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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

**ORDER GRANTING MOTION TO
SEAL**

[Re: ECF 768, 771]

Before the Court is Plaintiff Cisco Systems, Inc. (“Cisco”)’s administrative motion to file under seal certain portions of the trial transcripts. ECF 768. Arista Networks, Inc. (“Arista”) Arista filed an opposition, to which Cisco seeks leave to file a reply in further support of the motion. ECF 769, 771. For the reasons stated below, the motion is GRANTED and Cisco’s motion for leave to file a reply is TERMINATED as moot.

I. LEGAL STANDARD

There is a “strong presumption in favor of access” to judicial records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). A party seeking to seal judicial records bears the burden of overcoming this presumption by articulating “compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178-79. Compelling reasons for sealing court files generally exist when such “‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,

1 incrimination, or exposure to further litigation will not, without more, compel the court to seal its
2 records.” *Kamakana*, 447 F.3d at 1179. Ultimately, “[w]hat constitutes a ‘compelling reason’ is
3 ‘best left to the sound discretion of the trial court.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*,
4 809 F.3d 1092, 1097 (9th Cir. 2016).

5 In this District, parties seeking to seal transcripts of proceedings must furthermore follow
6 Civil Local Rule 79-5 and General Order No. 59, which require, *inter alia*, that a sealing request
7 be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). Where the
8 submitting party seeks to file under seal a document designated confidential by another party, the
9 burden of articulating compelling reasons for sealing is placed on the designating party. *Id.* 79-
10 5(e). General Order No. 59 sets forth the time frame in which a transcript of a proceeding will be
11 made public and the procedure by which a party may request redactions.

12 **II. DISCUSSION**

13 Cisco argues that the motion should be granted because it is seeking to redact narrow
14 portions of the trial transcripts relating to terms of a confidential agreement and Cisco’s
15 confidential business and litigation strategies. Mot. 2, ECF 768; Jenkins Decl. 1, ECF 768-1.
16 Arista opposes the motion because Cisco did not follow the procedures to redact court transcripts
17 as required by General Order No. 59. According to Arista, Cisco did not file a “Notice of Intent to
18 Request Redaction” for at least one of the transcript days and waited over two months after the
19 filing of its “Notice of Intent to Request Redaction” before filing the instant motion. Opp’n 1-2,
20 ECF 769.

21 Although Cisco may or may not have complied with the procedures required by General
22 Order No. 59, the Court nonetheless will consider the motion and need not determine whether this
23 motion is timely. The timeliness requirement of General Order No. 59 is not jurisdictional. *See*,
24 *e.g., U.S., ex rel. Meyer v. Horizon Health Corp.*, No. 00-1303 SBA, 2007 WL 518607, at *3
25 (N.D. Cal. Feb. 13, 2007) (holding that “timeliness requirement of Rule 54(d)(1) is not
26 jurisdictional”). Moreover, the transcripts relevant to this motion still remain locked and
27 unavailable to the public to date. Accordingly, the Court will exercise its discretion to consider
28 this motion.

1 The Court has reviewed Cisco’s sealing motion and declaration of Sara Jenkins in support
2 thereof. According to the declaration, the portions of the transcripts should be sealed because they
3 contain confidential information based on a non-public agreement that reveals Cisco’s litigation
4 strategies. ECF 768-1 ¶ 3. The Court finds that Cisco has articulated compelling reasons to seal
5 certain portions of the transcripts. The proposed redactions are also narrowly tailored.

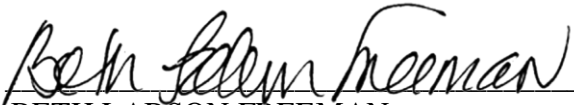
6 **III. ORDER**

7 For the foregoing reasons, the sealing motion at ECF 768 is GRANTED and the following
8 narrowly tailored portions of the trial transcript are to be sealed:

- 9 • 1187:2-5
- 10 • 1188:4-1190:16
- 11 • 1191:6-1192:3
- 12 • 1199:18-21
- 13 • 1720:9-14
- 14 • 1765:23-25
- 15 • 1771:11-17
- 16 • 2130:4-7
- 17 • 2130:16-8
- 18 • 2264:15-20
- 19 • 2760:8-10
- 20 • 2789:1-5

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Dated: February 24, 2017


BETH LABSON FREEMAN
United States District Judge