

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
SAN JOSE DIVISION**

FINJAN, INC.,
Plaintiff,
v.
CISCO SYSTEMS INC.,
Defendant.

Case No. 17-cv-00072-BLF

**ORDER DENYING WITHOUT
PREJUDICE CISCO SYSTEMS, INC.’S
ADMINISTRATIVE MOTION TO
SEAL**

Before the Court is Defendant Cisco Systems, Inc.’s (“Cisco”) administrative motion to file under seal certain portions of its Motion to Dismiss Plaintiff Finjan, Inc.’s Second Amended Complaint for Failure to State a Claim for Willful Infringement and exhibits filed in connection therewith. ECF 56. For the reasons set forth below, the motion is DENIED WITHOUT PREJUDICE.

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 & Cnty. 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)). 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 “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 upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this 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

1 identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or
2 protective order that allows a party to designate certain documents as confidential is not sufficient
3 to establish that a document, or portions thereof, are sealable.” *Id.*

4 **II. DISCUSSION**

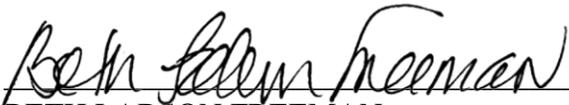
5 The Court has reviewed Cisco’s motion and its declaration submitted in support thereof.
6 According to Cisco’s declaration, all of the material sought to be sealed has been designated by
7 Plaintiff Finjan, Inc. (“Finjan”) as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
8 pursuant to the terms of the parties’ Interim Protective Order. ECF 56-1 at 1-2. Thus, pursuant to
9 Civil L.R. 79-5(e)(1), Finjan was required to file a declaration establishing that the designated
10 material is sealable within four days of the filing of Cisco’s motion. Finjan has not done this.
11 However, pursuant to Civil L.R. 79-5(e), Cisco was required to serve its declaration in support of
12 sealing (i.e., ECF 56-1) on Finjan on the same day it was filed and file proof of such service.
13 Cisco has not filed proof of such service, so it is not clear that Finjan has received Cisco’s
14 declaration in support of sealing. Accordingly, the Court will DENY Cisco’s motion WITHOUT
15 PREJUDICE in order to afford the parties sufficient time to comply with Civil L.R. 79-5.

16 **III. ORDER**

17 Cisco’s motion at ECF 56 is DENIED WITHOUT PREJUDICE. Cisco shall, pursuant to
18 Civil L.R. 79-5(e), serve its declaration in support of sealing on Finjan and file proof of such
19 service no later than July 31, 2017. Finjan shall, pursuant to Civil L.R. 79-5(e)(1), file a
20 declaration establishing whether and the extent to which the designated material is sealable (if at
21 all) no later than August 4, 2017.

22 **IT IS SO ORDERED.**

23 Dated: July 28, 2017

24 
25 BETH LABSON FREEMAN
26 United States District Judge
27
28