (9th Cir. 2008) (citing *Nixon*, 435 U.S. at 598).

3 As this Court has previously ruled, motions concerning the remedies to be awarded in this
4 case cannot fairly be characterized as “unrelated, or only tangentially related, to the underlying
5 cause of action.” *Kamakana*, 447 F. 3d at 1179. To the contrary, these motions implicate the very
6 core of Apple's claims and Apple's desired relief in bringing suit against Samsung. As evidenced
7 by the plethora of media and general public scrutiny of the preliminary injunction proceedings and
8 the trial, the public has a significant interest in these court filings, and therefore the strong
9 presumption of public access applies. Accordingly, the “compelling reasons” standard applies to
10 Apple’s Damages Motion, and to documents supporting it, including the exhibits to the Musika
11 Declaration that Samsung seeks to seal here.

12 II. ANALYSIS

13 Samsung seeks to seal five documents. The first two, Exhibits 12 and 13, are slides from
14 internal Samsung presentations. In a declaration submitted in support of the motion to seal,
15 Samsung counsel Hankil Kang explains that these documents are highly confidential because they
16 “contain Samsung’s projections about future demand in the smartphone market and reveal STA’s
17 pricing strategy, including the prices at which STA is likely to sell phones in the future.” Kang
18 Decl. at ¶ 3. Samsung asserts that “competitors can use the information to undercut Samsung’s
19 prices and diminish Samsung’s market share.” *Id.* The slides, however, do not contain information
20 that is sufficiently specific to create any real risk of competitive harm. Rather, Exhibit 12 gives
21 fifty-dollar price ranges in which Samsung proposes to focus its offerings, and Exhibit 13
22 expresses the belief that the number of first-time phone buyers will exceed a certain level in the
23 next two years. Samsung has not explained, and the Court does not see, how public availability of
24 either of these slides could actually cause any sort of competitive harm. A bare assertion that
25 competitors might use information to undercut prices, without any theory as to how the information
26 could actually be used, is insufficient. Nor is there any indication that the information contained in
27 these slides constitutes trade secrets. Accordingly, Exhibits 12 and 13 cannot meet the “compelling
28 reasons” standard, and Samsung’s motion as to these exhibits is DENIED.

1 Exhibit 21 is a slide from a presentation apparently made by Samsung to a carrier. It
2 includes a graph of iPhone price points—information already well known to the public—and a few
3 general notes about Samsung’s marketing strategy. Again, Samsung has indicated in conclusory
4 fashion that “competitors can use the information to Samsung’s strategic disadvantage by
5 undercutting Samsung’s prices in the future and interfering with Samsung’s relationship with
6 carrier partners.” Kang Decl. at ¶ 5. But Samsung has not explained *how* any competitor might
7 actually use this information to inflict competitive harm, and the Court cannot see how information
8 at this level of generality could possibly be used to Samsung’s disadvantage. The Court thus finds
9 that Exhibit 21 does not meet the “compelling reasons” standard. Accordingly, Samsung’s motion
10 as to Exhibit 21 is DENIED.

11 Exhibit 25 contains a graphic image showing popular words from online conversations
12 before and after a Samsung marketing campaign. Samsung asserts that “competitors can use the
13 information to counter Samsung’s marketing and advertising efforts.” Kang Decl. at ¶ 4. But
14 advertising and marketing efforts are public by their nature, and competitors can counter
15 Samsung’s advertising efforts with or without a graphic image displaying Samsung’s assessment of
16 online talk about its products. Further, the chart represents information about conversations that
17 happened *in public*. Anyone who wanted to collect similar information could do so. Thus, it is
18 difficult to see how a graphic image of public information could even be considered confidential,
19 let alone raise a potential for competitive harm. Accordingly, it cannot meet the “compelling
20 reasons” standard, and Samsung’s motion as to Exhibit 25 is DENIED.

21 Finally, Samsung seeks to seal Exhibit 49, which consists of an email exchange from
22 September, 2008, between two Samsung executives. The emails contain a meeting agenda, and
23 discuss two possible categories of product design and the relative importance of certain phone
24 features. Samsung asserts that these emails discuss Samsung’s “product strategy, including
25 hardware specifications for Samsung’s smartphones.” Having reviewed the emails, however, the
26 Court sees only a discussion of screen size—not of any confidential aspects of Samsung’s products
27 that might be considered trade secrets. Further, the emails contain some discussion of the relative
28 merits of two broad types of design, to be discussed at a meeting held over four years ago.

1 Samsung has not explained, and the Court cannot see, how disclosure of the fact that Samsung
2 once held such discussions could place it at any sort of competitive disadvantage now, in 2012,
3 when the design decisions under discussion have presumably already been implemented in
4 publically available products, or were rejected four years ago. The Court thus finds that Exhibit 25
5 does not meet the “compelling reasons” standard. Accordingly, Samsung’s motion as to Exhibit 25
6 is DENIED.

7 As the Court has found that none of the information Samsung has presented is sealable
8 under the applicable standard, the motions are denied with prejudice.

9 Finally, Samsung has requested that if the Court denies its motion, the Court stay its Order
10 pending resolution of Samsung’s appeal of the Court’s August 9 sealing Order, ECF No. 1649.
11 However, the documents Samsung seeks to seal here are not the same types of documents that are
12 the subject of that appeal. The appeal concerns pretrial documents containing detailed financial
13 information; the information here does not concern Samsung’s finances, and does not concern a
14 pretrial motion. *See* Fed. Cir. Case No. 12-1600, ECF No. 46. Thus, even if the Federal Circuit
15 finds in Samsung’s favor on the appeal, it will not change the analysis of the present motion, where
16 Samsung seeks to seal documents attached to a motion for a permanent injunction that do not
17 contain confidential financial information. Accordingly, Samsung’s request for a stay is DENIED.

18 **IT IS SO ORDERED.**

19 Dated: November 13, 2012

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21 LUCY H. KOH
22 United States District Judge
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