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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORNING OPTICAL
COMMUNICATIONS WIRELESS LTD.,

Plaintiff,

v.

SOLID, INC., et al.,

Defendants.

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

**OMNIBUS ORDER RE: MOTIONS TO
SEAL**

(Re: Docket Nos. 426, 440, 444, 447)

Before the court are four administrative motions to 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 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.⁴

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

¹ See Docket Nos. 426, 440, 444, 447.

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)).

⁴ *Id.* at 1178-79.

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

12 In addition to making particularized showings of good cause, parties moving to seal
13 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to
14 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document
15 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection
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17 _____
18 ⁵ *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

19 ⁶ *See id.* at 1180.

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

21 ⁸ *Id.*

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

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

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

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

1 under the law.” “The request must be narrowly tailored to seek sealing only of sealable material,
2 and must conform with Civil L.R. 79-5(d).”¹³ “Within 4 days of the filing of the Administrative
3 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
4 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹⁴

5 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>
426	Defendants’ Motion for Attorney’s Fees	Designations highlighted in yellow on pages v, 17-19 at Docket No. 426-5 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information. The designating party has indicated that some designations may be filed publicly. ¹⁵
426	Declaration of Christian Platt in Support of Defendants’ Motion for Attorney’s Fees	Designations highlighted in yellow at Docket No. 426-8 SEALED; all other designations UNSEALED.	Designated portions narrowly tailored to confidential business information.
426	Exhibit 9 to the Platt Declaration (TX 52)	UNSEALED	The designating party has indicated that the document may be filed publicly. ¹⁶

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21 ¹³ 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 “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.”
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23 Civ. L.R. 79-5(d)(1)(d).

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25 ¹⁴ Civ. L.R. 79-5(e)(1).

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27 ¹⁵ See Docket No. 432 at 2 n.1.

28 ¹⁶ See *id.*

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426	Exhibit 10 to the Platt Declaration (TX 53)	UNSEALED	The designating party has indicated that the document may be filed publicly. ¹⁷
426	Exhibit 11 to the Platt Declaration (TX 54)	UNSEALED	The designating party has indicated that the document may be filed publicly. ¹⁸
426	Exhibit 12 to the Platt Declaration (TX 58)	Designations highlighted in black at Docket No. 453-3 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
426	Exhibit 13 to the Platt Declaration (TX 74)	Designations highlighted in black at Docket No. 453-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
426	Exhibit 14 to the Platt Declaration (TX 78)	UNSEALED	The designating party has indicated that the document may be filed publicly. ¹⁹
426	Exhibit 15 to the Platt Declaration (TX 88)	Docket No. 426-30 at TX0088-003, TX0088-005 to -014, TX0088-016 to -018, TX0088-022 to -024 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
426	Exhibit 16 to the Platt Declaration (excerpt of TX 97)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁰

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

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426	Exhibit 17 to the Platt Declaration (TX 111)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²¹
426	Exhibit 18 to the Platt Declaration (TX 112)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²²
426	Exhibit 19 to the Platt Declaration (TX 113)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²³
426	Exhibit 20 to the Platt Declaration (TX 116)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁴
426	Exhibit 22 to the Platt Declaration (TX 2167)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁵
426	Exhibit 23 to the Platt Declaration (TX 2169)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁶

²¹ *See id.*

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.*

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426	Exhibit 24 to the Platt Declaration (TX 2286)	UNSEALED	Not narrowly tailored to confidential business information.
426	Exhibit 28 to the Platt Declaration (O'Day Tr.)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁷
426	Exhibit 29 to the Platt Declaration (Shapira Tr.)	UNSEALED	The designating party has indicated that the document may be filed publicly. ²⁸
426	Exhibit 42 to the Platt Declaration (AIPLA Report)	Contents of table on page I-108 at Docket No. 426-69 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to information not publicly available.
440	Trial Exhibit 155-16	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
440	Trial Exhibit 155-62	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
440	Trial Exhibit 203	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
440	Trial Exhibit 206	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).

²⁷ See *id.*

²⁸ See *id.*

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440	Trial Exhibit 253	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
440	Trial Exhibit 263	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
440	Trial Exhibit 293	SEALED except for pages 1, 5, 7, 18, 19, 27 and 37.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 294	SEALED except for pages 1, 7 and 13.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 361	SEALED except for pages 1, 2, 4, 5, 10, 15 and 19.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 362	SEALED except for page 1.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 363	SEALED except for pages 1, 2, 3, 9, 10 and 11.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.

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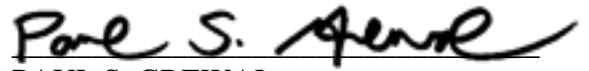
440	Trial Exhibit 364	SEALED except for page 1.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 366	SEALED except for page 1.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 367	SEALED except for page 1.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 1019	SEALED	Narrowly tailored to confidential business information.
440	Trial Exhibit 1036	SEALED except for rows 1 and 2162.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
440	Trial Exhibit 1053	SEALED except for pages 1, 13, 135, 201, 211, 214, 218, 248, 267, 272, 452, 468, 471, 490 and 532.	Only sealed portions narrowly tailored to confidential business information and not previously disclosed at trial.
444	Plaintiff's Opposition to Motion for Attorney's Fees	Designations highlighted in black at Docket No. 444-3 SEALED; all other designations UNSEALED.	Designated portions narrowly tailored to confidential business information.

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447	Exhibit 10 to the Platt Declaration (excerpts from TX 54)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
447	Exhibit 11 to the Platt Declaration (TX 58)	Designations highlighted in black at Docket No. 453-3 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
447	Exhibit 12 to the Platt Declaration (TX 74)	Designations highlighted in black at Docket No. 453-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
447	Exhibit 14 to the Platt Declaration (TX 2167)	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).

SO ORDERED.

Dated: January 5, 2016



PAUL S. GREWAL
United States Magistrate Judge