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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 CORNING OPTICAL
8 COMMUNICATIONS WIRELESS LTD.,

9 Plaintiff,

10 v.

11 SOLID, INC., et al.,

12 Defendants.

Case No. [14-cv-03750-PSG](#)

OMNIBUS ORDER RE: MOTIONS TO SEAL

(Re: Docket Nos. 296, 308, 317, 327, 343, 346, 364)

13 Before the court are seven administrative motions to seal. “Historically, courts have
14 recognized a ‘general right to inspect and copy public records and documents, including judicial
15 records and documents.’”¹ Accordingly, when considering a sealing request, “a ‘strong
16 presumption in favor of access’ is the starting point.”² Parties seeking to seal judicial records
17 relating to dispositive motions bear the burden of overcoming the presumption with “compelling
18 reasons” that outweigh the general history of access and the public policies favoring disclosure.³

19 However, “while protecting the public's interest in access to the courts, we must remain
20 mindful of the parties’ right to access those same courts upon terms which will not unduly harm
21 their competitive interest.”⁴ Records attached to nondispositive motions therefore are not subject

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23 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)).

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

25 ³ *Id.* at 1178-79.

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

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

11 In addition to making particularized showings of good cause, parties moving to seal
12 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to
13 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
14 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection
15 under the law.” “The request must be narrowly tailored to seek sealing only of sealable material,
16 and must conform with Civil L.R. 79-5(d).”¹² “Within 4 days of the filing of the Administrative

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18 ⁵ See *id.* at 1180.

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

20 ⁷ *Id.*

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

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

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

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

27 ¹² Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed
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1 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
2 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹³

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

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
296	Supplemental Declaration of Barry Bruce in Support of Defendants’ Motion for Summary Judgment	UNSEALED	Not narrowly tailored to confidential business information; portions sought to be sealed contain information later publicly disclosed at trial.
308	Defendants’ August 31, 2015 Letter Brief	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
308	Exhibit 1 to Defendants’ Letter Brief	Docket No. 308-4 at pages 4-7 (Appendix) SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.

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24 order that is narrowly tailored to seal only the sealable material” which “lists in table format each
25 document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an
26 “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).

27 ¹³ Civ. L.R. 79-5(e)(1).

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317	Plaintiff's Motion in Limine #2	UNSEALED	Portions sought to be sealed contain information later publicly disclosed at trial.
317	Exhibit A to Plaintiff's Motion in Limine #2	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
327	Defendants' Motions in Limine	UNSEALED	Not narrowly tailored to confidential business information; some portions sought to be sealed contain information later publicly disclosed at trial.
327	Defendants' Motion to Exclude Expert Testimony of Michele Riley	UNSEALED	Portions sought to be sealed contain information later publicly disclosed at trial.
327	Defendants' Trial Exhibit List (Exhibit F to Joint Pretrial Statement)	UNSEALED	Not narrowly tailored to confidential business information.
327	Exhibit 2 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information.
327	Exhibit 3 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information.

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327	Exhibit 5 to the Platt Declaration	UNSEALED	Portions sought to be sealed contain information later publicly disclosed at trial.
327	Exhibit 6 to the Platt Declaration	SEALED	Narrowly tailored to confidential business information.
327	Exhibit 8 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
327	Exhibit 12 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
327	Exhibit 13 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
327	Exhibit 14 to the Platt Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.

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343	Plaintiff's Opposition to Defendants' Motion to Exclude Expert Testimony of Michele Riley	UNSEALED	Portions sought to be sealed contain information later publicly disclosed at trial.
343	Exhibit D to the Stover Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.
346	Plaintiff's Opposition to Defendants' Motions in Limine	UNSEALED	Not narrowly tailored to confidential business information; some portions sought to be sealed contain information later publicly disclosed at trial.
346	Exhibit 1 to the Hunt Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
346	Exhibit 2 to the Hunt Declaration	UNSEALED	Not narrowly tailored to confidential business information.
346	Exhibit 3 to the Hunt Declaration	SEALED	Narrowly tailored to confidential business information.
346	Exhibit 4 to the Hunt Declaration	UNSEALED	Not narrowly tailored to confidential business information; portions of document contain information later publicly disclosed at trial.

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364	Defendants' Opposition to Plaintiff's Motion for Reconsideration of Summary Judgment Order	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
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SO ORDERED.

Dated: November 2, 2015


PAUL S. GREWAL
United States Magistrate Judge