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# **UNITED STATES DISTRICT COURT** NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

CISCO SYSTEMS INC, Plaintiff, v.

ARISTA NETWORKS, INC., Defendant.

Case No. 14-cv-05344-BLF

### **OMNIBUS ORDER RE PRETRIAL** SEALING MOTIONS

[Re: ECF 612, 616, 617, 631, 632, 641, 652, 660, 662]

This order addresses administrative motions to file under seal portions of its briefing and exhibits filed by Arista Networks, Inc. ("Arista") and Cisco Systems Inc. ("Cisco") in support of their trial briefs. ECF 612, 616, 617, 631, 632, 641, 652. It also addresses the motions to file under seal portions of the Court's Order remotions in limine and a pretrial conference transcript. ECF 660, 662. For the reasons stated below, the motions are GRANTED IN PART and DENIED IN PART.

I. LEGAL STANDARD

20 "Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents." Kamakana v. City and Cnty. of 21 Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Nixon v. Warner Commc'ns, Inc., 435 22 23 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are "more than tangentially related to the merits of a case" may be sealed only upon a showing of 24 25 "compelling reasons" for sealing. Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed 26 upon a lesser showing of "good cause." Id. at 1097. In addition, sealing motions filed in this 27 28 district must be "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the
 identified material is "sealable." 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." *Id*.

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## II. DISCUSSION

The Court has reviewed the parties' sealing motions and declarations in support thereof. The Court finds the parties have articulated compelling reasons to seal certain portions of most of the submitted documents. The proposed redactions are also narrowly tailored. The Court's rulings on the sealing requests are set forth in the tables below:

10	A. ECF 612		
11	Identification of Documents	<b>Description of Documents</b>	Court's Order
11	to be Sealed		
12	Exhibit 9 to the Declaration	The entire document contains	GRANTED.
	of Ryan Wong In Support of	information relating to highly	
13	Defendant Arista Networks,	confidential source code of	
14	Inc.'s Opening Brief re	Cisco and Arista.	
14	Analytic Dissection ("Wong		
15	Declaration") (Cisco		
	Interrogatory Responses,		
16	Exhibit G)	The entire document contains	CDANTED
17	Exhibit 10 to the Wong Declaration (Cisco		GRANTED.
1/	Interrogatory Responses,	information relating to highly confidential source code of	
18	Exhibit H)	Cisco and Arista.	
10		Cibeo una mista.	
19	Exhibit 11 to the Wong	Pages 9:21-23 of the Li	GRANTED.
20	Declaration (Compilation of	excerpt; and pages 8:11-19 of	
20	Deposition Transcript	the Liu excerpt are previously	
21	Excerpts)	filed under seal per the Court's	
22		August 24, 2016 order (ECF	
22		487) at 24. The excerpts	
23		contain Cisco's confidential	
		business information	
24		pertaining to its source code.	
25	Exhibit 13 to the Wong	Entire document contains	GRANTED.
23	Declaration (Cisco	Cisco's confidential business	
26	document)	information regarding Cisco's product design.	
27		Previously filed under seal per	
27		the Court's August 24, 2016	
28		order (ECF 487) at 21.	
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1	Exhibit 14 to the Wong Declaration (Cisco	Entire document contains Cisco's confidential business	GRANTED.
2	document)	information regarding Cisco's product design.	
3		Previously filed under seal per	
4		the Court's August 24, 2016 order (ECF 487) at 21.	
5	Exhibit 15 to the Wong	Pages 9:21-23; 152:8-20; 227:19-22; 236:22-24 contain	GRANTED.
6	Declaration (Li Deposition Excerpts)	personal information about the	
7		witness and confidential information about Cisco's	
, 8		product development.	
		Previously filed under seal per the Court's August 24, 2016	
9		order (ECF 487) at 18.	
10	Exhibit 16 to the Wong Declaration (March 31, 2016	Pages 27:1-29:25; 38:2-45:25; 50:2-57:25; 62:1-73:24; 82:1-	GRANTED.
11	Remaker Deposition Excerpts)	85:19 contain confidential information about Cisco's	
12		product development.	
13		Previously filed under seal per the Court's August 24, 2016	
14	Exhibit 17 to the Wong	order (ECF 487) at 19. Entire document contains	GRANTED.
15	Exhibit 17 to the Wong Declaration	Cisco's confidential business information regarding Cisco's	GRANTED.
16		product development.	
17		Previously filed under seal per the Court's August 24, 2016	
18		order (ECF 487) at 20-21.	
19	Exhibit 18 to the Wong Declaration (Sweeney	Entire document discusses and discloses internal, non-public	GRANTED.
20	Deposition Excerpts)	information regarding the development and development	
21		process of the Arista EOS	
22		software, including details regarding how certain	
23		technologies were integrated into Arista's products.	
24		-	
25		Previously filed under seal per the Court's August 24, 2016	
		order (ECF 487) at 21.	
26	Exhibit 20 to the Wong Declaration (Black Opening	Portions previously ordered filed under seal: Paragraphs ¶¶	GRANTED.
27	Expert Report)	298, 397, 519, 525, and 678(i); portions quoting or referencing	
28		portions quoting of referencing	

1 2 3 4 5 6 7 8 9		deposition of Philip Kasten; highlighted portions of Paragraphs ¶¶ 120, 123-125, 132, 161, 433, 438, 448- 459, 461-471, 478-482, 498, 500-502, 504, 508, 510, 514, 515, 570, 580, 636, 689-691, 696, 700 and footnotes 32, 35, 40, and 128 contain Cisco's and Arista's confidential business information. Previously filed under seal per the Court's August 24, 2016 order (ECF 487) at 14, and August 26, 2016 order (ECF	
10	Exhibit 22 to the Wong	490) at 2. Paragraphs ¶¶ 148, 155, 156,	GRANTED.
11 12	Declaration (Black Rebuttal Expert Report)	160-166, and 169-171; and 50- 51, 55, 148, 155, 156, 159,	
12		160, 165, and 170 contain Cisco's and Arista's	
		confidential information.	
14 15		Previously filed under seal per the Court's August 24, 2016 order (ECE 487) at 22	
16	Exhibit 30 to the Wong	order (ECF 487) at 22. Pages 259:15-260:22; 261:18-	GRANTED.
17 18	Declaration (April 4, 2016 Lougheed Deposition Excerpts)	22; 267:4-295:1; 296:23- 298:16, 346:18-374:18; 379:2- 25 contain confidential	
18 19	LACIP(S)	information regarding Cisco's source code and product	
20		development. Previously filed under seal per	
21		the Court's August 24, 2016 order (ECF 487) at 19-20.	
22	Exhibit 32 to the Wong	Entire document contains	GRANTED.
23	Declaration (Kasten (Juniper) Deposition	confidential information and trade secret information of	
24	Excerpts)	non-party, Juniper Networks, Inc. regarding its proprietary	
25		software.	
26		Previously filed under seal per	
27		the Court's October 27, 2016 order (ECF 604) at 2.	
28	Exhibit 33 to the Wong	Pages 50:6; 54:12 contain	GRANTED.
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1 2 3 4 5 6	Declaration (Dell Corporation Representative Deposition Excerpts) Exhibit 36 to the Wong Declaration (Liu Deposition Excerpts)	<ul> <li>identity of the customer of Mr. Cato's previous employer, which constitutes confidential business information.</li> <li>Previously filed under seal per the Court's August 26, 2016 order (ECF 490) at 2.</li> <li>Pages 167-172 contain Cisco's confidential business information about Cisco's</li> </ul>	GRANTED.
7	LACOP(S)	product development.	
8		Previously filed under seal per	
9		the Court's October 27, 2016 order (ECF 604) at page 3.	
10	Exhibit 38 to the Wong Declaration (Black	Paragraphs 13, 23, 35, 59, 76, 78, 80, 84, 85, 98, 99, 100 and	GRANTED.
11	Supplemental Report)	footnote 11 contain confidential source code,	
12 13		discussions of related confidential third-party source	
14		code, as well as confidential information about Cisco's	
15		licenses, business development, and competitive intelligence.	
16		Previously filed under seal per	
17 18		the Court's October 27, 2016 order (ECF 604) at 2.	
19	Exhibit 39 to the Wong	Pages 506, 583-584, 587-588,	GRANTED.
20	Declaration (September 16, 2016 Lougheed Deposition Excerpts)	and 626 contain confidential information about Cisco's source code and product	
21		development.	
22		Previously filed under seal per the Court's October 27, 2016	
23		the Court's October 27, 2016 order (ECF 604) at 3.	
24	Exhibit 42 to the Wong Declaration (November 20,	Pages 55:2-56:18, 95:9-99:14; 178:11-13 contain confidential	GRANTED.
25 26	2016 Lougheed Deposition Excerpts)	information about Cisco's source code and product	
26		development.	
27 28		Previously filed under seal per the Court's August 24, 2016	
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		order (ECF 487) at 18.	
1 2 2	Exhibit 44 to the Wong Declaration (March 30, 2016 Remaker Deposition	Page 8:17-18 contains personal information related to the witness.	GRANTED.
3	Excerpts)	Previously filed under seal per	
4		the Court's August 24, 2016 order (ECF 487) at 22.	
5	Exhibit 45 to the Wong	Entire document contains	GRANTED.
6 7	Declaration (Patil Email)	confidential business information regarding Cisco's product development.	
8 9		Previously filed under seal per the Court's August 24, 2016	
		order (ECF 487) at 20.	
10	B. ECF 616		r
11	Identification of Documents to be Sealed	<b>Description of Documents</b>	Court's Order
12	Cisco's Trial Brief Re:	Arista does not seek to seal the	DENIED.
13	Analytic Dissection	highlighted portions.	
	Exhibit A to the Declaration of Kevin C.	The highlighted portions contain Cisco's and Arista's	GRANTED.
14	Almeroth in Support of	confidential business	
15	Cisco's Trial Brief Re:	information including	
16	Analytic Dissection (copy of	information regarding product	
16	his Opening report	architecture, development,	
17	dated June 3, 2016)	support and documentation; customer communications,	
18		sales, sales strategies, and	
19		testing and analysis procedures.	
20		The Court has previously	
21		granted the sealing of the highlighted portions of this	
		$1  4  ECE \ 407  45  10$	
22	Exhibit C to the	document. ECF 487 at 5-10.	<b>CRANTED</b>
22 23	Exhibit C to the Declaration of Kevin C.	Highlighted portions contain Arista's source code and the	GRANTED.
23	Declaration of Kevin C. Almeroth in Support of	Highlighted portions contain Arista's source code and the development timeline of	GRANTED.
23 24	Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (Evidence	Highlighted portions contain Arista's source code and the	GRANTED.
23	Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re:	Highlighted portions contain Arista's source code and the development timeline of	GRANTED.
23 24 25	Declaration of Kevin C. Almeroth in Support of Cisco's Trial Brief Re: Analytic Dissection (Evidence	Highlighted portions contain Arista's source code and the development timeline of	GRANTED.

1	Exhibit F to the Declaration of Kevin C.	Highlighted portions contain Arista's source code and the	GRANTED.
2	Almeroth in Support of Cisco's Trial Brief Re:	development of Arista's products.	
3	Analytic Dissection (Evidence of Hierarchy Copying Table)	Freedom	
4	Exhibit G to the	Entire document contains	GRANTED.
5	Declaration of Kevin C. Almeroth in Support of	Cisco's and Arista's confidential business	
6	Cisco's Trial Brief Re: Analytic Dissection	information regarding source code.	
7 8	(Interrogatory 2, Evidence of Help Description Copying)		
° 9	Exhibit H to the Declaration of Kevin C.	Highlighted portions of contain Cisco and Arista's confidential	GRANTED.
10	Almeroth in Support of Cisco's Trial Brief Re:	business information.	
11	Analytic Dissection (copy of Kevin Almeroth's Rebuttal	The Court has previously granted the sealing of the	
12	report dated June 17, 2016)	highlighted portions of this document. ECF 487 at 10-13.	
13	Exhibit 1 to the	Highlighted portions contain	GRANTED.
14	Declaration of Drew Holmes in Support of	discussions of Cisco's confidential source code and	
15	Cisco's Trial Brief Re: Analytic Dissection (excerpt of	discussions of related confidential third-party source	
16	Opening Expert Report of Dr.	code.	
17	John Black)	The Court has previously	
18		granted the sealing of the highlighted portions of this	
19	Exhibit 2 to the	document. ECF 487 at 14-15. Highlighted portions contain	GRANTED.
20	Declaration of Drew Holmes in Support of	Cisco's confidential source code.	
21	Cisco's Trial Brief Re:		
22	Analytic Dissection (copy of Cisco's Supplemental Exhibit	The Court has previously granted a motion to seal these	
23	F to Cisco's Supplemental Responses to Interrogatory	portions.	
24	Nos. 16 & 19)		DENIED
25	Exhibit 4 to the Declaration of Drew	Arista does not seek to seal this exhibit.	DENIED.
26	Holmes in Support of Cisco's Trial Brief Re:		
27	Analytic Dissection (First Supplemental Exhibit I to		
28	Interrogatory No. 31 (Oct. 14,		

	2016))		
1	Exhibit 11 to the	Pages 174:3-175:3; 176:7-25;	GRANTED as to pages 174:3-
2	Declaration of Drew	and 216:1-219:25 contain	175:3; 176:7-25; and 216:1-
2	Holmes in Support of	Arista's confidential business	219:25; and DENIED as to
3	Cisco's Trial Brief Re:	information and product	remainder.
	Analytic Dissection (Excerpts	development.	
4	of Deposition Transcript of	Ĩ	
~	Adam Sweeney)		
5	Exhibit 13 to the	Cisco's declaration states that	DENIED.
6	Declaration of Drew	the "highlighted portions"	
Ū	Holmes in Support of	contain confidential	
7	Cisco's Trial Brief Re:	information about Cisco's	
	Analytic Dissect (Excerpt from	product development. Jenkins	
8	the deposition of Phillip	Decl. ¶ 10, ECF 616-1.	
9	Remaker)	However, the motion seeks to	
7		seal the entire exhibit and no	
10		document with partial	
_		redaction or highlighted	
11		portions has been provided.	
10	Exhibit 16 to the	The following portions of this	GRANTED as to the table
12	Declaration of Drew	document contain Arista's	starting on page 8, line 13, and
13	Holmes in Support of	confidential information	ending on page 9, line 28; the
10	Cisco's Trial Brief Re:	relating to product design and	table starting on page 10, line
14	Analytic Dissection (Arista's	development:	6, and ending on page 12, line
	supplemental discovery	• The table starting on page	3; the table starting on page 12,
15	responses to Cisco's	8, line 13, and ending on	line 13, and ending on page 16,
16	Interrogatory No. 9.)	Page 9, line 28;	line 11; the table starting on
10		• The table starting on page	page 16, line 20, and ending on
17		10, line 6, and ending on	page 23, line 15; the
		Page 12, line 3;	information on page 23, lines
18		• The table starting on page	16 through 27; and DENIED
10		12, line 13, and ending on	as to remainder.
19		Page 16, line 11;	
20		• The table starting on page	
		16, line 20, and ending on	
21		Page 23, line 15;	
		• The information on page	
22		23, lines 16 through 27.	
23	Exhibit 17 to the	The table starting on page 7,	GRANTED as to the table
23	Declaration of Drew	line 11, and ending on page 18,	starting at 7:11, and ending at
24	Holmes in Support of	line 13 contains Arista's	18:13; and DENIED as to
	Cisco's Trial Brief Re:	confidential business	remainder.
25	Analytic Dissection (Arista's	information regarding internal	
26	supplemental discovery	product design and	
26	responses to Cisco's	development.	
27	Interrogatory No. 26.)		

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<b>Identification of Documents</b>	<b>Description of Documents</b>	Court's Order
to be Sealed		
Arista's Opening Brief re	Third-party Juniper Networks	GRANTED as to highlight
Analytic Dissection	seeks to seal highlighted	portions of the footnote on
	portions of the footnote on	page 12, except for the last
	page 12, except for the last line	of the footnote, and the
	of the footnote, and the	highlighted portions at 19:
	highlighted portions at 19:20-	23; and DENIED as to
	23. These portions contain	remainder.
	confidential information	
	relating to Juniper's software. No other parties seek to seal	
	the remaining portions.	
	the remaining portions.	
D. ECF 631		1
Identification of Documents	<b>Description of Documents</b>	Court's Order
to be Sealed		~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
Cisco's Trial Brief re:	The highlighted portion at 2:7-	GRANTED as to the
Copyrighted Work	9 contains confidential	highlighted portion of
	information regarding Arista's	2:7-9; and DENIED as to
	product development.	remainder.
E. ECF 632		
<b>Identification of Documents</b>	Description of Documents	Court's Order
to be Sealed		
Exhibit 1 to the Declaration	Cisco has not filed a	DENIED.
of Audrey Hadlock ISO	declaration in support of	
Arista's Brief Re Defining	sealing this exhibit.	
Cisco's Copyrighted Works		
(Cisco Interrogatory Responses)		
(Copolises)	I	
F. ECF 641		
Identification of Documents to be Sealed	<b>Description of Documents</b>	Court's Order
Cisco's Trial Brief	Arista has not filed a	DENIED.
	declaration in support of	
	sealing the highlighted	
	portions of this exhibit.	
G. ECF 652		
Identification of Documents	<b>Description of Documents</b>	Court's Order
to be Sealed	_	
Cisco's Response to	Portions at 2:20-3:5 and 11:19-	GRANTED as to pages 2:2
Arista's Brief re: Analytic	28 contain confidential	3:5 and 11:19-28; and
Dissection	information relating to design	DENIED as to remainder.
	Land dovalonment of Aristo	
	and development of Arista software and product	

Identification of Documents	Description of Documents	Court's Order
H. ECF 660		
Sadana)		
transcript of the Anshul		
excerpt of the deposition		
Neukom (March 17, 2016		
Declaration of John M.	this exhibit.	
Exhibit 2 to the	Arista does not seek to seal	DENIED.
	narrowly tailored.	
	redacted and whether they are	
	portions are sought to be	
	exhibit. Accordingly, the Court cannot assess what	
	portions in the unredacted	
	correspond to the highlighted	
	sealed in the motion do not	
Lougheed)	the portions designated to be	J(u)(1).
Lougheed)	development and architecture,	5(d)(1).
2015 excerpt of deposition transcript of Kirk	containing information relating to Cisco's product	169:25 to be sealed) <i>with</i> EC 652-5; <i>see also</i> Civil L.R. 79
Neukom (November 20,	sealing portions of the exhibit	135:25; 141:1-143:25; 166:1
Declaration of John M.	declaration in support of	(designating portions at 131:
Exhibit 1 to the	Although Cisco submitted a	DENIED. Compare ECF 652
	development strategies.	

Identification of Documents	<b>Description of Documents</b>	Court's Order
to be Sealed		
Court's Order re Motions in	Portions at 7:15, 7:28, 8:2, and	GRANTED.
Limine	12:19-21, starting with	
	"Arista's Senior Vice	
	President" and ending with	
	"publicly," contain Arista's	
	confidential business	
	information.	

20	I. ECF 662		
21	Identification of Documents	<b>Description of Documents</b>	Court's Order
21	to be Sealed		
22	November 3, 2016 Pretrial	Highlighted portions at 59:22-	GRANTED.
	Conference Transcript	25; 60:1-2; 62:12-16; 65:11-	
23	_	17; 66:2-4, 8-17; 93:19-20, and	
		93:23 contain confidential	
24		information relating to the	
25		International Trade	
25		Commission's determination	
26		that is under seal.	

## III. ORDER

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART the aforementioned sealing motions. Under Civil Local Rule 79-5(e)(2), for any request that has been denied because the party designating a document as confidential or subject to a protective order has not provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later than 10 days form the filing of this order. With respect to the motions at ECF 660 and 662, Arista is ordered to file redacted versions of the Court's Order re motions *in limine* and of the pretrial conference transcript within 10 days from the filing of this order.

#### IT IS SO ORDERED.

Dated: November 29, 2016

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BETH LABSON FREEMAN United States District Judge