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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NANCY LANOVAZ, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

TWININGS NORTH AMERICA, INC.,

Defendant.

Case No. C-12-02646-RMW

ORDER RE: SEALING MOTIONS

[Re Docket Nos. 100, 115, 119]

Before the court are three administrative motions to seal documents. The entirety of the Administrative Motion to File Under Seal Supplemental Exhibits Related to Class Certification, Dkt. No. 119, is denied as moot as the court denied the motion to supplement. *See* Dkt. No. 132 at n.2. The court addresses the remaining two motions, Dkt. Nos. 100 and 115, below.

A. Legal Standard

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *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)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to dispositive motions

1 bear the burden of overcoming the presumption with “compelling reasons” that outweigh the
2 general history of access and the public policies favoring disclosure. *Id.* at 1178-79.

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.” *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29
6 (Fed. Cir. 2013). Records attached to nondispositive motions therefore are not subject to the strong
7 presumption of access. *See id.* at 1180. Because the documents attached to nondispositive motions
8 “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving
9 to seal must meet the lower “good cause” standard of Rule 26(c). *Id.* at 1179 (internal quotations
10 and citations omitted). As with dispositive motions, the standard applicable to nondispositive
11 motions requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
12 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
13 1210-11 (9th Cir. 2002); *see* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by
14 specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*,
15 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during discovery may
16 reflect the court’s previous determination that good cause exists to keep the documents sealed, *see*
17 *Kamakana*, 447 F.3d at 1179-80, but a blanket protective order that allows the parties to designate
18 confidential documents does not provide sufficient judicial scrutiny to determine whether each
19 particular document should remain sealed. *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation
20 or protective order that allows a party to designate certain documents as confidential is not
21 sufficient to establish that a document, or portions thereof, are sealable.”).

22 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, a trial court has broad
23 discretion to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or
24 other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G).
25 The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement of Torts,
26 holding that “[a] trade secret may consist of any formula, pattern, device or compilation of
27 information which is used in one’s business, and which gives him an opportunity to obtain an
28 advantage over competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th

1 Cir. 1972) (quoting *Restatement of Torts* § 757, cmt. b). “Generally it relates to the production of
2 goods. . . . It may, however, relate to the sale of goods or to other operations in the business. . . .”
3 *Id.* In addition, the Supreme Court has recognized that sealing may be justified to prevent judicial
4 documents from being used “as sources of business information that might harm a litigant’s
5 competitive standing.” *Nixon*, 435 U.S. at 598. In this case, the Federal Circuit has counseled that
6 “Apple and Samsung have an interest in keeping their detailed product-specific financial
7 information secret . . . because they could suffer competitive harm if this information is made
8 public.” *Apple*, 727 F.3d at 1225.

9 In addition to making particularized showings of good cause, parties moving to seal
10 documents must comply with the procedures established by Civ. L. R. 79-5. Pursuant to Civ. L.
11 R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
12 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
13 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
14 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b) (requiring the submitting party to attach
15 a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table
16 format each document or portion thereof that is sought to be sealed,” and an “unreadacted version
17 of the document” that indicates “by highlighting or other clear method, the portions of the
18 document that have been omitted from the redacted version.”). “Within 4 days of the filing of the
19 Administrative Motion to File Under Seal, the Designating Party must file a declaration as required
20 by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R.
21 79-5(e)(1).¹

22 With these standards in mind, the courts rules on the instant motions as follows.
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27 ¹ The Civil Local Rules have recently been amended shortening the time available to the
28 designating party to file a supporting declaration from seven days to four days. As this rule change
was only recently implemented, the court applies the prior form of Civ. L. R. 79-5 for the purposes
of this order.

B. Sealing Order

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Ruling</u>	<u>Reason/Explanation</u>
100	Declaration of Dan Martin at 2:4-12 and 3:10	GRANTED	Narrowly tailored to confidential business information.
100	Exhibit A to the Declaration Dan Martin (2009 Wholesale Price List)	GRANTED in part and DENIED in part.	GRANTED as to the "list price" columns; DENIED as the rest of the document.
100	Exhibit B to the Declaration Dan Martin (2011 Wholesale Price List)	GRANTED in part and DENIED in part.	GRANTED as to the "list price" columns; DENIED as the rest of the document.
100	Exhibit D to the Declaration Dan Martin (Specialty Wholesale Price List)	GRANTED in part and DENIED in part.	GRANTED as to the "list price" columns; DENIED as the rest of the document.
100	Exhibit A to Declaration of Carol Scott, portions of ¶¶ 6, 7, 10, 12, 20-30, 32, 34, and Exhibit 4 to the Expert Report (Compilation of wholesale pricing).	GRANTED	Narrowly tailored to confidential business information.
115	Exhibit A to the Reply in Support of Class Certification (internal Twinings marketing research)	GRANTED	Narrowly tailored to confidential business information.
115	Exhibit B to the Reply in Support of Class Certification (internal Twinings marketing research)	GRANTED	Narrowly tailored to confidential business information.
115	Exhibit C to the Reply in Support of Class Certification (internal Twinings marketing research)	GRANTED	Narrowly tailored to confidential business information.
115	Exhibit D to the Reply in Support of Class Certification (internal Twinings marketing research)	GRANTED	Narrowly tailored to confidential business information.
115	Exhibit E to the Reply in Support of Class Certification (internal Twinings marketing research)	GRANTED	Narrowly tailored to confidential business information.

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115	Declaration of Dr. Oral Capps in Support of Reply in Support of Class Certification at 4:9-11; 8:2-21; 9:8-10, 26-27.	GRANTED	Narrowly tailored to confidential business information.
115	Plaintiff's Reply at 1:13-20; 2:25-28; 3:1-23	GRANTED	Narrowly tailored to confidential business information.

IT IS SO ORDERED.

Dated: April 24, 2014


RONALD M WHYTE
United States District Judge