

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re HIGH-TECH EMPLOYEE ANTITRUST LITIGATION)	Case No.: 11-CV-2509-LHK-PSG
)	
)	ORDER GRANTING-IN-PART MOTIONS TO SEAL
)	
)	(Re: Docket Nos. 279, 313, 319, 326, 329, 331)
)	

Accompanying the parties’ various papers regarding Plaintiffs Michael Devine, Mark Fichtner, Siddharth Hariharan, Brandon Marshall, and Daniel Stover (collectively “Plaintiffs”) motion to compel production of documents from Defendant Google Inc. (“Google”) are several motions to seal or redact brought pursuant to Civil L.R. 79-5. All of the motions, whether brought by Plaintiffs or Google, arise from Google’s assertion of confidentiality over the nature and terms of its relationship with Bill Campbell (“Campbell”) or over communications between its executives regarding employee retention.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”¹ Accordingly, when considering a sealing

¹ *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

1 request, “a strong presumption in favor of access is the starting point.”² Parties seeking to seal
2 judicial records relating to dispositive motions bear the burden of overcoming the presumption
3 with “compelling reasons” that outweigh the general history of access and the public policies
4 favoring disclosure.³

5 Records attached to nondispositive motions, however, are not subject to the strong
6 presumption of access.⁴ Because the documents attached to nondispositive motions “are often
7 unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal
8 must meet the lower “good cause” standard of Rule 26(c).⁵ As with dispositive motions, the
9 standard applicable to nondispositive motions requires a “particularized showing”⁶ that “specific
10 prejudice or harm will result” if the information is disclosed.⁷ “[B]road allegations of harm,
11 unsubstantiated by specific examples or articulated reasoning” will not suffice.⁸ A protective order
12 sealing the documents during discovery may reflect the court’s previous determination that good
13 cause exists to keep the documents sealed,⁹ but a blanket protective order that allows the parties to
14 designate confidential documents does not provide sufficient judicial scrutiny to determine whether
15 each particular document should remain sealed.¹⁰
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19 ² *Id.*

20 ³ *Id.* at 1178-79.

21 ⁴ *See id.* at 1180.

22 ⁵ *Id.* at 1179 (internal quotations and citations omitted).

23 ⁶ *Id.*

24 ⁷ Fed. R. Civ. P. 26(c).

25 ⁸ *Id.*

26 ⁹ *See id.* at 1179-80.

27 ¹⁰ *See* Civil L.R. 79-5(a).
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1 In addition to making particularized showings of good cause, parties moving to seal
2 documents must comply with the procedures established by Civil Local Rule 79-5. The rule allows
3 sealing orders only where the parties have “establishe[d] that the document or portions thereof is
4 privileged or protectable as a trade secret or otherwise entitled to protection under the law.”¹¹ The
5 rule requires parties to “narrowly tailor” their requests only to sealable material.¹²

6 Google first seeks to seal any references to Campbell’s relationship to Google, including
7 redacting significant portions of the parties’ papers,¹³ redacting significant portions of a deposition
8 of Campbell,¹⁴ and sealing entirely Campbell’s declaration and the copies of the agreements he
9 signed with Google during his relationship with it.¹⁵ Google asserts that its “unique business
10 arrangement” with Campbell is “confidential and highly sensitive” and that it would suffer
11 “competitive harm” because its competitors “would discover, and therefore better understand, the
12 unique and confidential arrangement between Mr. Campbell and Google regarding his role as
13 senior advisor to Google.”¹⁶

14 Although parts of the documents properly may be sealed, such as Campbell’s Social
15 Security number¹⁷ and the amount and nature of his compensation,¹⁸ Google has not made a
16 particularized showing how descriptions of the services Campbell provided to Google would be
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19 ¹¹ *Id.*

20 ¹² *Id.*

21 ¹³ *See* Docket No. 313 Ex. 1; Docket No. 319 Ex. 1; Docket No. 329 Ex. 1; Docket No. 331 Ex. A.

22 ¹⁴ *See* Docket No. 331 Ex. B.

23 ¹⁵ *See* Docket No. 319.

24 ¹⁶ *See* Docket No. 331; *see also* Docket Nos. 319, 329.

25 ¹⁷ *See* Fed. R. Civ. P. 5.2(a)(1).

26 ¹⁸ *See Apple, Inc. v. Samsung Elecs. Co.*, Case No. 11-CV-1846-LHK, 2012 WL 3283478, at *7
27 (N.D. Cal. Aug. 9, 2012) (granting motions to seal information about compensation).
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1 detrimental if revealed, especially in light of the publicity around his role at Google.¹⁹ Given that
2 publicity, the court finds that sealing references to or descriptions of his relationship to Google is
3 inappropriate and so Google’s requests are not narrowly tailored. The court therefore DENIES
4 WITHOUT PREJUDICE Google’s sealing requests regarding Campbell. Because the deposition,
5 the consultant agreement, and the employment agreement include information about Campbell’s
6 compensation and his Social Security Number, Google may renew its motion to seal with narrowly
7 tailored redactions of that information.
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9 Google additionally seeks redaction of names of people that Google employees either
10 communicated with or about in emails attached to Plaintiffs’ motion.²⁰ Google also requests that
11 emails attached to Plaintiffs’ motion containing Google employees’ conversations about strategies
12 for employee retention be sealed.²¹ The privacy interests of third parties outweigh the limited
13 public interest in their information that accompanies a non-dispositive motion.²² As to the emails,
14 the court notes that Judge Koh already has determined that “compensation and recruiting strategies,
15 policies, and procedures” of the various defendants in this case may remain under seal.²³ Google
16 likewise here has made a sufficient showing that disclosure of its compensation and retention
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20 ¹⁹ See, e.g., Miguel Helft, “Bill Campbell on Coaching RockMelt and Google vs. Apple,” *New*
21 *York Times*, Nov. 8, 2010 (available at [http://bits.blogs.nytimes.com/2010/11/08/bill-campbell-on-](http://bits.blogs.nytimes.com/2010/11/08/bill-campbell-on-coaching-rockmelt-and-google-vs-apple/)
22 [http://www.forbes.com/sites/roberthof/2011/07/27/startups-secrets-of-bill-campbell-the-coach-of-](http://www.forbes.com/sites/roberthof/2011/07/27/startups-secrets-of-bill-campbell-the-coach-of-silicon-valley/)
23 [silicon-valley/](http://www.forbes.com/sites/roberthof/2011/07/27/startups-secrets-of-bill-campbell-the-coach-of-silicon-valley/)).

24 ²⁰ See Docket No. 313 Exs. 2, 3.

25 ²¹ See Docket No. 313.

26 ²² See *Nettles v. Farmers Ins. Exch.*, Case No. C06-5164, 2007 WL 858060, at *2, (W.D. Wash.
27 Mar. 16, 2007).

28 ²³ See Docket No. 273.

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policies could cause competitive harm. Google's requests to seal Exhibits E, K, L, and M in their entirety and to redact Exhibits D and J and portions of Plaintiffs' motion are GRANTED.

IT IS SO ORDERED.

Dated: February 28, 2013



PAUL S. GREWAL
United States Magistrate Judge