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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 TESSERA, INC.,
7 Plaintiff,

8 v.

9 TOSHIBA CORPORATION,
10 Defendant.

Case No. [5:15-cv-02543-BLF](#)

**OMNIBUS ORDER RE:
ADMINISTRATIVE MOTIONS TO
SEAL DOCUMENTS**

[Re: ECF 139, 140, 144]

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12 Before the Court are three administrative motions to seal, one from Plaintiff Tessera, Inc.,
13 and two from Defendant Toshiba Corp. See Mots., ECF 139, 140, 144. All three sealing motions
14 relate to the briefing on the parties' cross-motions for summary judgment. See *id.* Tessera's
15 motion, located at ECF 140, is GRANTED IN PART and DENIED IN PART, Toshiba's first
16 sealing motion, located at ECF 139, is DENIED as moot, and Toshiba's second sealing motion,
17 located at ECF 144, is GRANTED IN PART and DENIED IN PART.

18 **I. LEGAL STANDARD**

19 "Historically, courts have recognized a 'general right to inspect and copy public records
20 and documents, including judicial records and documents.'" *Kamakana v. City & County of*
21 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435
22 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, "a 'strong
23 presumption in favor of access' is the starting point." *Id.* (quoting *Foltz v. State Farm Mut. Auto.*
24 *Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to
25 motions that are "more than tangentially related to the underlying cause of action" bear the burden
26 of overcoming the presumption with "compelling reasons" that outweigh the general history of
27 access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d
28 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178-79.

1 However, “while protecting the public’s interest in access to the courts, we must remain
2 mindful of the parties’ right to access those same courts upon terms which will not unduly harm
3 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed.
4 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
5 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto*
6 *Safety*, 809 F.3d at 1099; see also *Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
7 for access to court records attached only to non-dispositive motions because those documents are
8 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
9 to seal the documents attached to such motions must meet the lower “good cause” standard of
10 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
11 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
12 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
13 1210-11 (9th Cir. 2002); see Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by
14 specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*,
15 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during discovery
16 may reflect the court’s previous determination that good cause exists to keep the documents
17 sealed, see *Kamakana*, 447 F.3d at 1179-80, but a blanket protective order that allows the parties
18 to designate confidential documents does not provide sufficient judicial scrutiny to determine
19 whether each particular document should remain sealed. See Civ. L.R. 79-5(d)(1)(A) (“Reference
20 to a stipulation or protective order that allows a party to designate certain documents as
21 confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

22 In addition to making particularized showings of good cause, parties moving to seal
23 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
24 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
25 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
26 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
27 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
28 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable

1 material” which “lists in table format each document or portion thereof that is sought to be
 2 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by
 3 highlighting or other clear method, the portions of the document that have been omitted from the
 4 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative
 5 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection
 6 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

7 **II. DISCUSSION**

8 Toshiba’s second sealing motion, located at ECF 144, is an amended version of its first
 9 sealing motion, located at ECF 139. Toshiba’s first sealing motion, ECF 139, thus is DENIED as
 10 moot. The remaining sealing motions are resolved under the compelling reasons standard,
 11 because the parties’ summary judgment briefing is more than tangentially related to the merits of
 12 this case.

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
140-4	Tessera’s motion for partial summary judgment	Designations highlighted in yellow SEALED.	Sealed material contains confidential business information.
140-6	Ex. 1	SEALED.	Sealed material contains confidential business information.
140-7	Ex. 2	SEALED.	Sealed material contains confidential business information.
140-8	Ex. 3	SEALED.	Sealed material contains confidential business information.
140-9	Ex. 4	SEALED.	Sealed material contains confidential business information.
140-10	Ex. 5	UNSEALED.	Not narrowly tailored to confidential business information.
140-12	Ex. 7	Designation highlighted in yellow SEALED.	Sealed material contains confidential business information.
140-13	Ex. 8	SEALED.	Sealed material contains confidential business information.
140-14	Ex. 9	SEALED.	Sealed material contains confidential business information.
140-15	Ex. 10	SEALED.	Sealed material contains confidential business information.

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140-16	Ex. 11	SEALED.	Sealed material contains confidential business information.
140-17	Ex. 12	SEALED.	Sealed material contains confidential business information.
140-18	Ex. 14	SEALED.	Sealed material contains confidential business information.
140-19	Ex. 15	SEALED.	Sealed material contains confidential business information.
140-20	Ex. 16	SEALED.	Sealed material contains confidential business information.
140-21	Ex. 17	SEALED.	Sealed material contains confidential business information.
140-22	Ex. 18	SEALED.	Sealed material contains confidential business information.
140-23	Ex. 19	UNSEALED.	Not narrowly tailored to confidential business information.
140-24	Ex. 20	SEALED.	Sealed material contains confidential business information.
140-25	Ex. 21	SEALED.	Sealed material contains confidential business information.
140-26	Ex. 22	SEALED.	Sealed material contains confidential business information.
140-27	Ex. 24	SEALED.	Sealed material contains confidential business information.
140-28	Ex. 25	SEALED.	Sealed material contains confidential business information.
140-29	Ex. 26	SEALED.	Sealed material contains confidential business information.
140-30	Ex. 27	SEALED.	Sealed material contains confidential business information.
140-31	Ex. 28	UNSEALED.	Not narrowly tailored to confidential business information.
140-32	Ex. 29	UNSEALED.	Not narrowly tailored to confidential business information.

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139-4 ¹	Toshiba's first motion for summary judgment	Designations highlighted in yellow at 4:7-21, 23-24, 5:1-4, 22-24, 6:6-15, 17-28, 7:1-9, 11-14, 17-23, 26-27, 8:1-18, 9:1-14, 16-18, 22-24, n.6, 10:1-2, 4-6, 10-14, 13:14-20, 22-24, 14:5-9, 15:2, 16:1-5, 21, 24, 17:2-3, 6-25, 18:12, 16, 20-28, 19:1-4, 6-9, 20:2-3, 5-6 SEALED; remainder UNSEALED.	Only sealed portions contain confidential business information.
139-6	Liang Decl. in support of Toshiba's motion for summary judgment	Designations highlighted in yellow at ¶¶ 33, 36, 38, 40 SEALED; remainder UNSEALED.	Only sealed portions contain confidential business information.
139-7	Ex. 2 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-8	Ex. 3 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-9	Ex. 4 to Liang decl.	SEALED.	Sealed material contains confidential business information.
139-10	Ex. 8 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-11	Ex. 9 to Liang Decl.	UNSEALED.	Does not contain confidential business information.
139-13	Ex. 10 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-15	Ex. 11 to Liang Decl.	UNSEALED.	Does not contain confidential business information.

¹ Toshiba did not re-file the documents to be sealed with its amended sealing motion, and so the documents are identified by the ECF numbers assigned to the first sealing motion. The documents to be sealed are located at ECF 139, 141.

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139-17	Ex. 12 to Liang Decl.	UNSEALED.	Does not contain confidential business information.
139-18	Ex. 13 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-19	Ex. 14 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-21	Ex. 15 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-22	Ex. 16 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-23	Ex. 17 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-24	Ex. 18 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-25	Ex. 19 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-26	Ex. 20 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-27	Ex. 21 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-28	Ex. 22 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-29	Ex. 23 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-30	Ex. 24 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
139-31	Ex. 25 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-1	Ex. 26 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-2	Ex. 27 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-3	Ex. 28 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-4	Ex. 29 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-5	Ex. 30, part 1 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-6	Ex. 30, part 2 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-7	Ex. 30, part 3 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-8	Ex. 30, part 4 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-9	Ex. 30, part 5 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-10	Ex. 30, part 6 to Liang Decl.	SEALED.	Sealed material contains confidential business information.

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141-11	Ex. 30, part 7 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-12	Ex. 30, part 8 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-13	Ex. 31, part 1 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-14	Ex. 31, part 2 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-15	Ex. 31, part 3 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-16	Ex. 31, part 4 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-17	Ex. 31, part 5 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-18	Ex. 32 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-19	Ex. 33 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-20	Ex. 34, part 1 to Liang Decl.	UNSEALED.	Does not contain confidential business information. Patents are public information.
141-21	Ex. 34, part 2 to Liang Decl.	UNSEALED.	Does not contain confidential business information. Patents are public information.
141-22	Ex. 34, part 3 to Liang Decl.	UNSEALED.	Does not contain confidential business information. Patents are public information.
141-24	Ex. 36, part 1 to Liang Decl.	UNSEALED.	Not narrowly tailored to confidential business information; several of the documents contained in this exhibit are public information.
141-25	Ex. 36, part 2 to Liang Decl.	UNSEALED.	Not narrowly tailored to confidential business information; several of the documents contained in this exhibit are public information.
141-26	Ex. 37 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-27	Ex. 38 to Liang Decl.	SEALED.	Sealed material contains confidential business information.
141-28	Ex. 35 to Liang Decl.	Designations highlighted in yellow SEALED.	Sealed material contains confidential business information.


The parties may renew their motions to seal the documents the Court has identified as not narrowly tailored. Any renewed motions must comport with Civ. L.R. 79-5(d) and be filed by August 16, 2016.

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Furthermore, when Toshiba amended its motion to seal, it submitted only the amended motion, a declaration in support, and a proposed order. See ECF 144. It did not submit the redacted and unredacted version of the documents to be sealed, presumably because the documents were already filed with Toshiba's first motion to seal. See ECF 139. Civ. L.R. 79-5(d)(C)-(D) explicitly requires parties to file redacted and unredacted versions of the documents sought to be filed under seal. The Court nonetheless has ruled on the amended motion to seal for the sake of expediency, but going forward, any amended motion to seal must fully comply with Civ. L.R. 79-5(d) and include the redacted and unredacted versions of the documents to be sealed. Any amended motion that does not comply with Civ. L.R. 79-5(d) will be denied.

IT IS SO ORDERED.

Dated: August 9, 2016


BETH LABSON FREEMAN
United States District Judge