

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRITE SMART CORP.,  
Plaintiff,  
v.  
GOOGLE INC.,  
Defendant.

Case No. [5:15-cv-03962-BLF](#)

**ORDER RE: MOTION TO SEAL**  
**(Re: Docket No. 166)**

Before the court is one administrative motion to seal.<sup>1</sup> “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”<sup>2</sup> Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”<sup>3</sup> 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.<sup>4</sup>

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.”<sup>5</sup> Records attached to nondispositive motions therefore are not subject

<sup>1</sup> See Docket No. 166.

<sup>2</sup> *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)).

<sup>3</sup> *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

<sup>4</sup> *Id.* at 1178-79.

<sup>5</sup> *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

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

11 In addition to making particularized showings of good cause, parties moving to seal  
12 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to  
13 Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document  
14 is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection  
15 under the law.” “The request must be narrowly tailored to seek sealing only of sealable material,  
16 and must conform with Civil L.R. 79-5(d).”<sup>13</sup> “Within 4 days of the filing of the Administrative  
17

---

18 <sup>6</sup> See *id.* at 1180.

19 <sup>7</sup> *Id.* at 1179 (internal quotations and citations omitted).

20 <sup>8</sup> *Id.*

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

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

24 <sup>11</sup> See *Kamakana*, 447 F.3d at 1179-80.

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

27 <sup>13</sup> Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed  
28

1 Motion to File Under Seal, the Designating Party must file a declaration as required by subsection  
2 79-5(d)(1)(A) establishing that all of the designated material is sealable.”<sup>14</sup>

3 With these standards in mind, the court rules on the instant motion as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
166-3	Ex. 1 to Google’s Motion to Redact the June 30, 2015 Hearing Transcript	UNSEALED.	Not narrowly tailored to confidential business information.
166-5	Ex. 2 to Google’s Motion to Redact the June 30, 2015 Hearing Transcript	UNSEALED.	Not narrowly tailored to confidential business information.

4  
5  
6  
7  
8  
9 **SO ORDERED.**

10 Dated: December 7, 2015

11   
12 PAUL S. GREWAL  
13 United States Magistrate Judge

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 order that is narrowly tailored to seal only the sealable material” which “lists in table format each  
25 document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an  
26 “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.”  
Civ. L.R. 79-5(d)(1)(d).

27 <sup>14</sup> Civ. L.R. 79-5(e)(1).