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

TESSERA, INC.,  
Plaintiff,  
v.  
TOSHIBA CORPORATION,  
Defendant.

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

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

[Re: ECF 176, 178, 181]

Before the Court are three administrative motions to seal, two from Plaintiff Tessera, Inc., and one from Defendant Toshiba Corp. *See* ECF 176, 178, 181. The motions relate to the briefing on the parties’ cross-motions for summary judgment. For the reasons discussed below, the motions are GRANTED IN PART and DENIED IN PART.

**I. LEGAL STANDARD**

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. 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)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

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 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.

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

19 In addition to making particularized showings of good cause, parties moving to seal  
20 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.  
21 79-5(b), a sealing order is appropriate only upon a request that establishes the document is  
22 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under  
23 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and  
24 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  
25 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable  
26 material” which “lists in table format each document or portion thereof that is sought to be  
27 sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by  
28 highlighting or other clear method, the portions of the document that have been omitted from the

1 redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative  
2 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection  
3 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

4 **II. DISCUSSION**

5 The sealing motions at issue are resolved under the compelling reasons standard because  
6 motions for summary judgment are more than tangentially related to the merits of this case. With  
7 this standard in mind, the Court rules on the instant motions as follows:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
176-3	Toshiba’s Reply to Tessera’s Opposition to Toshiba’s Motion for Summary Judgment	DENIED for deposition testimony designated as confidential for failure to provide sufficient reason to seal. GRANTED as to the remainder.	Contains discussions about and language from confidential license agreements between the parties, confidential communications between Tessera and Tessera’s third-party business partners, directly quotes or references audit and royalty correspondence between the parties and deposition testimony that Toshiba and/or Tessera has designated as confidential, and information the Court previously sealed. ECF 51.
176-4	Ex. 1 to Liang Declr.	GRANTED	Contains excerpts from the deposition transcript of former Tessera employee Christopher Pickett that include discussion of the parties’ confidential negotiation of the Agreement.
178-4	Tessera’s Reply in Support of Motion for Partial Summary Judgment	DENIED for deposition testimony designated as confidential for failure to provide sufficient reason to seal. GRANTED as to the remainder.	Contains information the Court previously sealed ( <i>see</i> ECF 51), confidential license negotiation documents, audit and royalty correspondence between the parties, and deposition testimony the parties have designated as confidential under the protective order in this case.
178-5	Ex. 1 to Reply	GRANTED	Contains information the Court previously sealed. <i>See</i> ECF 174.
178-6	Ex. 2 to Reply	DENIED	Contains excerpts from the deposition transcript of Toshiba employee Hiroshi Miyauchi that include information about Toshiba’s business that Toshiba has represented is proprietary. Denied because the designating party did not provide a supporting declaration.

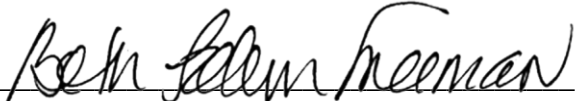
1	181-4	Ex. 6 to Glasser Declr.	GRANTED	Contains information the Court previously sealed. <i>See</i> ECF 51.
2	181-6	Ex. 11 to Glasser Declr.	GRANTED	Contains information the Court previously sealed. <i>See</i> ECF 51, 175.
3	181-8	Ex. 15 to Glasser Declr.	GRANTED	Contains information the Court previously sealed. <i>See</i> ECF 51, 170.
4	181-10	Ex. 16 to Glasser Declr.	GRANTED	Contains confidential terms and conditions of Tessera's licenses, including royalty rates and amounts, license fees, buy-down terms, and indemnity provisions.
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7	181-12	Ex. 17 to Glasser Declr.	GRANTED	Contains confidential terms and conditions of Tessera's licenses, including royalty rates and amounts, license fees, buy-down terms, and indemnity provisions.
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10	181-14	Ex. 18 to Glasser Declr.	GRANTED	Contains confidential terms and conditions of Tessera's licenses, including royalty rates and amounts, license fees, buy-down terms, and indemnity provisions.
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13	181-15	Ex. 19 to Glasser Declr.	GRANTED	Contains confidential terms and conditions of Tessera's licenses, including royalty rates and amounts, license fees, buy-down terms, indemnity provisions, and information the Court previously sealed. <i>See</i> ECF 51, 175.
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17	181-18	Ex. 22 to Glaser Declr.	GRANTED	Contains information the Court previously sealed. <i>See</i> ECF 51, 175.

**III. ORDER**

For the foregoing reasons, the sealing motions at ECF 176, 178, and 181 are GRANTED IN PART and DENIED IN PART. 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 from the filing of this order.

**IT IS SO ORDERED.**

Dated: August 24, 2016

  
BETH LABSON FREEMAN  
United States District Judge