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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

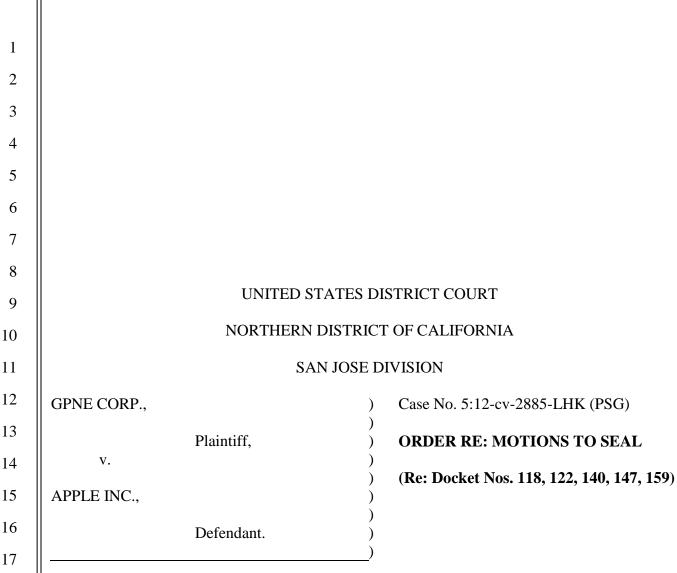|	
GPNE CORP.,	) Case No. 5:12-cv-2885-LHK (PSG)
Plaintiff,	) **ORDER RE: MOTIONS TO SEAL**
v.	)
	) **(Re: Docket Nos. 118, 122, 140, 147, 159)**
APPLE INC.,	)
Defendant.	)

Before the court are five administrative motions to seal 44 documents, including such

industry secrets as, "This deposition is taking place at 500 Arguello Street in Palo Alto, California

on October 29th, 2013 at 9:50," "What is your current position at Apple?" and "Good morning."

Other gems include the identity of a Rule 30(b)(6) witness and the fact that one or more of the

accused mobile devices uses a baseband processor. "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 request, "a 'strong presumption in favor

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[1] *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)).

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of access' is the starting point."[2] Parties seeking to seal judicial records relating to dispositive

motions bear the burden of overcoming the presumption with "compelling reasons" that outweigh

the general history of access and the public policies favoring disclosure.[3]

However, "while protecting the public's interest in access to the courts, we must remain

mindful of the parties' right to access those same courts upon terms which will not unduly harm

their competitive interest."[4] Records attached to nondispositive motions therefore are not subject

to the strong presumption of access.[5] Because the documents attached to nondispositive motions

"are often unrelated, or only tangentially related, to the underlying cause of action," parties moving

to seal must meet the lower "good cause" standard of Rule 26(c).[6] As with dispositive motions, the

standard applicable to nondispositive motions requires a "particularized showing"[7] that "specific

prejudice or harm will result" if the information is disclosed.[8] "Broad allegations of harm,

unsubstantiated by specific examples of articulated reasoning" will not suffice.[9] A protective order

sealing the documents during discovery may reflect the court's previous determination that good

cause exists to keep the documents sealed,[10] but a blanket protective order that allows the parties to

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

[3] *Id.* at 1178-79.

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

[5] *See id.* at 1180.

[6] *Id.* at 1179 (internal quotations and citations omitted).

[7] *Id.*

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

[9] *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

[10] *See Kamakana,* 447 F.3d at 1179-80.

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designate confidential documents does not provide sufficient judicial scrutiny to determine whether each particular document should remain sealed.[11]

In addition to making particularized showings of good cause, parties moving to seal documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is "sealable," or "privileged or protectable as a trade secret or otherwise entitled to protection under the law." "The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d)."[12] "Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable."[13]

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

Motion to Seal	Document to be Sealed	Result	Reason/Explanation
118	GPNE's Motion To Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	No declaration timely filed
118	Exhibit M To The Hartsell Hartsell Declaration ISO Plaintiff's Motion To Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	No declaration timely filed
118	Exhibit N To The Hartsell Hartsell Declaration ISO	UNSEALED	No declaration timely filed

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[11] *See* Civ. L.R. 79-5(d)(1)(A) ("Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.").

[12] Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a "proposed order that is narrowly tailored to seal only the sealable material" which "lists in table format each document or portion thereof that is sought to be sealed," Civ. L.R. 79-5(d)(1)(b), and an "unreadacted 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).

[13] Civ. L.R. 79-5(e)(1). The Civil Local Rules have recently been amended shortening the time available to the 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.

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	Plaintiff's Motion To Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions		
122	GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit C to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit D to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit E to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit F to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit G to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
122	Exhibit H to the Muniz Declaration ISO GPNE's Motion To Compel Supplemental Responses To Its First Request For Production Of Documents	UNSEALED	Not narrowly tailored to confidential business information
140	Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
140	Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And	UNSEALED	Not narrowly tailored to confidential business information

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	Sanctions		
140	Exhibit A to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	No declaration filed
140	Exhibit E to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
140	Exhibit F to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
140	Exhibit G to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
140	Exhibit H to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
140	Exhibit I to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
140	Exhibit J to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
140	Exhibit O to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule	SEALED	Narrowly tailored to confidential business information

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	30(B)(6) Testimony And Sanctions		
140	Exhibit S to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	No declaration submitted
140	Exhibit T to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	No declaration submitted
140	Exhibit V to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
140	Exhibit Y to Green Declaration ISO Apple's Opposition to GPNE's Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
147	GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
147	Birkett Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
147	Exhibit D to Birkett Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
147	Exhibit E to Birkett Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
147	Exhibit G to Birkett Declaration ISO GPNE's	UNSEALED	Not narrowly tailored to confidential

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	Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions		business information
147	Exhibit H to Birkett Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
147	Exhibit I to Birkett Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	SEALED	Narrowly tailored to confidential business information
147	Bumgardner Declaration ISO GPNE's Reply ISO its Motion to Compel Baseband Logs And Rule 30(B)(6) Testimony And Sanctions	UNSEALED	Not narrowly tailored to confidential business information
159	Exhibit 1 to Apple's Administrative Motion for Leave to File a Sur-Reply in Opposition to GPNE's Motion to Compel	UNSEALED	Not narrowly tailored to confidential business information
159	Exhibit 4 to Apple's Administrative Motion for Leave to File a Sur-Reply in Opposition to GPNE's Motion to Compel	SEALED	Narrowly tailored to confidential business information

IT IS SO ORDERED.

Dated: March 14, 2014

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PAUL S. GREWAL
United States Magistrate Judge

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