

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

SARAH SAMET and JAY PETERS,)
individually and on behalf of all others similarly)
situated,)
)
Plaintiffs,)
)
v.)
)
PROCTER & GAMBLE COMPANY,)
KELLOGG COMPANY and KELLOGG)
SALES COMPANY,)
Defendants.)

Case No.: 5:12-cv-01891-PSG
**ORDER GRANTING-IN-PART
MOTION TO SEAL**
(Re: Docket No. 146)

Before the court is one motion to file three documents under seal.¹ “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”² Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”³ Parties seeking to seal judicial records

¹ See Docket No. 146.

² *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

³ *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

1 relating to dispositive motions bear the burden of overcoming the presumption with “compelling
2 reasons” that outweigh the general history of access and the public policies favoring disclosure.⁴

3 However, “while protecting the public's interest in access to the courts, we must remain
4 mindful of the parties' right to access those same courts upon terms which will not unduly harm
5 their competitive interest.”⁵ Records attached to nondispositive motions therefore are not subject
6 to the strong presumption of access.⁶ Because the documents attached to nondispositive motions
7 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving
8 to seal must meet the lower “good cause” standard of Rule 26(c).⁷ As with dispositive motions, the
9 standard applicable to nondispositive motions requires a “particularized showing”⁸ that “specific
10 prejudice or harm will result” if the information is disclosed.⁹ “Broad allegations of harm,
11 unsubstantiated by specific examples of articulated reasoning” will not suffice.¹⁰ A protective
12 order sealing the documents during discovery may reflect the court’s previous determination that
13 good cause exists to keep the documents sealed,¹¹ but a blanket protective order that allows the
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19 ⁴ Id. at 1178-79.

20 ⁵ *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

21 ⁶ See *id.* at 1180.

22 ⁷ *Id.* at 1179 (internal quotations and citations omitted).

23 ⁸ *Id.*

24 ⁹ *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);
25 see Fed. R. Civ. P. 26(c).

26 ¹⁰ *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

27 ¹¹ See *Kamakana*, 447 F.3d at 1179-80.

1 parties to designate confidential documents does not provide sufficient judicial scrutiny to
2 determine whether each particular document should remain sealed.¹²

3 In addition to making particularized showings of good cause, parties moving to seal
4 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to
5 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
6 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
7 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
8 must conform with Civil L.R. 79-5(d).”¹³ “Within 4 days of the filing of the Administrative
9 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
10 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹⁴

11 With these standards in mind, the courts rules on the instant motion as follows:

<u>Motion</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
Docket No. 146-4	Defendants Kellogg Company and Kellogg Sales Company’s Opposition to Plaintiff’s Motion for Class Certification	UNSEALED.	No declaration filed in support.
Docket No. 146-15	Ex. I to Lee Decl. in support of Defendants’ Opposition	UNSELEAD.	No unredacted version of document was electronically filed for the court’s review, as required by Civ. L.R. 79-5(d)(1)(D).
Docket No.	Ex. M to Lee Decl. in	7:24, 7:27, 8:9 and	Only sealed portions narrowly

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22 ¹² See Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to
23 designate certain documents as confidential is not sufficient to establish that a document, or
portions thereof, are sealable.”).

24 ¹³ Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed
25 order that is narrowly tailored to seal only the sealable material” which “lists in table format each
26 document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an
27 “unredacted version of the document” that indicates “by highlighting or other clear method, the
portions of the document that have been omitted from the redacted version.”
Civ. L.R. 79-5(d)(1)(d).


28 ¹⁴ Civ. L.R. 79-5(e)(1).

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146-20	support of Defendants' Opposition	8:13 SEALED; remainder UNSEALED.	tailored to confidential business information and supported by a declaration.
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SO ORDERED.

Dated: October 13, 2015



PAUL S. GREWAL
United States Magistrate Judge